

A
Complete Collection
OF
STATE-TRIALS,
AND
PROCEEDINGS
UPON
HIGH-TREASON,
AND OTHER
CRIMES and MISDEMEANOURS;
FROM
The Reign of King *RICHARD* II.
TO
The End of the Reign of King *GEORGE* I.

The FIFTH VOLUME.

With Two Alphabetical Tables to the Whole.

The THIRD EDITION, *with* ADDITIONS.

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A COMPLETE
COLLECTION
OF
TRIALS, &c.

CLXI.

The TRIAL of Joseph Dawson, Edward Forfeith, William May, William Bishop, James Lewis, and John Sparkes, at the Old Bailey, for Felony and Piracy, Octob. 19. 1696. 8 Will. III.

Admir. Angl. ff.

The Sessions of Oyer and Terminer, and Goal-Delivery, held for our Sovereign Lord the King, for the Jurisdiction of the Admiralty of England, at Justice-Hall in the Old Bailey, in the Suburbs of the City of London, on Monday the 19th Day of October, in the Eighth Year of the Reign of our said Sovereign Lord King William the Third, over England, &c. before the Right Honourable Edward Russel, Esq; Henry Priestman, Esq; Sir Robert Rich, Knight and Baronet; Sir George Rooke, Knight; Sir John Houblon, Knight; and James Kendal, Esq; Commissioners for Executing and Exercising the Office and Place of Lord High Admiral of England, respectively assigned and deputed; the Right Worshipful Sir Charles Hedges, Kt. Doctor of Law, Lieutenant in the High Court of Admiralty of England, Commissary-General of our Sovereign Lord the King, and President and Judge of the said Court; the Right Honourable Sir John Holt, Kt. Lord Chief Justice of the King's Bench; Sir George Treby, Kt. Lord Chief Justice of the Common Pleas; Sir Edward Ward, Kt. Lord Chief Baron of the Exchequer; Sir Tho. Rokeby, Kt. and one of the Justices of the King's Bench; Sir Samuel Eyre, Kt. another of the Justices of the King's Bench; Sir John Turton, Kt. another of the Justices of the King's Bench; Sir John Powell, Kt. one of the Justices of the
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Common Pleas; Sir Littleton Powis, Kt. one of the Barons of the Exchequer; William Bridgeman and Josias Burchet, Esqrs; Secretaries of the Admiralty of England; Thomas Lane, William King, and John Cooke, respectively Doctors of Laws; and others his Majesty's Justices named in the said Commission.



IS Majesty's Commissioners being then and there met, the Commission was read, and Proclamation made for Attendance: After which, the Gentlemen of the Grand Jury were called and sworn, and received their Charge from Sir Charles Hedges, Kt. Judge of the High Court of Admiralty, who set forth unto them the Nature of the Commission, the Extent of the Jurisdiction of the Court, and the subject Matter of their Enquiries.

Then the Witnesses for the King being sworn, the Grand Jury withdrew, and after a little Time returned, finding *Billa vera* against Henry Every, not yet taken, Joseph Dawson, Edward Forfeith, William May, William Bishop, James Lewis, and John Sparkes, Prisoners, for feloniously and piratically taking and carrying away, from Persons unknown, a certain Ship called the *Gunsway*, with her Tackle, Apparel, and Furniture, to the Value of 1000 l. and Goods to the Value of 110 l. together with 100000 Pieces of Eight, and 100000 Chequins, upon the High Seas, ten
B Leagues

Leagues from the Cape St. John's, near Surat in the East-Indies. Then Dawson, Forseith, May, Bishop, Lewis, and Sparkes, were brought to the Bar, and their Indictment was read.

Joseph Dawson confessed that he was Guilty, but the rest pleaded Not Guilty, and put themselves upon their Trials; and thereupon the Petty Jury was called, and the Persons, whose Names follow, were sworn.

William Walker,	}	Benjamin Dry,
John Child,		John Sherbrooke,
Edward Leeds,		Samuel Jackson,
Thomas Clarke,		Thomas Emms,
Nathan Green,		Henry Hunter,
Henry Sherbrooke,		John Hall.

Then the King's learned Council opened the Indictment, &c. and Dr. Newton made a Speech; which is as follows.

My Lord, and Gentlemen of the Jury,

THE Prisoners are indicted for Piracy, in Robbing and Plundering the Ship Gunsway, belonging to the Great Mogul and his Subjects, in the Indian Seas, to a very great Value.

And the End was suitable to their Beginning; they first practised these Crimes upon their own Countrymen, the English, and then continued them on to Strangers and Foreigners: For the Ship in which this Piracy was committed, was an English Vessel, called the Charles the Second, belonging to several Merchants of this City, designed for others Ends, and a far different Voyage, which by these Criminals, with the Assistance of one Every, their Captain, in all these Villanies, was seized near the Groyn in Spain, in May 1694. from which Place, having first, by Force, set Captain Gibson the Commander on Shore, they carried off the Ship, and with it committed many and great Piracies, for several Years (as will appear in the Course of the Evidence) in most of the Parts of the known World, without Distinction, upon all Nations, and Persons of all Religions.

Their last Piracy was this in the Indies, the greatest in itself, and like to be the most pernicious in its Consequences, especially as to Trade, considering the Power of the Great Mogul, and the natural Inclination of the Indians to Revenge: But they are now brought hither on their Trial, and, if the Matters they are charged with, shall be proved, to receive that Judgment from you, their Crime deserves; and that is Piracy, which by so much exceeds Theft or Robbery at Land, as the Interest and Concerns of Kingdoms and Nations, are above those of private Families, or particular Persons: For suffer Pirates, and the Commerce of the World must cease, which this Nation has deservedly so great a Share in, and reaps such mighty Advantage by: And if they shall go away unpunished, when it is known whose Subjects they are, the Consequence may be, to involve the Nations concerned in War and Blood, to the Destruction of the innocent English in those Countries, the total Loss of the Indian Trade, and thereby the Impoverishment of this Kingdom.

The Witnesses for the King, viz. John Dan, and Philip Middleton, were then called and sworn, and in the Opinion of the Court gave a full Evidence against the Prisoners, which was very clearly summ'd up by the Lord Chief Justice Holt; the Tenour whereof is particularly set

forth in the following Trials: But the Jury, contrary to the Expectation of the Court, brought in all the Prisoners Not Guilty; whereupon the Sessions was adjourned to Saturday the 31st of October following, and the Prisoners were committed upon a new Warrant for several other Piracies.

Die Sabbati, tricesimo primo Octobris, Annoq; Regni Regis Willielmi Tertii Octavo, Annoq; Domini 1696.

THE Court being sat (at which were present Sir Charles Hedges Judge of the High Court of Admiralty, the Lord Chief Justice Holt, the Lord Chief Justice Treby, the Lord Chief Baron Ward, Mr. Justice Rookby, Mr. Justice Turton, Mr. Justice Eyre, Mr. Baron Powis, Dr. Lane, Dr. King, and Dr. Cook) the Court proceeded in this Manner.

Cl. of Arr. Cryer, make Proclamation.

Cryer. O yes, O yes, O yes. All Manner of Persons that have any thing more to do at this Sessions, draw near and give your Attendance: And you Sheriffs of the City of London, return the several Precepts directed to you, and returnable here this Day, upon Pain and Peril that shall follow thereon.

[Then the Grand Jury were called over, and the Appearances mark'd.]

Cl. of Arr. Make Proclamation.

Cryer. O yes, &c. The Lords the King's Justices charge and command all Persons to keep Silence while the Charge is giving.

The Judge of the Admiralty's Charge to the Grand Jury upon this Occasion.

Sir Charles Hedges. Gentlemen of the Grand Jury, **T**HE Opinion which this Court had of the good Intentions, Abilities, and Integrity of the last Grand Jury, was so fully answered at our late Meeting in this Place, that I am confident all good Englishmen, who were Witnesses of their Proceedings, will concur in giving them publick Thanks for the good Services which they then performed: I wish that all others, who were concerned in the Dispatch of that Day's Business, had the like Pretence to have the same; the publick Justice of the Nation would not then have lain under any Manner of Reproach, neither would you have had this farther Trouble. But seeing that it hath so happen'd, it is become absolutely necessary that a farther and a strict Enquiry should be made after those Crimes which threaten, and tend to the Destruction of our Navigation and Trade; and therefore I am assured of your Patience, whilst I shew you briefly,

1. What the Crimes are, which you are to enquire after.
2. How far the Jurisdiction and your Power in making these Enquiries doth extend.
3. What is the Duty incumbent on you in this behalf.

1. As to the Crimes, I shall not repeat what was mention'd touching all the Particulars thereof, at the Opening of this Sessions; but confine

my

my Discourse to those, which I find by the Calendar will, at this Time, necessarily fall under your Examination; and those are Piracies.

Now Piracy is only a Sea-Term for Robbery, Piracy being a Robbery committed within the Jurisdiction of the Admiralty. If any Man be assaulted within that Jurisdiction, and his Ship or Goods violently taken away without a legal Authority, this is Robbery and Piracy. If the Mariners of any Ship shall violently dispossess the Master, and afterwards carry away the Ship it self, or any of the Goods, or Tackle, Apparel, or Furniture, with a felonious Intention, in any Place where the Lord Admiral hath, or pretends to have Jurisdiction, this is also Robbery and Piracy. The Intention will, in these Cases, appear, by considering the End for which the Fact was committed; and the End will be known, if the Evidence shall shew you what hath been done.

2. Now the Jurisdiction of the Admiralty is declared, and described in the Statute, and Commission, by Virtue of which we here meet, and is extended throughout all Seas, and the Ports, Havens, Creeks, and Rivers beneath the first Bridges next the Sea, even unto the higher Water-mark.

The King of *England* hath not only an Empire and Sovereignty over the *British* Seas, but also an undoubted Jurisdiction, and Power, in Concurrency with other Princes and States, for the Punishment of all Piracies and Robberies at Sea, in the most remote Parts of the World; so that if any Person whatsoever, Native or Foreigner, Christian or Infidel, Turk or Pagan, with whose Country we have no War, with whom we hold Trade and Correspondence, and are in Amity, shall be robbed or spoiled, in the Narrow Seas, the Mediterranean, Atlantick, Southern, or any other Seas, or the Branches thereof, either on this or the other Side of the Line, it is Piracy within the Limits of your Enquiry, and the Cognizance of this Court.

3. Concerning the Duty incumbent upon you in making your Enquiries, and Presentments, you may consider that there is a great Trust and Authority committed to you; and therefore it will be expected that a suitable Care should be had, and your Power executed according to a well-regulated Discretion: As you are, on the one hand, to take Care that the Court be not troubled, nor any Man put in Hazard of his Life, through any frivolous, or malicious Prosecution; so, on the other Side, and more especially in the Cases of great and publick Offences, you are to use your utmost Endeavours, that Justice, the Support of Government, be not obstructed by any Partial Proceedings.

You are not obliged in all Cases to require a clear and full Evidence, but only to examine till you find, and are satisfied in your Consciences, that there is sufficient and just Cause to put the Party accused upon his Trial. You cannot convict, but may in Effect acquit the greatest Criminals; and therefore, if you do but find Proofs enough to create a Presumption against the Party accused, when the Case seems odious, and is of great Consequence and Importance, your safest Way is to put it in a proper Method for the Petty Jury, who are to receive full Satisfaction from the Evidence that shall be given in the Presence of the Party; and according to that Evi-

dence, have Power to determine whether guilty, or not guilty, condemn, as well as acquit.

And upon this Occasion, seeing many who are upon that Service are present, it seems fit that they should also know that they have no Power to do more or less than what is agreeable to the Evidence: They are not to interpose in Points of Law, or to be swayed by any Consideration whatsoever, but what shall arise from the Proofs judicially made; they are indeed Judges of the Fact, but they are not arbitrary; they are as much restrained by the Dictates of Conscience, informed and convinced by reasonable Proofs, as the Judges on the Bench are by the Rules of Law.

No Man can believe just as he lists; and therefore a Determination, or Judgment at Will and Pleasure, will never be thought to deserve the Name of a Verdict: For whatever may be pretended, the World will not be persuaded that a Jury hath pursued the Dictates of Conscience, unless some reasonable Grounds for its Proceedings shall appear; and therefore, whenever it shall happen that notorious Malefactors escape unpunished, notwithstanding that in the Opinion of most good Men there was a full and sufficient Evidence for their Conviction, it is to be wished, and indeed it seems to me to be necessary, in Cases that relate to the Laws of Nations, that the Reasons which induced such a Determination, should be given for the publick Satisfaction; otherwise, since Foreigners look upon the Decrees of our Courts of Justice as the Sense and Judgment of the whole Nation, our Enemies will be glad to find an Occasion to say, that such Miscreants as are out of the Protection of all Laws, and Civil Government, are abetted by those who contend for the Sovereignty of the Seas. The barbarous Nations will reproach us as being a Harbour, Receptacle, and a Nest of Pirates; and our Friends will wonder to hear that the Enemies of Merchants and of Mankind, should find a Sanctuary in this ancient Place of Trade. Nay, we our selves cannot but confess, that all Kingdoms and Countries who have suffered by *English* Pirates, may, for Want of Redress in the ordinary Course, have the Pretence of Justice, and the Colour of the Laws of Nations to justify their making Reprizals upon our Merchants, wherefore they shall meet them upon the Seas. If a Jury happens in these Cases to be too severe, there is room for Mercy, and I am confident, that upon a just Representation, the Innocent never failed of obtaining it; but for a Fault, Neglect, or Error on the other hand, there is no Relief for injured Foreigners, but by their carving out, as we may be sure they will, for themselves, such a Satisfaction, upon our Merchants, as they shall think fit, whenever they shall have an Opportunity; and so our whole Nation must unavoidably suffer both in Reputation and Interest, and all as it were through our own Default.

I hope what hath been said upon this unexpected Occasion, will not be looked upon as intended to influence any Jury; I am sure it is far from being so designed: Religion, Conscience, Honour, common Honesty, Humanity, and all Laws, forbid such Methods: There is no Doubt but the Judge as well as the Jurymen then best discharge his Duty, when he proceeds without Favour or Affection, Hatred or Ill-will, or any partial Respect whatsoever.

Every Man ought to be extremely tender of such a Person as he has Reason to believe is innocent; but it should be considered likewise on the other Side, that he who brings a notorious Pirate, or common Malefactor, to Justice, contributes to the Safety and Preservation of the Lives of many, both bad and good; of the Good, by Means of the Assurance of Protection, and of the Bad too, by the Terror of Justice. It was upon this Consideration that the Roman Emperors in their Edicts made this Piece of Service for the publick Good, as meritorious as any Act of Piety, or religious Worship.

Our own Laws demonstrate how much our Legislators, and particularly how highly that great Prince King Henry the 5th, and his Parliament, thought this Nation concerned in providing for the Security of Traders, and scouring the Seas of Rovers and Free-booters. Certainly there never was any Age wherein our Ancestors were not extraordinary zealous in that Affair, looking upon it, as it is, and ever will be, the chief Support of the Navigation, Trade, Wealth, Strength, Reputation and Glory of this Nation.

Gentlemen, our Concern, as our Trade is, ought in Reason to be rather greater than that of our Fore-fathers; we want no manner of Inducements, no Motives to stir us up, whether we consider our Interest or Honour; we have not only the sacred Word, but also the glorious Acts of the best of Kings, which sufficiently manifest to us, that the Good and Safety of this Nation is the greatest Care of his Life. Let every Man therefore, who pretends to any thing of a true English Spirit, readily, cheerfully follow so good, so great, so excellent an Example, by assisting and contributing to the utmost of his Power and Capacity at all Times towards the carrying on his noble and generous Designs for the common Good, and particularly at this Time, by doing all that he can, to the End that by the Administration of equal Justice, the Discipline of the Seas, on which the Good and Safety of this Nation entirely depends, may be supported and maintained.

Then the Witnesses being sworn in Court, the Grand Jury withdrew to bear their Evidence; and in the mean Time T. Vaughan, J. Murphey, and Tim. Brenain, were arraigned, whom the Keeper of Newgate, by Order, brought to the Bar.

Cl. of Arr. T. Vaughan, Hold up thy Hand; (which he did.) Thou standest indicted, &c.

Art thou Guilty of this High Treason whereof thou standest indicted, or Not guilty?

T. Vaughan. Not guilty.

Cl. of Arr. Culprit, How wilt thou be tried?

T. Vaughan. By God and this Country.

Cl. of Arr. God send thee a good Deliverance.

Cl. of Arr. J. Murphey, Hold up thy Hand; (which he did.) Thou standest indicted, &c.

How sayest thou, J. Murphey, Art thou Guilty of the High Treason whereof thou standest indicted, or Not guilty?

J. Murphey, Not guilty.

Cl. of Arr. How wilt thou be tried?

J. Murphey. By God and the King.

Officer. You must say, by God and my Country.

Cl. of Arr. God send thee a good Deliverance.

Cl. of Arr. Bring Tim. Benain to the Bar, (who was brought accordingly.)

Cl. of Arr. Tim. Brenain, Have you any Copy of your Indictment?

Tim. Brenain. Yes.

Cl. of Arr. When had you it?

Tim. Brenain. This Day Se'ennight.

Cl. of Arr. Tim. Brenain, Hold up thy Hand, (which he did.) Thou standest indicted, &c.

How sayest thou, Art thou Guilty of the High Treason whereof thou standest indicted, or Not guilty?

Tim. Brenain. Not guilty.

Cl. of Arr. How wilt thou be tried?

T. Brenain. By God and my Country.

Cl. of Arr. God send thee a good Deliverance.

Mr. Mompesson. Will your Lordships please that he may be tried now?

L. C. J. Treby. Does he desire to be tried now?

Mr. Mompesson. Yes, my Lord, there is no Evidence against him, and he is sick.

Mr. Sol. Gen. We are not now prepared for the Trial.

L. C. J. Treby. If the King's Council and the Prisoner be agreed, with all my Heart.

L. C. J. Holt. He may be tried with the rest.

Then T. Vaughan, J. Murphey, and T. Brenain had Notice to prepare for their Trials on Friday next, at Two of the Clock in the Afternoon.

Then the Grand Jury came into Court.

Cl. of Arr. Gentlemen of the Grand Jury, are you agreed in your Bills?

Grand Jury. Yes.

Cl. of Arr. Billa vera against Joseph Dawson, Ed. Forfeith, W. May, W. Bishop, James Lewis, and J. Sparkes, for Piracy and Robbery.

Cl. of Arr. Keeper of Newgate, set Joseph Dawson, Ed. Forfeith, Will. May, Will. Bishop, Will. Lewis, and J. Sparkes to the Bar. (Which was done accordingly.)

Cl. of Arr. Joseph Dawson, hold up thy Hand. (Which he did.)

Ed. Forfeith, hold up thy Hand. (Which he did.)

W. May, hold up thy Hand. (Which he did.)

W. Bishop, hold up thy Hand. (Which he did.)

James Lewis, hold up thy Hand. (Which he did.)

Jo. Sparkes, hold up thy Hand, (Which he did.)

Then the Indictment was read, and set forth,

That Henry Every, alias Bridgman, Joseph Dawson, Edward Forfeith, William May, William Bishop, James Lewis, and John Sparkes, late of London, Mariners, on the 30th of May, in the 6th Year of the Reign of our Sovereign Lord King William, and the late Queen, did, against the Peace of God, and our said Sovereign Lord the King that now is, and the late Queen, by Force of Arme, upon the high and open Seas, in a certain Place, about three Leagues from the Groyne, and within the Jurisdiction of the Admiralty of England, piratically and feloniously set upon one Charles Gibson, a Subject of our said Sovereign Lord the King that now is, and of the late Queen, being then and there Commander of a certain Merchant-Ship, called the Charles the Second, carrying 40 Pieces of Ordnance, belonging

to certain Subjects of the said King, and the late Queen, (to the Jurors as yet unknown); and then and there put the said Charles Gibson in bodily Fear of his Life; and then and there, within the Jurisdiction aforesaid, feloniously and piratically did steal, take and carry away from the said Charles Gibson, the said Ship, called the Charles the Second, her Tackle, Apparel, and Furniture, of the Value of One Thousand Pounds; Forty Pieces of Ordnance, of the Value of Five Hundred Pounds; One Hundred Fuses, of the Value of One Hundred Pounds; Fifteen Ton of Bread, of the Value of One Hundred and Fifty Pounds; and Two Hundred Pair of Woollen Stockings, of the Value of Ten Pounds, in the Possession of the said Charles Gibson then being; the Ship, Goods, and Chattels of the Subjects of our said Sovereign Lord the King, and the late Queen, (to the Jurors unknown) against the Peace of our said Sovereign Lord the King, and the late Queen, their Crown, and Dignities, &c.

How say'st thou, Joseph Dawson, art thou Guilty of this Piracy and Robbery, or Not guilty?

Jos. Dawson. I am ignorant of the Proceedings. *Officer.* He pleads Ignorance.

Cl. of Arr. You must plead Guilty, or Not guilty.

Jos. Dawson. Guilty.

Cl. of Arr. How say'st thou, Ed. Forseith, art thou Guilty, or Not guilty?

Ed. Forseith. Not guilty?

Cl. of Arr. How wilt thou be try'd?

Ed. Forseith. By God and my Country.

Cl. of Arr. How say'st thou, Will. May, art thou Guilty, or Not guilty?

W. May. Not guilty.

Cl. of Arr. How say'st thou, W. Bishop, art thou Guilty, or Not guilty?

W. Bishop. I desire to hear the whole Indictment read again.

L. C. J. Holt. You have heard it just now, and may hear it again if you desire it.

W. Bishop. The former Indictment.

L. C. J. Holt. No, there is no Occasion for that, this is an Indictment for a Fact distinct from that.

Cl. of Arr. This is a new Indictment, not the old one. Art thou Guilty of this Piracy and Robbery, or Not guilty?

W. Bishop. Not guilty.

Cl. of Arr. How say'st thou, James Lewis, art thou Guilty, or Not guilty?

J. Lewis. Not guilty.

Cl. of Arr. How say'st thou, J. Sparkes, art thou Guilty, or Not guilty?

J. Sparkes. Not guilty.

Cl. of Arr. How wilt thou be try'd? (As of the rest.)

J. Sparkes. By God and my Country.

Cl. of Arr. God fend thee a good Deliverance.

Cryer. O Yes, &c. You good Men of the City of London summoned to appear here this Day, to try between our Sovereign Lord the King, and Prisoners at the Bar, answer to your Names as you are called, and save your Issues.

Cl. of Arr. Jo. Degrave, Benjamin Hatley, Jo. Ayres, &c.

L. C. J. Holt. Have you any of the former Jury in this Pannel?

Cl. of Arr. Yes, my Lord.

Counsellor Conyers. We shall except against them for the King.

L. C. J. Holt. If you have returned any of the former Jury, you have not done well; for that Verdict was a Dishonour to the Justice of the Nation.

Cler. of Arr. You, the Prisoners at the Bar, these Men you hear called, are to pass between our Sovereign Lord the King, and you; if therefore you will challenge any of them, you are to challenge them as they come to the Book to be sworn, and before they are sworn.

Then they were called over, and some being challenged for the King, and some by the Prisoners, the Persons sworn in this Jury were these:

J. Degrave,	}	Alex. Pollinton,
J. Ayres,		J. Glover,
G. Broom,		Nath. Carpenter,
T. Hicks,		Jo. Bickley,
R. Meakins,		Nath. Troughton,
J. Shelswell,	}	Hum. South.

Cler. of Arr. Make Proclamation.

Cryer. O yes, If any one can inform my Lords, the King's Justices, the King's Serjeant, the King's Attorney General, or his Majesty's Advocate in his High Court of Admiralty, before this Inquest be taken, of the Piracy and Robbery whereof the Prisoners at the Bar stand indicted, let them come forth and they shall be heard, for the Prisoners stand at the Bar upon their Deliverance; and all others may depart.

Then the Grand Jury came into Court again, having found two other Bills against the Prisoners at the Bar, one for piratically taking away a Moorish Ship, and another for committing Piracy on two Ships belonging to Denmark.

And then the Grand Jury was adjourned to Friday next, at two a Clock in the Afternoon.

Cler. of Arr. Ed. Forseith, hold up thy Hand, (and so of the rest): You that are sworn, look upon the Prisoners, and hearken to their Cause; they stand indicted, &c.

Mr. Whitaker. May it please your Lordships, and you Gentlemen of the Jury, the Prisoners at the Bar stand indicted for Felony and Piracy, for that they, about the 30th of May, in the 6th Year of the Reign of his present Majesty King William, did make an Assault on Captain Gibson, Commander of the Ship *Charles the Second*, and put him in Fear of his Life, and piratically stole away the Ship and all the Furniture; and this is laid to be against their Duty and Allegiance, and against the Peace of our Sovereign Lord the King, his Crown and Dignity; to which Indictment they have pleaded Not guilty. We shall go on to call our Witnesses, and prove the Charge against the Prisoners at the Bar, and doubt not but you will do your Duty.

Then Dr. Littleton, Advocate-General to his Majesty, in his High Court of Admiralty, spake as follows.

Gentlemen of the Jury,

YOU have heard the Indictment opened, and we shall now call our Witnesses, who will relate to you what enormous and horrid Crimes the Prisoners at the Bar have committed in the Prosecution of the Fact laid

laid in the Indictment: Crimes, that the bare Intention, had they not taken Effect, would have merited the highest Punishment: But this is not their Case, for they were not disappointed of their wicked Lusts and Desires; for as their Crimes are great, so have they been consummate as well as voluntary and malicious. I may well say, that their Wickedness has been as boundless and as merciless as the Element upon which their Crimes have been committed; nor is there any Part of the World that hath not been sensible of their Rage and Barbarity.

Therefore, Gentlemen, as you are Lovers of Christianity, as you are Lovers of Honesty, nay, as you are Lovers of your selves, who bear the Character of honest Men, if we prove this Charge against the Prisoners, you must and ought to find them Guilty, remembering that the doing Justice upon wicked and profligate Men, is the greatest Mercy and Protection to the Good and Honest. We shall therefore proceed to call our Witnesses, not doubting but that you will act like honest Men, for the Honour and Welfare of your Country, without having any Respect to the dishonourable Proceedings of the former Jury.

Mr. Whitaker. Call Jo. Gravet. (He appeared and was sworn.) Let him stand up.

* Sir John Hawkes. Mr. Sol. Gen. Mr. Gravet, pray will you give my Lords and the Jury an Account of what you know of the Prisoners running away with the Ship *Charles the Second*.

J. Gravet. I was Second Mate in the Ship at that Time. There was violent Hands laid on me, I was seized, and a Pistol clapp'd to my Breaſt, and carry'd away.

Mr. Sol. Gen. Who did it? Begin before.

J. Gravet. I was seiz'd by the Carpenter of the Ship; he took me by the Throat, and clapp'd a Pistol to my Breaſt.

L. C. J. Treby. Begin where the Ship was lying.

L. C. J. Holt. You was a Mate in this Ship: Now pray give an Account of the whole Matter.

J. Gravet. I was upon my Watch upon the Deck.

Prisoners. Pray speak up.

J. Gravet. And there was a Boat came from the *James Galley*, with People in her: And as soon as the Boat came, the Carpenter seiz'd me, and took me by the Throat, and clapp'd a Pistol to me, and said, if I resisted I was a dead Man. They took me, one by one Arm, and another by the other, and led me to my Cabin, and one with a Pistol stood at my Cabin-door, till they were got two Leagues without the *Groyne*. Then *Every* came to speak to Captain *Gibson*, who was then sick, and was guarded on both Sides; and when he had done speaking with him, and was return'd from Capt. *Gibson*, he came to me again, and said, I suppose you do not intend to go with us: I said, I would not. Then I, and the rest that would not go with them, had Liberty to go ashore; and I would have gone to my Coffer, and taken my Clothes, but they would not let me; and told me I should carry no more than the Clothes on my Back.

Mr. Sol. Gen. Did any of the Prisoners at the Bar say so?

J. Gravet. That I cannot tell.

Mr. Conyers. Then go on.

J. Gravet. Then I went to *Every*, and I had some of my Clothes, he was so kind to give me them; he gave me a Coat and Waistcoat, and his Commission that he left behind him; and *W. May* took me by the Hand and wished me well home, and bid me remember him to his Wife.

Mr. Conyers. Was there Liberty for any of them that would, to go ashore?

J. Gravet. Captain *Gibson* told me so, and there were about seventeen went off.

Mr. Conyers. No Matter what Captain *Gibson* told you, you say you went off: Might any one that would, go?

J. Gravet. That I cannot tell.

Mr. Conyers. You say there was about seventeen went off; would the Boat hold more?

J. Gravet. Yes, Sir.

Mr. Cowper. Did you see any hindered that would have gone off? Were any of the Prisoners at the Bar there?

J. Gravet. No.

Mr. Sol. Gen. Do you know *Ed. Forſeith*, &c.?

J. Gravet. I know some of them.

Mr. Conyers. Name the Men that you say you know.

J. Gravet. *Joseph Dawson*, *W. May*, *J. Sparkes*.

Mr. Sol. Gen. They belonged to what Ship?

J. Gravet. To the *Charles*.

Mr. Conyers. Was there not a Boat came from the Ship *James*, before you went away? Was there any of the Prisoners at the Bar that came in that Boat?

J. Gravet. There were about twenty-six that we had Account of.

Mr. Conyers. From what Ship did they come?

J. Gravet. From the *James*.

Mr. Conyers. Were any of the Prisoners at the Bar any of them?

J. Gravet. Indeed, Sir, I cannot tell.

Cler. of Arr. Call *T. Druit*. (Who appeared, and was sworn.)

Mr. Sol. Gen. Mr. *Druit*, was you aboard the Ship called the *Charles the Second*, when she was carried away?

T. Druit. No, Sir.

Mr. Sol. Gen. Do you know any thing of the carrying of that Ship away?

T. Druit. I was not in that Ship; I was Mate of the *James*; and about Nine came one from aboard the *Charles the Second*, and ask'd me for the drunken Boatswain? And I reply'd short; and he went away again, and said the Ship was going to be run away withal. Whereupon I went with ten Men to recover the Ship; and after I had advised with the Commander, I ordered the Pinnacle to be mann'd; and when I came, the last that went into the Boat was one *Pike*; and I bid them put back, and they would not, but went away to the Ship *Charles*.

Mr. Conyers. How many were there that went away in that Boat?

T. Druit. About Five and Twenty.

Mr. Conyers. Did you know all the Men? Were any of the Prisoners at the Bar there? Look on them.

T. Druit. Yes, my Lord, there was *Ed. Forſeith*, *W. Bishop*, and *Ja. Lewis*.

L. C. J. Holt. What Boat did they go away with, the *James* Boat?

T. Druit. Yes, my Lord.

L. C. J. Holt. Then they came from the *James* to the *Charles the Second*. Name their Names again.

T. Druit. Ed. Forfeith, Ja. Lewis, and W. Bishop.

Mr. Sol. Gen. You saw them go off, did you not?

T. Druit. It was so dark that we could not see them.

Mr. Cowper. Were these three Men sent?

T. Druit. They were sent.

Mr. Cowper. Or did they go of their own Head?

T. Druit. No, I do not say so; but I went to command them back again, and they refus'd.

Mr. Cowper. Did they make any Answer?

T. Druit. No, they only went away damning and sinking.

Mr. Conyers. Were there any Guns sent after them?

T. Druit. Yes.

Mr. Conyers. What was it for?

T. Druit. It was to bring them back again.

Mr. Cowper. And they would not come back?

T. Druit. They did not come.

Mr. Cowper. Then they would not come.

Cler. of Arr. Call David Creagh. (*Who was sworn.*)

Prisoner. This Man is a Prisoner for Piracy, my Lord.

L. C. J. Holt. What if he be?

Prisoner. I do not understand Law; I hope your Lordship will advise us.

L. C. J. Holt. I will do you all Right. If he be so, that is no Objection against him; he may be a good Witness for all that.

Cler. of Arr. He is not a Prisoner for Piracy, but for Treason.

L. C. J. Holt. Tho' he be a Prisoner for Treason, he is not attainted. What is his Name?

Cler. of Arr. David Creagh.

Mr. Sol. Gen. What do you know about the Prisoners running away with the Ship *Charles*?

D. Creagh. Upon the 7th of May, 1694. I came to the *Groyne*, in Company with the Boat-swain and several others, on board the *Charles*; and when I was going in to the Captain of the *Charles*, Captain *Gibson*, I found Mr. *Every*, the Carpenter, and some others, drinking a Bowl of Punch: And after I was come from the Captain, I came and sat down with them, and Mr. *May* drank a Health to the Captain, and Prosperity to their Voyage: And we not knowing their Design then, thought it was to our lawful Captain, and Prosperity to the Voyage he was design'd for.

L. C. J. Holt. What was your Voyage?

D. Creagh. It was to the *Spanish Indies*. And afterwards the Company broke up, and retired, and went to their Cabins. And when we were in our Cabins, we heard a great Noise above Deck; and Captain *Humphreys*, that commanded the Gally, called to us, to tell us his Men were run away with the Boat, and were gone to Captain *Gibson*. To which *Every* answered, that he knew that well enough: So the Men came aboard; and as I was coming out of my Cabin to see what the Matter was, I was met by *Every*, the Carpenter, and two *Dutchmen*; and they obliged me to retire again to my Cabin. And Captain *Humphreys* fired two Guns at us. But we presently got out of Reach of the Guns, and proceeded on the Design. And I came out of my Cabin, and went on the Quarter-deck, where I met *Every* and the Carpenter together; *Every* was conning the Ship.

L. C. J. Holt. What is the Meaning of that?

D. Creagh. That is, to direct in the steering of her. So *Every* took me by the Hand, and ask'd me if I would go with him? And I answer'd, I did not know his Design. He said, there were but few that knew it. Says I, Tell me who do know it, that if you will not tell me your self, I may ask them that can tell me. But he said, we should all know by To-morrow Morning Eight a Clock. I told him, that would be too late to repent of the Design? The Carpenter stood by him, and said, Do you not see this Cock? Yes, says I, I do. Says he, This Man, and old *May*, and *Knight*, I can trust with any thing; they are true Cocks of the Game, and old Sportsmen. Then, said I, I suppose they know your Design. Yes, says he, they do; and if it were a Thing of ten times the Consequence, they should know it. Upon this, the Carpenter came to me, and said, If you do not go down, I will knock you on the Head. And as I was going down, I met with *W. May*, the Prisoner at the Bar. What do you do here? says he. I made him no Answer, but went down to my Cabin; and he said, God damn you, you deserve to be shot through the Head, and he then held a Pistol to my Head. Then I went to my Cabin, and presently came Orders from *Every*, that those that would go ashore, should prepare to be gone. And when the Captain was got out of Bed, who was then very ill of a Fever, *Every* came and said, I am a Man of Fortune, and must seek my Fortune. Says Capt. *Gibson*, I am sorry this happens at this Time. Says he, If you will go in the Ship, you shall still command her. No, says Captain *Gibson*, I never thought you would have served me so, who have been kind to all of you; and to go on a Design against my Owners Orders, I will not do it. Then, says *Every*, prepare to go ashore. Upon which, the Captain, and several others of us, went into the Boat. When we were by the Ship's Side, I heard them order the Doctor to be secured; but if there was any more would go into the Boat, they might: And we came into the Boat, to the Number of Sixteen; and they gave us four Oars in the Pinnace, and set us adrift.

L. C. J. Holt. Where did he set you?

D. Creagh. He set us aboard the *James*, my Lord.

L. C. J. Holt. That is, you were turned off from this Expedition.

D. Creagh. Yes, my Lord.

Mr. Conyers. Was there any Room for more in the Boat?

D. Creagh. Yes there was.

L. C. J. Holt. Was there Liberty for any more to go?

D. Creagh. Yes, my Lord.

Mr. Sol. Gen. What do you know of the Prisoners at the Bar?

D. Creagh. I know only *W. May*.

Mr. Cowper. What Time past from the coming of the Boat, to the Time of your going off?

D. Creagh. About two Hours, Sir.

Mr. Cowper. Was there any Guns fired in that Time?

D. Creagh. Yes, Sir, one or two from the *James*, by Capt. *Humphreys*.

Mr. Cowper. Was this done in the Ship with Silence? Or was there any Uproar, or Opposition?

D. Creagh. No: There could be no Opposition; for the Men came from the whole Squadron, and came upon us, and surprized us, being assisted by those that belonged to the *Charles*.

Mr. Cowper. But did No-body make Opposition to their going? Did not Captain *Gibson*?

D. Creagh. No, Captain *Gibson* could not, being sick.

L. C. J. Holt. But he went ashore?

D. Creagh. Yes, my Lord.

L. C. J. Holt. Was any Body stopp'd that would go?

D. Creagh. No, my Lord, none but the Doctor.

Mr. Sol. Gen. Now call *Jo. Dan.* (*Who appeared and was sworn.*)

Mr. Conyers. What Ship were you aboard of at the *Groyne*?

Jo. Dan. The *Charles the Second*?

Mr. Conyers. Now, pray give my Lord and the Jury an Account what you know of the taking away of the Ship *Charles the Second*, and what pass'd there?

Jo. Dan. Yes, Sir: We came to the *Groyne*, and had been there about three or four Months, and we had been about eight Months out of *England*, and we lay for our Wages, and there was no Wages to be got. But inasmuch as we wanted Wages, *Every*, and several others, contriv'd to carry this Ship away. So that Night, which was *Sunday*, they went ashore; and when they came aboard again, made some Men privy to it, whom I know not. And the *Monday* following, I think, the Packet went out in the Morning, and the Night being fair, was ordered to give Notice; and they came to the *Dove*, and about Nine or Ten her Boat broke off, and she haled us; for they told Captain *Humphreys* they were coming to run away with our Ship. So he hales the *James*; and presently some of the Officers came and order'd their Pinnace to be mann'd, and it was so. And when they gave this Order, there was *Every* and twenty-five or twenty-six Men. And as they came aboard, our Cables were cut, and ready to go. And coming under the Castle, we cut all the Boats but two, and stood out to Sea about two or three Leagues; and there *Every* went to Captain *Gibson*, and, as they said, to ask him if he would go with them, or not. He said, No. Then he said, He must prepare to go ashore; and he did so, and several others with him. And the Word was given about, that they that would go ashore might go; but whether these Men heard it or no, I cannot tell; and no Man's Name was mention'd to be stopp'd, but the Doctor. And when they went away, they cry'd, There was Water in the Boat, and they desired a Bucket of us, to heave it over, and we gave them one; and away they went, I think, about fifteen of them, and no more did offer to go as I saw, nor did I see any hinder any that would go: And afterwards, they that went off went about their Business, and we about our Business. And we came to the *Isle of May*, and victual'd our selves there; and there we met with three *English* Ships, out of which we took some Necessaries for our selves, and among the rest several Men; nine Men we took out of them.

Mr. Sol. Gen. Were the Prisoners at the Bar in the Ship, when they went away?

Jo. Dan. Yes.

Mr. Sol. Gen. Name them.

Jo. Dan. *Ed. Forfeith*, *W. May*, *J. Lewis*, *Jo. Sparkes*, *W. Bishop*.

Mr. Conyers. Which of them was aboard the *Charles*, that belong'd to her?

Jo. Dan. *W. May* and *J. Sparkes*; and *Ed. Forfeith*, *Ja. Lewis*, and *W. Bishop*, came from the *James*.

Mr. Cowper. Was it not generally understood, that they were going to run away with the Ship, when they came to Capt. *Gibson*?

Jo. Dan. Yes, Sir, they knew to be sure.

Mr. Sol. Gen. Did you know that they assented to it?

Jo. Dan. No, Sir, I did not hear them say so.

Mr. J. Eyre. Did they desire to go ashore with the rest?

Jo. Dan. I saw none hindered.

L. C. J. Holt. Was *Ed. Forfeith* in the Ship then?

Jo. Dan. *Ed. Forfeith* was in the Ship then.

L. C. J. Holt. Was he at the *Isle of May*, taking in Necessaries with you?

Jo. Dan. Yes, Sir,

L. C. J. Holt. What did he do in the Company?

Jo. Dan. He was in the Ship, and came from the *James*.

L. C. J. Holt. And so did *Bishop*, and so did *Lewis*?

Jo. Dan. Yes, my Lord, these three; and the other two belong'd to the *Charles*.

Mr. Whitaker. Did any of the Ship's Crew go ashore at the *Isle of May*?

Jo. Dan. Yes, Sir, I think so.

Mr. Sol. Gen. But I think, you say, that the Word was given about, that any might go that would.

Mr. Conyers. Go on with the Proceedings after you were at the *Isle of May*.

Jo. Dan. After we had victual'd, we took in some Men.

Prisoners. We have been try'd for that already, my Lord.

L. C. J. Holt. Go on.

Jo. Dan. After we had been there, and took in what we had Occasion for, our Quarter-master said, he would give them Bills for what he took of them. Then we went to the Coast of *Guinea*, and took several Negroes, and carried them away with us. And afterward we went to the *Island of Princes*, where lay two *Danes*, and we fought them, and took them; and after we had taken them, some of the Men went ashore at the *Island of Princes*, and others went along with us; and we brought the Ships to *Vandepo*, and burnt one, and carried one with us. Then we came to *Cape Lopes*.

L. C. J. Holt. Where is that?

Jo. Dan. Under the Equinoctial-Line; and there we fired a Shot through the little one to sink her, for the Men could not agree, and so we could not carry her with us. We went about the Cape, and touch'd at *Madagascar*.

Dr. Littleton. Had not these Men their Part and Share of the Plunder?

L. C. J. Holt. You go too fast, Sir.

Mr. Conyers. What was the next Ship you met with, after you had rounded the Cape?

Jo. Dan. The next was a small Vessel, about 30 or 40 Ton, and we put her ashore, and took a small Matter out of her, and let her lie; and there

there we put this Gentleman, Mr. May ashore. And we seeing three *English* Ships a coming, we left him there, and went to the Equinoctial Line: And afterwards, for want of Bread and Water, we came again, and took another small Vessel, and some Rice and Pody out of her, and sunk her, and then went to the Cape again, and took in *W. May* again, and met another Vessel, and took Rice and Meal out of her, and sunk her too. And then we went to the *Red Sea* to a Town called *Meat*; and the People would not trade with us, and we burnt it. And thence we went up to the *Red Sea*, as far as we could: And going up to the Cape *Adin*, we met with two *English* Privateers more, and they came and joined with us.

L. C. J. Holt. You call them Privateers; but were they such Privateers as you were?

J. Dan. Yes, my Lord. I suppose they had Commissions at first, but I suppose they did not run so far as that.

Mr. Conyers. Did you go all on the same Design?

J. Dan. Yes, they sailed on with us, and we made the best of our Way, and came up into the *Red Sea* in a little Time, and came to an Anchor at *Bobs Key*, and had lain there but a Night and a Day, and there came up three *Englishmen* more from *America*, and they likewise conformed with us; and we lay there about five Weeks; and in that Time we expected the Fleet to come down.

Mr. Conyers. What Fleet?

J. Dan. The *Moorish* Fleet, that came from *Mocha*. They pass'd us on *Saturday Night* unseen, and we took a Vessel, which gave us an Account that they were gone. And then we followed them; and about three Days after we made Land, we came up with one of them of about 2 or 300 Tons, and we fired a Broadside at her, and Small Shot, and took her, which, after we had taken her, we plundered, and took out some Gold and Silver.

Mr. Conyers. And what did you do with it?

J. Dan. We brought it aboard our Ship.

Mr. Conyers. Did you share it?

J. Dan. Not then, but after we took the other Ship.

Mr. Conyers. What was that other Ship?

J. Dan. After we had taken her, we put some Men aboard to keep her with us; and about two Days after we were lying at Anchor at *St. John's*, and there was a great Ship called the *Gunsway*; and we weigh'd Anchor, and fought her about two Hours, and took her, and put some Men aboard her, and plunder'd her. And after we had done as much as we thought convenient, we sent her to *Surat* with the People in her. And then we stood farther to the *Indian Coast*, and shared our Money about a Week after.

L. C. J. Holt. That was a brave Prize, was it not, the best you had all the Voyage?

J. Dan. Yes, my Lord.

L. C. J. Holt. Did you all share?

J. Dan. Yes, all that were in the Ship.

L. C. J. Holt. You have given a good Account of this Matter. Was *Ed. Forfeitb* there?

J. Dan. Yes, my Lord.

L. C. J. Holt. What did he do? Was he active?

J. Dan. I did not see him act.

L. C. J. Holt. Had he a Share?

Vol. V.

J. Dan. Yes, my Lord, he had.

L. C. J. Holt. Was *W. May* there?

J. Dan. Yes, my Lord.

L. C. J. Holt. What did he do there?

J. Dan. He could do but little then; he had his Share.

L. C. J. Holt. And when you took him in again, what did he do? Did he do his Business as a Seaman?

J. Dan. Yes, my Lord, till he was sick.

L. C. J. Holt. Was *W. Bishop* there?

J. Dan. Yes, my Lord, he was among the rest.

L. C. J. Holt. What did he do? Did he consent and agree to what was done?

J. Dan. He had Share of the Money.

L. C. J. Holt. Did *Ja. Lewis* share too?

J. Dan. He had a Share, as far as was allowed by the Company.

L. C. J. Holt. Did *J. Sparkes* share with you too?

J. Dan. Yes, my Lord, as far as the Company thought fit to give him.

Mr. Cowper. When you say as the Company thought fit, what do you mean? How did they share it?

J. Dan. Some had 1000*l.* some 500, others 300.

Mr. Cowper. Had all the Prisoners some Share?

J. Dan. Yes, Sir, all had some Share.

Mr. Whitaker. What did you do with the *Charles the Second*, after the Voyage?

J. Dan. We left her at *Providence*.

L. C. J. Holt. If any of you Prisoners at the Bar will ask him any Questions, you may.

Mr. Justice Turton. What Provisions were aboard the *Charles* when she was taken away?

J. Dan. I cannot tell.

Mr. Justice Turton. What Quantity of Bread was there?

J. Dan. A pretty deal, I cannot tell the Quantity.

Mr. Justice Turton. And were there any Guns aboard her and small Arms?

J. Dan. Yes, my Lord, there were.

W. May. My Lord, may I speak for my self?

L. C. J. Holt. If you will ask him any Questions you may; you shall be heard again to speak for your self by and by.

W. May. I desire he may be ask'd where I was taken sick?

L. C. J. Holt. He asks you, where he was taken sick?

J. Dan. I cannot justly tell that, I think it was at *Allibore*, at the Coast of *Guinea*.

W. May. I did not lie down with it?

J. Dan. No you did not; but your first being taken sick was at *Allibore*.

W. May. My Lord, I desire you will ask him, whether he thinks I had any Knowledge of the going away of the Ship?

L. C. J. Holt. You hear what he says; what do you say?

J. Dan. I know nothing of that.

L. C. J. Holt. You were there, and you had a Share of the Prize; you drank an Health to the Success of your Voyage?

W. May. I hope, my Lord, you will not be angry for asking Questions.

L. C. J. Holt. No, no-body is angry, you may ask what Questions you will.

Then Philip Middleton was called and sworn.

Mr. Conyers. Pray tell what you know of taking away the Ship *Charles the Second*?

P. Middleton. I cannot say any thing of running away with the Ship, for I was asleep then; but afterwards, in the Morning, they called up all Hands; and the Captain said, Every Man should share alike, only he would have two Shares.

L. C. J. Holt. Who said so?

P. Middleton. Capt. Every. From thence they went to *Bonyvis*, and took in some Salt; and from *Bonyvis* they went to the *Isle of May*, and there they took three *English* Ships, and plundered them; and they took the Governor aboard their own Ship till they had done, (for then they could demand what Victuals they had a mind to) and then they sent him away again: And from the *Isle of May* they went to the Coast of *Guinea*, where they put out *English* Colours, to make the Natives come aboard to trade; and when they came aboard, they surprized them, and took their Gold from them, and tied them with Chains, and put them into the Hold; and when they came to a Place called the *Island of Princes*, they gave seven of them away for Slaves: And then they went to *Vandepoe*, where they clean'd their Ship; and from *Vandepoe* they went to *Cape Lopes*, and from *Cape Lopes* to *Annibo*, and from *Annibo* about the Cape; and at *Madagascar* they watered their Ship, and got Provisions, and Cows to salt up; and from thence they went to *Joanna*, and from *Joanna* they went to take a Junk, and took Rice out of her, and sunk her: and from thence they went to the *Equinoctial Line*, and because they were short of Water and Rice, they went back again to *Joanna*; and the Wind being contrary, they went to *Commeroe*; and there they met a small *French* Vessel, and they took her, and sunk her; and then went to *Joanna* again, and there took in Mr. May again: And then went to *Meat*; and because the Natives would not trade with them, they burnt their Town: And then they went to *Bobs Key*, by the Mouth of the *Red Sea*: But before that, they met with an *English* Vessel, that was on the same Account that we were; and we rode there a Night or two; and they saw there another Sail a coming, which proved to be another *English* Vessel: And in the Morning they saw two more; *May*, *Farrel*, and *Wake*, were the Captains: And on *Saturday* Night all the *Mocha* Fleet passed by: And on *Sunday* Morning they took another Vessel, that told them the said Fleet was gone by; and so they consulted whether they should follow them, or stay there. And then they went after them and overtook them, and took one that was about three or four hundred Ton, and took Gold and Silver out of her; and sent Men aboard her to plunder and keep her. And next Day they spied another Sail, and got up their Anchor, and stood to her, and took her; she was called the *Gunsway*: they killed several Men aboard, and when they had taken and plundered the Ship, they left the Men aboard to go to *Surat* again. And then they went to *Rachipool* in the *East-Indies*, and got Water and Necessaries; and from thence to *Degorees*, and watered again; and then to *Dascaran*, where they set about twenty-five *Frenchmen* ashore, and fourteen *Danes*, and some *English*; for they were afraid, if they came to *England*, and were caught,

they should be hang'd; and they thought themselves there secure. From that Place they went to *Ascension*, and then to the *Island Providence* in the *West-Indies*: And then they wrote a Letter to the Governor, to know if he would let them come in, and said they would present the Governor with twenty Pieces of Eight, and two Pieces of Gold, if he would let them come in; and the Captain, because he had a double Share, he offered forty Pieces of Eight, and four of Gold; and with that they sent some Men down, *Adams* and others, with the Letter: And they came again, with a Letter, from the *Island*, that they should be welcome, and come and go again when they pleased.

Mr. Conyers. Look on the Prisoners at the Bar, were they all there?

L. C. J. Holt. Do you know *Ed. Forseith*? Was he there? Did he belong to the *Charles the Second*?

P. Middleton. He came from the *James*.

L. C. J. Holt. Was *W. May* there?

P. Middleton. He was aboard the *Charles*.

L. C. J. Holt. Was *W. Bishop* there?

P. Middleton. *W. Bishop* came from the *James*.

L. C. J. Holt. Was *J. Lewis* there?

P. Middleton. Yes, he came from the *James*.

L. C. J. Holt. Was *J. Sparkes* there?

P. Middleton. Yes, he was aboard the *Charles*.

L. C. J. Holt. Had all the Men their Shares?

P. Middleton. Yes, such as the Company thought fit to allow them, all of them.

L. C. J. Holt. Had these Men their Shares of the several Prizes they took?

P. Middleton. Yes, they had.

L. C. J. Holt. Were they active in the taking of the Prize?

P. Middleton. They were, as far as I saw.

L. C. J. Holt. Were not divers others set ashore besides Capt. *Gibson*?

P. Middleton. I never heard any repine, or wish they had been ashore, or that they had never come along with the Ship.

L. C. J. Holt. But do you know of any others that were set ashore?

P. Middleton. Yes, a great many, Mr. *Gravet* and several others.

Mr. Cowper. I think, you said, some *French* and *English* were set ashore in the *Indies*.

P. Middleton. Yes, Sir.

Mr. Cowper. Were they set ashore willingly?

P. Middleton. They desired to be set ashore.

Jury-man. He says, in the Morning Capt. Every called them above Deck, and gave Leave to any to go ashore, that were not willing to go with them; we desire to know whether any of the Prisoners were there at that Time?

P. Middleton. I know not that; all Hands were called up.

Mr. Justice Turton. What Number of Persons were aboard when the Dividend was made?

P. Middleton. About a hundred and sixty.

Mr. Justice Turton. What might the Shares be?

P. Middleton. Some a thousand Pounds, some six hundred, and some five hundred, and some less, according as the Company thought they deserved.

Mr. Justice Turton. Had not you a Share?

P. Middleton. Yes, what the Company thought fit, and they told me that would serve to put me out an Apprentice, and that I should never go near my Friends.

Mr.

Mr. Justice *Turton*. How much was that you had?

Pb. Middleton. Above an Hundred Pound.

Mr. *Conyers*. What became of it?

Pb. Middleton. *Jo. Sparkes* robb'd me of it.

L. C. J. *Holt*. The King's Counsel have done with the Evidence, and therefore now is your Time for to speak, if you have any thing to say for your selves. *Ed. Forfeith*, what have you to say?

Ed. Forfeith. My Lord, I desire you would call Mr. *Druit*, and ask him whether I was one of the Pinnace's Crew?

L. C. J. *Holt*. You hear what he says.

T. *Druit*. Yes, you were, and I commanded you to come back, and you refused.

Ed. Forfeith. Did not you command me to go?

T. *Druit*. Yes, and I afterwards commanded you to come back, and you refused.

Ed. Forfeith. You did not command me back.

T. *Druit*. Yes, I did, and fired at you, and shot through the Boat.

Ed. Forfeith. I held Water with my Oar, that was all I could do.

L. C. J. *Holt*. What did you command him to do?

T. *Druit*. To rescue the Ship.

L. C. J. *Holt*. Instead of rescuing the Ship, you run away with her. He commanded you back, and you refused to come back.

Ed. Forfeith. I could not bring her back my self, nor come back, unless I should leap over-board.

L. C. J. *Holt*. Have you any more to say?

Ed. Forfeith. My Lord, when I was in the Boat, I knew not who was in it, nor how many. When I came aboard the *Charles*, the Sails were loose, and I was in a very sorry Condition; they cut the Boat off, and put her adrift; I could not get into her, she was gone in a Minute's Time, I did not know which Way, or what Men there were in her, nor heard nothing 'till Two o' Clock the next Day. And I hope, my Lord, as we are but poor Sea-faring Men, and do not understand the Law, you will take it into Consideration.

L. C. J. *Holt*. But all you Seamen understand that Law, that it is not lawful to commit Piracy; and he that doth, deserves to be hang'd.

Ed. Forfeith. My Lord, I never did.

L. C. J. *Holt*. Did you think it no Piracy to rob?

Ed. Forfeith. I was forc'd to do what I did.

Mr. J. *Eyre*. You all compell'd one another.

Ed. Forfeith. My Lord, I was sent of an Errand. I hope as we are poor Men in this Condition, you will take into Consideration.

L. C. J. *Holt*. We shall. Have you any more to say?

Ed. Forfeith. No, my Lord.

L. C. J. *Holt*. W. *May*, what do you say?

W. *May*. Here is one of the King's Evidence, that testifies that I knew nothing of the Ship's going away; and I believe very few knew it, I believe not above Nine or Ten.

L. C. J. *Holt*. None of them say you were at the Consult; but one says that you said, *God damn you, you deserve to be shot through the Head*; and held a Pistol to him.

W. *May*. I never was any higher than the Under-deck; I was coming up the Hatch-way, and Captain *Every* was standing, and commanding the Ship.

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L. C. J. *Holt*. *Every* was no Officer, he had nothing to do to command; he was under Captain *Gibson*, and took the Ship from *Gibson*.

W. *May*. My Lord, I know nothing of the Ship's going away.

L. C. J. *Holt*. You should have stuck to Captain *Gibson*, and endeavoured to suppress the Insolence of *Every*. Captain *Gibson* was the Commander, you ought to have obeyed him; and if any had resisted him, or gone to put a Force upon him, you should have stood by him.

W. *May*. I was surprized.

L. C. J. *Holt*. How?

W. *May*. By Captain *Every*, and knew nothing of it.

L. C. J. *Holt*. You were zealous from the Beginning, and said to one, *Damn you, you deserve to be shot through the Head*.

Mr. J. *Turton*. And one says you drank a Health to your good Voyage.

W. *May*. Presently after I heard this Rumour, I came up the Hatch-way, and Capt. *Every* says, *You, May, I believe you do not love this Way, pray get down to your Cabbin*. So I went to my Cabbin, which one that is now at *Virginia* could testify; which I hope will be considered, that I cannot have my Witnesses for me.

L. C. J. *Holt*. What have you more to say? Have you any Witnesses to call?

W. *May*. I stay'd in the Cabbin a considerable Time. I was thinking I must leave my old Captain without seeing him; and I begg'd them to give me Leave to come to him; and there was two Men stood with naked Cutlases, and would not let me come to him. We had some Confabulation together, and I begg'd the Favour to come in, and at last they permitted me; and the Doctor was anointing the Commander's Temples. And as I was coming along, I had my Hand cut; and I went to the Doctor, to desire him to bind up my Hand. When I came out again, they began to hurry the Men away. Here was Mr. *Gravet*, the second Mate, who is now one of the King's Evidence; and I told him he should remember me to my Wife, I am not like to see her; for none could go, but who they pleased: For when those Men were in the Boat, they cry'd to have a Bucket, or else they should sink, they having three Leagues to go: And I do not know how they could go so far with more, when their Boat was like to sink with those that were in her, as some of the King's Evidence have testified.

L. C. J. *Holt*. Who will you call?

W. *May*. Mr. *Dan*. (*Who appear'd.*)

L. C. J. *Holt*. Mr. *Dan*, answer the Question, Whether there was calling for a Bucket several Times by the Men that were in the Boat?

J. *Dan*. They did call, and a Bucket was given them to pump with.

L. C. J. *Holt*. You were willing to be rid of them.

W. *May*. I have more to say. Afterwards, if I should have denied to go with them, I might have been kill'd by them; and I knew not whether it be better to be necessary to my own Death, or to suffer by the Law of the Nation.

Sir Cb. *Hedges*. You seem to say that you were under a Constraint and Terror. Did you make any Complaint or Discovery so soon as you had Liberty, or at your first coming into the King's Dominions?

W. May. Yes, at *Virginia*.

Sir Ch. Hedges. Where did you first arrive in *England*?

W. May. At *Bristol*.

Sir Ch. Hedges. When you came to *Bristol*, did you discover it to any Magistrate?

W. May. When I came to *Bristol*, I had a Design to discover it to the Lords of the Admiralty.

L. C. J. Holt. Did you go to a Magistrate?

W. May. I was several Days in the King's Collector's House, and did discover the whole to him; and at *Providence*.

L. C. J. Holt. You speak now of *Providence*; but in *England* who did you discover it to?

W. May. I was taken sick, and could not go abroad.

L. C. J. Holt. You might have sent to the Mayor of *Bristol*.

W. May. I knew nothing of it, I intended to declare it to none but the Lords of the Admiralty. I knew no Man there, but two Men that were Fellow-Trademen in *Virginia*. I came from *Virginia* by the first Ship; and if that Ship had come away before the Fleet, I had been at home long before. I lay sick at *Bristol* four or five Days, and the fifth Day I got Passage for *London* in the Coach; and was taken three Miles off *Bath* by the King's Messenger, by one who betrayed me, and I was carried back to *Bath* again. And there was the Duke of *Devonshire*; and there they examined the whole Matter, in every Particular, as I have now declared to the Court. And my Lord desired the Messenger should take me away again, and see me safe to *London*; which was all he said to me. I have more to say, as to my being put ashore at *Joanna*. I had no Place to go to, but lay in a lamentable Condition, I could not put Water to my Mouth without Help, and remained useless of Hands or Feet, despairing of my Life. I desired to go ashore, to see if the Air would do me any good; and I went ashore at *Joanna*, with another Man, *Gunning*, and others, for Refreshment. So the second Day we went in, there appears three Ships, which were *East-India* Men. Captain *Every* being surpriz'd by these Ships, hastened his Men and Water aboard to get out to Sea, that he might not be surprized in the Road without his Men on Board, who were come ashore for the Sick. And I told them, I will not go with you, I will rather trust to the Mercy of my Countrymen, or the Mercy of the Negroes: I should endanger my Life, if I go aboard; if I stay, no question my Countrymen will have Compassion on me; and if I have committed any thing worthy of Death, they have Authority to put me to Death according to the Law of the Nation. And I applied myself to Mr. *Edgcomb*, when he came ashore, and he gave me scurrilous Language. But I replied, I am a weak Man, for me to stay behind is Death; I had rather suffer Death by the Laws of my Country, than to be left to the Mercy of these Negroes. Mr. *Edgcomb* says, I will take you down with me, and will hang you there too.

L. C. J. Holt. Where?

W. May. At *Bombay*, where he said I should be tried. His Mate, and several other *Englishmen*, came to see me, and brought me one thing or other to refresh me. And at last, at Night, he sent his Doctor and Purser to me, who said, the

Captain is just now sending his Boat for you. I replied, I am ready, here is all I have in the World; and he goes away about Two a Clock in the Morning. And I remained seven or eight Weeks at the Mercy of those Negroes, and had perished, but that a Negroe hearing an *Englishman* was there, came to me; he lived at *Bednal-Green*, and spoke *English* very well. He went from *England* in the Ship *Rocheester*, taken at *Guinea* some Time before. The Captain commanded this Negroe to go for the Long-boat, and turn her adrift; which he does, but goes away with her himself; and in the Fight, says, the Ship blew up by an accidental Fire, and several were lost. This Negroe I got to look after me, and he did really feed me, and got me all Necessaries belonging to me: And by that Means I saved my Life. Now when Captain *Every* came in again, I could not go nor stir.

L. C. J. Holt. Do not call him Captain; he was a Pirate.

W. May. He commanded me, I was forced to obey him.

L. C. J. Holt. For that Matter, call *Gravet* again, because you and he were very kind together; you shook Hands with him, and bid him farewell, and remember you to your Wife. Mr. *Gravet*, do you remember when you went into the Boat? Did *W. May* take his leave of you, or was he unwilling to be left behind?

J. Gravet. When we had Liberty to go out of this Ship, this Man, *W. May*, took me by the Hand, and wished me well home, and bid me remember him to his Wife, and was very merry and jocund, and knew whither they were going.

Mr. J. Turton. Did he express any Inclination to go with you?

J. Gravet. No, my Lord, not at all.

L. C. J. Holt. Have you any more to say?

W. May. Yes, my Lord, I remained in this Condition till I came to *Providence*; and the King's Evidence can testify what I say. I only beg Mercy of this honourable Bench, to consider my weak State and Condition that I have been in.

L. C. J. Holt. Have you done?

W. May. Yes, my Lord.

L. C. J. Holt. Then the next. *W. Bishop*, what have you to say?

W. Bishop. I belonged to the Ship *James*; and at the *Groyne* the Men began to complain about Wages, and that was the first Beginning of the Disturbance about this Plotting. We were shipp'd out of *England* in Sir *James Houblon's* Service, to the *Spanish West-Indies*. Upon this Mutiny among the Men for their Wages, several Men went aboard the King's Ships, and desired to be entertained on Board any of them to go for *England*; and we all went away again to the Ship, because we could not be entertained. But this Design of *Every's* I did not know of. On the 17th Day Captain *Humpbreys* calls, and says, my Men are gone aboard the *Charles*, I think. And he calls out, says he, Mr. *Druit*, man the Pinnace. I being then on the Deck, at Night, the Men all quiet, as I thought, I went into the Pinnace, and I was no sooner in, but in comes fifteen or sixteen more that knew of the Design; but I was then sent, and knew it not. And they put off the Boat, and overpower'd us; and several of us would have gone aboard again,

again, and they would not suffer us. And when we came aboard the Ship *Charles*, they had cut the Cables, and the Sails were loose, and several Men went from the *Charles* to the *James* in a Boat; and they commanded the Innocent to do what they pleased, with Pistols and Cutlases; and they commanded me to go into the Hold to do what they pleased. And I not knowing of this Matter, the Men that were in the Boat called, Hand the Buckets, or we shall sink. And I heard afterwards, that none went ashore, but whom they pleased, that is, *Every* and his Crew. And I not knowing of it, could not go; and if I had known it, I had not been admitted to go. Then we were carried two Leagues without the *Groyne*.

L. C. J. Holt. Have you any Witnesses to call?

W. Bishop. The King's Evidence is my Witnesses; he commanded me to go into the Boat.

L. C. J. Holt. Will you ask him any Questions?

W. Bishop. No, my Lord.

L. C. J. Holt. *James Lewis*, what have you to say?

J. Lewis. I had been in *France*, a little before the Ship came to the *Groyne*, a Prisoner there; but I knew nothing of *Every's* Design. By the Command of our Officer I went aboard the Boat, and as soon as we were in her, we were overpower'd, and carried away; they took the Oars out of our Hands, and carried us to the Ship *Charles*. And when we came aboard, they put the Boat a-drift, and then they commanded me into the Forecastle; they had Arms, but we had none, and so were forced to obey them. When the Boat was going off, I heard a Noise of crying out for a Bucket. And when we were gone from the *Groyne*, we were forced to do what they would have us; it was against my Consent, and against my Will.

L. C. J. Holt. J. Sparkes, what say you?

J. Sparkes. When Captain *Humpbreds* called to them that were gone into the Boat, I was asleep; but with the Noise of *Gravet's* crying out, He is coming, I awaked; and all put the Candles out, for fear I should see them. And when the Men were come aboard, I went on the Deck, and they throw'd the Hammocks, and knock'd me down.

L. C. J. Holt. Who did it?

J. Sparkes. The Hammocks they brought from the other Ships. I durst not do any otherwise than they bid me; I was innocent of the Thing. I ask'd what they were going to do, and they said they were going for *England*.

L. C. J. Holt. Who told you so?

J. Sparkes. *John Dan*.

L. C. J. Holt. J. Dan, did you tell J. Sparkes the Ship was going for *England*?

J. Dan. I do not remember I saw him all the Night.

L. C. J. Holt. I would ask you if you had no Share of the Plunder.

J. Sparkes. I was forced to take it.

L. C. J. Holt. *Phil. Middleton*, you had some Share, had you not?

Phil. Middleton. Yes, my Lord.

L. C. J. Holt. What became of it?

Phil. Middleton. They took it away from me.

L. C. J. Holt. Who took it from you?

P. Middleton. J. Sparkes robb'd me of it by Night.

L. C. J. Holt. Did he take all away?

Phil. Middleton. Yes, all that I had there, Two hundred seventy odd Pieces of Gold; it was in a Belt.

J. Sparkes. He took out his Money and shew'd it to the Troopers, and they made him drunk and got it from him; and the next Morning he said they took it from him.

Phil. Middleton. I was forc'd to say so, because if I had said he had it, he would have made no more but to cut my Throat.

L. C. J. Holt. Have you any more to say?

J. Sparkes. No, my Lord.

Mr. Sol. Gen. May it please your Lordship, and you Gentlemen of the Jury, I am of Counsel in this Case for the King against the Prisoners at the Bar. They are arraign'd for a very high Crime, a Robbery upon the Seas. It was not a less Crime because committed on the Sea, but rather the more. These Men had a Trust reposed in them to assist their Captain in his Voyage; but instead of that, they resist their Captain, turn him out, and run away with the Ship. They could not find Shelter in any other Part of the World, and I hope you will make it appear such Crimes shall not find Shelter here, more than in other Parts of the World. These are Crimes against the Laws of Nations, and worse than Robbery on the Land: For in Case of a Robbery on the Land, we know who is to pay it; but in a Robbery by Sea, it often happens that innocent Persons bear the Loss of what these Men do. It has been very plainly proved against the Prisoners, That the Ship *Charles* was run away with from the *Groyne*. And it is as plain by two Witnesses, That all the Prisoners at the Bar were in this Ship; by three, That *W. May* in particular was one of them; and by one, That *W. May* was so far concerned, that because J. Gravet seem'd to dislike it, he said he desired to be shot through the Head: So that he that would make himself the most innocent of the five, is most guilty.

Now they have only this to say for themselves, that they were forced to do what they did. But it has been proved to you that they were not forced; it was said, All might go that would. And it is not proved on their Side, that any one of the Prisoners did seem to dissent from their going away. It is proved, that they all made use of this Ship to very bad Purposes; that they took and plundered several Ships, and shared the Booty. We do not produce this to prove them guilty, but to shew that they made use of this Ship to this very Purpose. Now if you allow what they say, that they were forced to go away; then you must never convict, at any time, one or two Highwaymen that rob in the Company of four or five; for they may say too, that they were overpower'd, and forced by their Company. It is so, not only in Case of Robbery, but in all other Crimes also. They have said a great deal indeed, but without any manner of Probability of Truth. They have produced no Witnesses for themselves, to prove any thing they have said. And the Witnesses for the King have given Testimony without any Exception. And, I hope, you will vindicate the Credit of the Nation, and find them Guilty, as the Evidence has proved them.

L. C. J.

L. C. J. *Holt*. Gentlemen of the Jury, These Five Prisoners, *E. Forseith*, *W. May*, *W. Bishop*, *Ja. Lewis*, and *J. Sparkes*, are indicted for a Piracy and Robbery committed on the High Seas, some Distance from the *Groyne*, in taking and carrying away a Ship, and several Goods therein contained. She was called the *Charles the Second*. This was done in May last was two Years, 1694. You have heard what Evidence has been given on this Indictment against the Prisoners.

It has appear'd that this Ship was bound in a Voyage to the *West-Indies*. Two of the Prisoners, *W. May*, and *J. Sparkes*, were Seamen then on board this Ship, and engaged in the Voyage; the other three were not Mariners in that, but in another Ship, called the *James*, that lay, at that Time, near the *Groyne*; but they came aboard the Ship *Charles* before, and continued on board her when she was carried away.

That there was a Piracy committed on the Ship *Charles*, is most apparent by the Evidence that hath been given; that is, a Force was put on the Master, and some others of the Seamen on board her, who because they would not agree to go on a piratical Expedition, had Liberty to depart, and be set ashore. But the Ship was taken from the Captain, who was possessed of her for the Use of the Owners, and was carried away by *Every*, and others of his Crew that remained on board her; and others came from the *James*: Which Taking was a Piracy that is manifested by the Use they did put her to; for they did afterwards commit several other Piracies with her, and took several *English* and *Danish* Ships, and then went to several Islands, Countries and Places, as to the Isles of *May* and *Princes*, to *Madagascar*, and then to *Joanna*, and afterwards to *Meat*, and then to the *Red Sea*; and at the Entrance of the *Red Sea* committed more Piracies, in the manner as you have heard, and has been very particularly described to you. So that I must tell you, beyond all Contradiction, the Force put on the Captain, and taking away this Ship, called the *Charles the Second*, was a Piracy; and for that particular Fact these Prisoners are now charged.

The Matter you are now to enquire after, is, Whether all the Prisoners were guilty of this Piracy, or which of them.

As for *Ed. Forseith*, *Bishop*, and *Lewis*, it hath appeared to you, that they, with others, were aboard the Ship *James*; and that there was a Report spread about of a Plot against the Captain of the *Charles the Second*, and a Design to carry that Ship away. To prevent which, there were some of these Men sent out in a Boat, by the Captain of the *James*, to this Ship, to assist Captain *Gibson*; but instead of preventing this Piracy, they stayed behind, and went along with these Men that carried away the Ship.

As to *W. May* and *J. Sparkes*, that were of this Ship's Crew, they continued on Board, and were Parties in all those Piracies.

There was a Consult, it seems, by some particular Persons, of which *Every* was the Ring-leader, how to effect this Design; Capt. *Every*, as they call him, though he was no Captain, but was under the Command of Capt. *Gibson*, that had the Conduct of this Ship.

It's true, it is not proved to you that these Men were at that Consult; for, it seems, they

were too many, for they were about 160 that remained on board when the Ship was carried off.

Now for *W. May*, *Jo. Gravet*, Second Mate, that was aboard, though he had a Pistol clapp'd to him to prevent any Resistance, yet had Liberty to depart; and upon his going off, discoursed with *May*, who shook Hands with him and bid him farewell, and remember him to his Wife. And therefore it is evident that *W. May* was under no Force to stay; he stay'd with his good Will, and did consent to the Piracy. And then another Witness is *D. Creagh*, who says, that *May* was so zealous in the Matter, that he said to him, God damn him, he deserves to be shot through the Head.

Sparkes was on Board the Ship, and had a design'd End, and no Compulsion was used towards him, since he had Liberty to depart; but the staying behind by the rest, is a great Evidence to induce you to believe they were Parties in the Design; for why else should not they go ashore as well as others, since there doth not appear any Restraint upon them to stay, especially when a general Word was given, that those who would go on Shore should go on the Deck, and a Boat was ready to carry them off?

They say, they wanted a Bucket in the Boat, and they gave them one to lave out the Water; that is a plain Evidence they were willing to be rid of those that were not willing to engage with them; and if they had not approved of the Design, they were not hindered from going in the Boat. As for those that came from the *James*, there was no manner of Force on them, but they were sent from the Captain to assist the Captain of the *Charles*; for those two Ships having lain near together at the *Groyne*, there was some Intelligence of such a Design in Agitation, and these three forsook their own Ship; *Every* declared his Design to some: And he told them what Shares they should have; and because he was their Captain and Commander, he thought himself entitled to a double Share.

And then you have heard what was done in the whole Progress of this wicked Design; every one of these Men had their Share; even this *W. May*, though he was sick for some Time, and was set ashore at *Joanna*, and at the Ship's Return taken in again, yet he had his Share of all the Prizes. *W. Bishop* had his Share, *James Lewis* had his Share, and *John Sparkes* had his Share; and, says this young Man, *Philip Middleton*, I had my Share, which was above an hundred Pound, which was thought by them to be a good Share for a Boy; and *Sparkes* took him at a Disadvantage, and having an Opportunity, took it from him.

Now if there be a Piracy committed, though contrived but by one Man, yet if others do concur in it, they are equally guilty.

Now, though these Prisoners tell you, there was a Force upon them, it is a meer Suggestion, without any manner of Evidence; but there is Evidence of their consenting and confederating in this wicked Enterprize.

Indeed there hath been a Trial before, which you have all heard of; for the City and Nation have discoursed of it; consider therefore the Evidence. You have a great Trust reposed in you, for you are not to act arbitrarily, but you are

are accountable to God Almighty, to whom you are sworn, and to the Government for the Verdict you give. If you are not satisfied in your Consciences that the Evidence is sufficient to find these Men guilty, in God's Name, acquit them.

But if you are satisfied in the Sufficiency of the Evidence to convict them, you must find them guilty.

Cl. of Arr. Cryer, swear an Officer to keep the Jury; which was done, and the Jury went out to consider of their Verdict. And in the mean time, the six Prisoners were again arraigned upon two several Indictments, the one for piratically taking away a *Moorish* Ship, and the other for committing Piracy upon two *Danish* Ships. To both which Indictments *Joseph Dawson* pleaded Guilty; the other five pleaded Not guilty, and put them upon their Trials.

Then the Jury having been withdrawn a little while, returned into Court.

Foreman. If there be any Evidence to prove that *John Sparkes* consented to the running away of the Ship, we desire it may be heard again.

L. C. J. Holt. He was with them at the carrying off the Ship, and at the taking of the several Prizes, and had his Share afterwards. What is Consent? Can Man otherwise demonstrate their Consent, than by their Actions?

Juryman. But we understand, my Lord, that he was tried upon his consenting to carry away the Ship.

L. C. J. Holt. What do you mean by consenting? If a Ship be carried away with Force from the Captain, divers Piracies are committed with her, one continues aboard and receives a Share of the Profit of the several Piracies; is not that an Evidence of Consent to the piratical Design? Was it not proved that many went out of the Ship that were not willing to go on that Design? And that was with the Leave of the rest that remain'd.

Mr. J. Eyre. And one stood on the Deck, and said with a loud Voice, that they that will not go, may have Liberty to go ashore.

Mr. Conyers. No Man was hindred but the Doctor, being a useful Man.

L. C. J. Holt. When a Ship is run away with, and People are aboard that Ship so run away with, that proves their Consent, unless they can produce Evidence to the contrary.

Mr. J. Turton. The Captain was in his Bed sick of a Fever at that Time, and was not willing to go with them, and they sent him away from them.

Mr. J. Eyre. And every Man had his Share.

Then the Jury consulting together a very little Time, agreed on their Verdict.

Cl. of Arr. Gentlemen of the Jury, answer to your Names. *Jo. Degrave.*

J. Degrave. Here. (And so of the rest.)

Cl. of Arr. Gentlemen, are you all agreed of your Verdict?

Jury. Yes.

Cl. of Arr. Who shall say for you?

Jury. Our Foreman.

Cl. of Arr. Set *Ed. Forfeith* to the Bar. *Ed. Forfeith*, hold up thy Hand. (Which he did.) Look upon the Prisoner; Is *Edward Forfeith* Guilty of

the Piracy and Robbery whereof he stands indicted, or Not guilty?

Foreman. Guilty.

Cl. of Arr. Look to him, Keeper. What Goods and Chattels, &c.

Foreman. None that we know of.

Cl. of Arr. W. May, hold up thy Hand. (Which he did.) Is *W. May* Guilty, &c. or Not guilty?

Foreman. Guilty.

Cl. of Arr. Look to him, Keeper, &c. *W. Bishop*, hold up thy Hand. (Which he did.) Is *W. Bishop* Guilty, &c. or Not guilty?

Foreman. Guilty.

Cl. of Arr. Look to him Keeper, &c. *J. Lewis*, hold up thy Hand. (Which he did.) Is *J. Lewis* Guilty, &c. or Not guilty?

Foreman. Guilty.

Cl. of Arr. Look to him, Keeper, &c. *Jo. Sparkes*, hold up thy Hand (Which he did.) Is *Jo. Sparkes* Guilty, &c. or Not guilty?

Foreman. Guilty.

Cl. of Arr. Look to him, Keeper, &c.

L. C. J. Holt. Gentlemen, you have done extremely well, and you have done very much to regain the Honour of the Nation, and the City.

Then the Court adjourned to Friday next the 5th of November, Two of the Clock in the Afternoon, On which Day *Ed. Forfeith*, &c. were tried upon two other Indictments for several Piracies.

An Abstract of the Trial of *Edward Forfeith*, *James Lewis*, *William May*, *William Bishop*, *John Sparkes*, (*Joseph Dawson* having pleaded Guilty upon his Arraignment) at the Sessions House in the Old Bailey, Friday, November the 6th, 1696. where were present *Sir Charles Hedges*, Judge of the High Court of Admiralty, the Lord Chief Justice *Holt*, the Lord Chief Justice *Treby*, with several others of his Majesty's Judges and Commissioners.

After several Challenges made by the Prisoners, of the Persons returned upon the Jury, these Twelve Gentlemen were sworn, viz.

<i>Roger Mott,</i>	}	<i>John Watson,</i>
<i>John James,</i>		<i>Benjamin Hooper,</i>
<i>Richard Rider,</i>		<i>John Hibbert,</i>
<i>William Hunt,</i>		<i>Richard Chiswell,</i>
<i>John Hammond,</i>		<i>Daniel Ray,</i>
<i>Abraham Hickman,</i>		<i>William Hatch.</i>

THEN the Clerk read the two Indictments upon which they were tried, viz. one for seizing, robbing, and carrying away two Ships belonging to *Denmark*, on the 30th of August, 1694. The other for that they, on the 28th of September, 1695. in a Place 40 Leagues distant from *Surat*, did forcibly and piratically set upon

a Moorish Ship and take away her Tackle and Goods, to a great Value.

Then Dr. Newton, one of his Majesty's Advocates, spoke to the Jury, as followeth.

My Lord, and Gentlemen of the Jury,

The Crime the Prisoners at the Bar stand charged with, and which has been opened to you, upon the Indictments, is Piracy; which is the worst Sort of Robbery, both in its Nature and its Effects, since it disturbs the Commerce and Friendship betwixt different Nations; and if left unpunished, involves them in War and Blood: For sovereign Powers and Nations have no Courts of Justice afterwards to resort to, as the Subjects of Princes have, in their own Countries, for Redress or Punishment; but they can only have recourse to Arms and War, which how expensive, and how dangerous they are, and what Calamities and Ruin they carry along with them, no Person can be a Stranger to. So that those who bring not such Criminals to Judgment, when its lies in their Power, and is their Duty to do so, are answerable, in a great Measure, before God and Man, for all the fatal Consequences of such Acquittals, which bring a Scandal on the publick Justice, and are often attended with publick Calamities.

It is not therefore, Gentlemen, to be supposed, that wise or honest Men, (and there are none who would be thought to be otherwise) who love their Country, and wish its Peace and Prosperity, would be guilty in that kind.

Gentlemen, This Piracy was begun in Europe, carried on through Africa, and ended in the remotest Indies; so that, in a manner, all the World is concerned in this Trial, and expects and demands Justice of them, if they are guilty, at your Hands.

Then the Witnesses were produced to prove the Facts charged upon the Prisoners, viz. Jo. Dean, David Creagh, Phil. Middleton, and others; who fully proved, against them, That the Prisoners, with several other wicked Persons, not yet taken, did forcibly take away the Ship *Charles the Second* from the lawful Commander, Captain Gibson, with a piratical Design; and in the said Ship did afterwards commit several Piracies. At the *Ile of May* they took three English Ships. From thence they went to the Coast of Guinea; and when some of the Natives came on board with their Gold, to trade with them, they took away their Gold, and carried them away for Slaves. And then went to the *Ile of Princes* and took two Danish Ships, and took out what was in them, viz. 40 Pound Weight of Gold Dust, and other Merchandize; and they offered to restore one of the Ships to the Master after they had robbed her, but the Master said she was insured, and he would not take her again. And afterwards they burnt one of the Ships, and carried away the other. Then they went to *Bobs Key*, at the Mouth of the *Red Sea*, waiting for the *Mocha Fleet*, which one Night pass'd by them unseen; but were informed the next Day that they were gone. And then calling a Council, they agreed

to follow them; and accordingly went after them, and came up with one of them which was about 250 Ton, and with small Resistance took her, and put some Men on board her, and took Gold and Silver out of her to the Value of 30 or 40000 l. with other Merchandize: And afterwards met with the Ship called the *Gunsway*, and robbed her likewise of all her Furniture, to a very great Value. And about a Week after, they shared all the Prizes they had taken; and some had a thousand Pound, some had eight hundred, some seven hundred, some five hundred, every Man in the Ship his Share, as they thought they deserved. And it was particularly proved by the Evidence against the Prisoners, that they had their Shares. *The more particular Relation of which is already printed at large in the foregoing Trial.*

When the King's Evidence had done, the Prisoners were permitted to say what they could in their Defence; but the same appearing to be very weak, the Lord Chief Justice *Holt* summ'd up the Evidence; and the Jury going out to consider their Verdict, after a short Stay, brought them in all Guilty.

Then the Court adjourn'd to the 10th of November following.

After the Trial of John Murphey was over, the Pirates were brought to the Bar.

Cl. of Arr. Joseph Dawson, you by your own Confession are convicted of Piracy and Robbery: What have you to say why Sentence of Death shall not be passed upon you according to Law?

Jos. Dawson. I submit my self to the King and the honourable Bench.

Cl. of Arr. Edward Forseith, what have you to say, &c.?

Forseith. I am an innocent Man; and went on to justify himself, &c.

Judge of the Admiralty. You and the rest of the Prisoners at the Bar have had a very fair Trial, and been fully heard upon your Defence; but the Jury your Countrymen, upon whom you put your selves to be tried, have found you Guilty: So that the insisting upon your Justification cannot now avail you any thing, the Verdict being given; but if you have any thing to offer in Arrest of Judgment, or can shew any Cause why the Court should not proceed to give Judgment according as the Law directs, against Persons convicted of Piracy, you shall have Liberty to speak, and will be heard.

Forseith. I desire to be sent into India to suffer there.

Cl. of Arr. William May, what have you to say, &c.

William May. My Lord, I being a very sickly Man, never acted in all the Voyage. I have served my King and Country this thirty Years, and am very willing to serve the *East-India Company* where they please to command me; and desire the honourable Bench to consider my Case, and if I must suffer, I desire to be sent into India to suffer there.

Cl. of Arr. William Bishop, What have you to say, &c.

William Bishop. I was forced away; and when I went, was but 18 Years old, and am now but 21, and desire Mercy of the King and the Court.

James Lewis. I am an ignorant Person, and leave my self to the King's Mercy.

John Sparkes. I leave my self to the King's Mercy, and to the honourable Court.

Judge of the Admiralty. Joseph Dawson, You stand convicted upon four Indictments, by your own Confession, for Piracy and Robbery. And you *Edward Forseith, William May, William Bishop, James Lewis* and *John Sparkes*, having put your selves upon your Trials according to the Customs and Laws of your own Country, have been found guilty upon three several Indictments, for

the same detestable Crimes committed upon the Ships and Goods of *Indians, of Danes*, and your own Fellow-Subjects. The Law for the Heinousness of your Crime hath appointed a severe Punishment, by an ignominious Death; and the Judgment which the Law awards, is this;

That you and every one of you be taken from hence to the Place from whence you came, and from thence to the Place of Execution, and that there you, and every one of you, be hanged by the Necks, until you, and every one of you, be dead: And the Lord have Mercy upon you

According to this Sentence, *Edward Forseith* and the rest were executed on *Wednesday, November the 25th, 1696.* at *Execution-Dock*, the usual Place for the Execution of Pirates.



CLXII. *The TRIAL of Captain Thomas Vaughan at the Old-Baily, for High-Treason; on the High-Seas, November 6, 1696. 8 Will. III.*

The Court being sate, at which were present, Sir Charles Hedges, Judge of the High Court of Admiralty, the Lord Chief Justice Holt, the Lord Chief Justice Treby, the Lord Chief Baron Ward, Mr. Justice Turton, and others of his Majesty's Commissioners; the Court proceeded on this Manner.

Cl. of Arr. Cryer.



draw near, and give your Attendance: God save the King.

A K E Proclamation.
O yes, O yes, O yes.
All Manner of Persons that have anything more to do, &c. and were adjourned to this Hour,

Then the Grand-Jury were called over, and the Appearances marked. And Witnesses being sworn in Court to give Evidence to them, against Thomas Vaughan, they withdrew to hear the same.

Then the Keeper of Newgate was order'd to bring his Prisoner, Thomas Vaughan, to the Bar. (Which he did.)

Cl. of Arr. Tho. Vaughan, Hold up thy Hand. (*Which he did.*) Thou standest indicted, &c.

How say'st thou, *Tho. Vaughan*, Art thou Guilty of the High-Treason whereof thou standest indicted, or Not guilty.

T. Vaughan. Not guilty.

Cl. of Arr. Culpit, How wilt thou be try'd?

T. Vaughan. By God and this Country.

Cl. of Arr. God send thee a good Deliverance.

And then the Court proceeded to the Trial of the Pirates, and gave Notice to Mr. Vaughan to prepare

for his Trial on Friday next, the 6th of November, 1696.

Die Veneris, sexto Novembris, Annoque Regni Regis Willhelmi Octavo, Annoque Domini, 1696.

Cl. of Arr. CRYER, make Proclamation.
Cryer. O yes, O yes, O yes, *All Manner of Persons that have any Thing more to do at this Sessions of Oyer and Terminer, adjourned over to this Day, draw near and give your Attendance. And you Sheriffs of the City of London, return the Precepts to you directed, upon Pain and Peril which will fall thereupon.*

Then the Under-Sheriff returned the Precepts.

Cl. of Arr. Make Proclamation.

Cryer. O yes, *You good Men of the City of London, summoned to appear this Day, to try between our Sovereign Lord the King, and the Prisoner at the Bar, answer to your Names, as you shall be called, every one at the first Call, and save your Issues.*

The whole Pannel was called over, and the Appearances of those that answered, recorded, and the Defaulters were again called over.

Mr. Phipps. Will your Lordship please to order, that two Men may be brought from the *Marshalsea*, in the Behalf of the Prisoner?

L. C. J. Holt. You shall have an Order.

Then the Court went on the Trial of the Six Pirates; and after the Trial was over, Thomas Vaughan was called to the Bar.

T. Vaughan. My Lord, my Irons are very uneasy to me, I desire they may be taken off.

L. C. J. Holt. Ay, ay, take them off.

Mr. Phipps. If your Lordship please, we have some Doubts as to the Indictment.

L. C. J. Holt. If you have any Exceptions, you ought to have made them before the Prisoner pleaded to it.

Mr. Phipps. I thought you had allow'd it, my Lord, in former Cases.

L. C. J. No, we did not allow it as of Right due to the Prisoner; the Exceptions should have been made before the Plea. You were indulg'd in being heard at first in the Cases of *Rookwood*, *Cranburne*, and *Lowick*; but it was not the Intent of the Act, to alter the Method of the Proceeding; and so upon Consideration hath it been determined. The Prisoner hath Time given by the Act to make any Exception to the Indictment before he pleaded; but you may move what you will afterwards in Arrest of Judgment, if it be material.

Cl. of Arr. Thomas Vaughan. Those Men that you shall hear called, and personally appear, are to pass between our Sovereign Lord the King, and you, upon Trial of Life and Death; if therefore you will challenge them, or any of them, your Time is to speak unto them as they come to the Book to be sworn, before they be sworn.

Mr. Phipps. There was one Man here that desired to be excused, because he was on the Grand-Jury; therefore it seems there are some returned upon this Jury that were on the Grand-Jury, which I think ought not to be.

L. C. J. Challenge them then.

Mr. Phipps. We do not know the Men.

Then the Pannel was called over, and a great many Challenges made, and the Twelve Men that were Sworn, were these;

Edward Leeds	}	Caleb Hook
Nath. Green		Joceline Roberts
Hen. Sberbrook		Tho. Parker
Jo. Sberbrook		Peter Gray
Tho. Enms		Roger Poston
Peter Parker	}	Woolley

Cl. of Arr. Cryer. Make Proclamation.

Cryer. O yes, If any one can inform my Lords the King's Justices, and the King's Serjeant, the King's Attorney-General, the King's Advocate in his High Court of Admiralty, before this Inquest be taken of the High-Treason, whereof Thomas Vaughan, the Prisoner at the Bar, stands indicted, let them come forth, and they shall be heard; for now the Prisoner at the Bar stands upon his Deliverance; and all others that are bound by Recognizance to give Evidence against the Prisoner at the Bar, let them come forth and give their Evidence, or else they forfeit their Recognizance.

Cl. of Arr. Thomas Vaughan. Hold up thy Hand. (Which he did.) You that are sworn, look upon the Prisoner, and hearken to his Cause. He stands indicted by the Name of Thomas Vaughan.

Whereas, That before and until the 8th Day of July, in the 7th Year of the Reign of our Sovereign Lord King William III. there was open War between our said Lord the King, and Lewis the French King: And that the said War continued on the said 8th Day of July, in the 7th Year aforesaid, and doth still con-

tinue. And that for all the Time aforesaid, the said Lewis the French King and his Subjects, were, and at present are Enemies of our said Lord the King that now is: And that at the Time of the said War, and before the said 8th Day of July, in the 7th Year aforesaid, the said Lewis the French King, set out, amongst others, a certain small Ship of War, called the Loyal Clencarty, of which Thomas Vaughan, a Subject of our said Lord the King that now is, was Commander, with several French Subjects, Enemies of our said Lord the King, to the Number of fifteen Persons, in a Warlike Manner, to take and destroy the Ships, Goods, and Monies of our said Lord the King, and his Subjects, and against our said Lord the King, to wage War upon the High-Seas within the Jurisdiction of the Admiralty of England. And that at the Time of the said War between our said Lord the King, and the aforesaid Lewis the French King, Tho. Vaughan, late of Galloway, in the Kingdom of Ireland, Mariner, being a Subject of our said now Lord the King, as a false Rebel against the said King his Supreme Lord, and not having the Fear of God before his Eyes, nor considering the Duty of his Allegiance, but being moved and seduced by the Instigation of the Devil, and altogether withdrawing the cordial Love, and true and due Obedience which every true and faithful Subject of our said Lord the King, ought by Law, to have towards the said King; and the said War, as much as in him lay, against our said Lord the King, designing and intending to prosecute and assist; the said Tho. Vaughan, on the said 8th Day of July, in the said 7th Year of the King, being a Soldier aboard the Ship of War called the Loyal Clencarty, in the Service of the said Lewis the French King, and being then on the High-Seas, within the Jurisdiction of the Admiralty of England, about fourteen Leagues from Deal, did then and there by Force and Arms, falsely, maliciously, wickedly, and traitorously, aid, help, and assist the Enemies of our said Lord the King, in the Ship of War, called the Loyal Clencarty. And afterwards the said Thomas Vaughan, in the Execution and Performance of his said aiding, helping, and assisting, maliciously, falsely, and traitorously sailed a Cruising to several maritime Places within the Jurisdiction aforesaid, by Force and Arms to take the Ships, Goods, and Money of our said Lord the King, and his Subjects; against the Duty of his Allegiance, the Peace of our said Lord the King, and also against a Statute in that Case made and provided.

And the said Jurors for our said Lord the King, upon their said Oaths, farther represent, that the aforesaid Thomas Vaughan, as a false Traytor against our said Lord the King, further designing, practising, and with his whole Strength, intending the common Peace and Tranquillity of this Kingdom of England to disturb; and War and Rebellion against the said King upon the High-Seas within the Jurisdiction of the Admiralty of England, to move, stir up, and procure; and the said Lord the King, from the Title, Honour, Royal Name, and Imperial Crown of his Kingdom of England, and Dominions upon the High-Seas, to depose and deprive; and miserable Slaughter of the Subjects of the said Lord the King, of this Kingdom of England, upon the High-Seas, and within the Jurisdiction aforesaid, to cause and procure; on the said 8th Day of July, in the said 7th Year of the King, upon the High-Seas, about fourteen Leagues from Deal, and within the Dominion of the Crown of England, and within the Jurisdiction of the Admiralty of England aforesaid, falsely, maliciously, devilishly, and treacherously, by Force and Arms, with divers other false Rebels and Traytors (to the Jurors unknown) War against our said now Lord the King,

King, prepared, prompted, levied, and waged. And that the said Thomas Vaughan in Performance of his said War and Rebellion, then and there, by Force and Arms, maliciously, wickedly, and openly assembled and joined himself with several other false Traytors and Rebels (to the Jurors unknown) to the Number of fifteen Persons, being armed, and provided in a warlike Manner, with Guns and other Arms, as well Offensive as Defensive. And the said Thomas Vaughan, then and there, being aboard the said Ship of War, called the Loyal Clencarty, assembled with the other false Rebels and Traytors as aforesaid, maliciously, wickedly and traiterously sailed a Cruising to several maritime Places, with the aforesaid Ship of War, called the Loyal Clencarty, with an Intent to take, spoil, and carry away the Ships, Goods, and Money, of our said Lord the King, and his Subjects, by Force and Arms, upon the high and open Seas, within the Jurisdiction aforesaid; against the Duty of his Allegiance, the Peace of our said Lord the King, his Crown and Dignities; and likewise against the Form of a Statute in this Case made and provided.

Thomas Noden, } Jurors.
Samuel Oldham, }

Upon this Indictment he hath been arraigned, and upon this Arraignment he hath pleaded not guilty; and for his Trial he hath put himself upon God and his Country, which Country you are. Your Charge is to enquire whether he be guilty of the High-Treason whereof he stands indicted, or not guilty. If you find him guilty, you are to enquire what Goods or Chattels, Lands or Tenements he had at the Time of the High-Treason committed, or at any Time since. If you find him guilty, you are to enquire whether he fled for it. If you find that he fled for it, you are to enquire of his Goods and Chattels, as if you had found him guilty. If you find him not guilty, nor that he did fly for it, you are to say so and no more; and hear your Evidence.

Mr. Whitaker. May it please you, my Lord, and the Gentlemen of the Jury, the Prisoner at the Bar, Thomas Vaughan, stands indicted for High Treason; That whereas on the 9th of July, there was a War between his Majesty the King of England, and Lewis the French King; amongst other Warlike Preparations that the French King did make, he did set forth a Ship called the Loyal Clencarty; That the Prisoner at the Bar, as a false Traitor, did lift himself aboard this Ship; and on the High-Seas, about eleven Leagues from Deal, did traiterously aid the King's Enemies, to take the King's Ships. This is said to be against the Duty of his Allegiance, and the Peace of our Sovereign Lord the King, his Crown and Dignity. He stands further indicted, for that he, the said Thomas Vaughan, with several other false Traytors, did levy War, and arm themselves with Arms, Offensive and Defensive, and was cruising on the High-Seas, off of Deal, with an Intent to take the King's Ships, and to kill and destroy the King's Subjects, against the Duty of his Allegiance, and the Peace of our Sovereign Lord the King, his Crown and Dignity. To this Indictment he has pleaded not guilty. We shall call our Witnesses, and prove the Fact, and doubt not but you will do your Duty.

Dr. Littleton. Gentlemen of the Jury, you have heard the Indictment opened, as also what Sort of Crime the Prisoner at the Bar stands charged

with, viz. That he being a Subject of the Crown of England, has, together with his Accomplices, armed himself in a military Way, to murder and destroy his Fellow-Subjects, and as much as in him lay, to ruin his native Country, by ruining the Trade and Traffick, which is the great Support and Riches of the Nation. And that this Crime might be consummate, he, with his Accomplices, has done what in him lay, to dethrone and dispossess his sacred Majesty; as well knowing it was in vain to expect to make the Nation unhappy, as long as we enjoy so great and good a Prince. So that you are to look on the Prisoner as an Enemy and Traitor to his own Country; and not only so, but as one of the worst and most dangerous Enemies; since he being a Subject of these Islands, was the better able to spy out our Weaknesses and Defects, and thereby to do us the greater Mischief. It is not to be expressed what Ruin and Desolation it would have caused to this Nation, had this Man and his Accomplices brought their wicked Intentions to effect. And all this was done to aid and assist the grand Enemy of Christianity, and of our own Country in particular, the French King. Therefore as you are Lovers of your King and Country, and your Fellow-Subjects, whom the Prisoner and his Accomplices would have destroyed; I am sure you will take Care to do the Nation Justice, and that he be brought to condign Punishment. Gentlemen, There is one Thing further that I must not omit, viz. That the Prisoner at the Bar being in Custody for these very Crimes about a Twelve-month since, did not think fit to trust to his Innocency, nor to his pretended French Extraction, but the Day before he was to be tried, he thought fit to break Prison, withdraw from Justice, and run his Country: Which though not a Confession and full Proof, yet is a great Evidence of his Guilt.

* Mr. Sol. Gen. May it please your Lordship, and you Gentlemen of the Jury, the Prisoner at the Bar, Thomas Vaughan, stands indicted for two Sorts of Treason: The one is for levying War against the King, the other is for aiding and abetting the King's Enemies. And to prove the first, the levying of War, we shall prove that he was a Captain of a French Ship, call'd the *Granado*, of *St. Maloes*; and that with that Ship he took and carried away many of his Majesty's Subjects, and took several Merchant Ships, and carried them to France. We shall likewise prove that he was Captain of another French Ship, called the *Loyal Clencarty*, with which he was cruising off of Deal, where we had several Ships lying at the same Time: And there he being on board the said Ship *Clencarty*, was taken Prisoner, with a Commission, by which he was constituted Captain of the *Loyal Clencarty*, under the Hand of Lewis the French King.

And to prove him aiding and abetting to the King's Enemies, we shall prove against him this particular Fact; That he and his Accomplices did in the Year 1692, come to London, and went to Tower-Wharf, to enquire what Vessels were ready to go down the River; and there was one laden with Piece-Goods, and he put himself, and several other of his Accomplices into this Vessel, to go down the River; but they had contrived the Matter, and brought it so to pass, that they fell on those Men who had the Government of the Ship, and carried away this Vessel to France. Now if this be true, the Prisoner is certainly guilty of aid-

* Sir John Hawles.

ing the King's Enemies: And to prove he was guilty of this, we will prove to you, that even in *France*, where he was at perfect Liberty, he owned he was the Contriver of all this, and that he had a thousand Pound for his Share of what was taken from our Merchants. If we prove these two Facts against him, I doubt not but you will find him Guilty. We will call our Witnesses.

Cl. of Arr. T. Eglington, Rich. Crouch, Samuel Oldham, John Bub, — Noden. (Who appeared, and were sworn.)

T. Vaughan. With Submission to your Lordships, and the honourable Bench, I beg that they may be put asunder, out of hearing of one another.

L. C. J. Let it be so, tho' you cannot insist upon it as your Right, but only a Favour that we may grant.

Mr. Cowper. Set up *Richard Crouch*. Is your Name *Richard Crouch*?

R. Crouch. Yes, Sir.

Mr. Cowper. Give my Lord and the Jury an Account of what you know of the Ship *Coventry* taking of the *Clencarty*, and what you know concerning the Prisoner at the Bar in taking of her.

R. Crouch. We weighed our Anchor about Four a Clock.

Mr. Cowper. Where were you?

R. Crouch. At the *Nore*.

Mr. Cowper. In what Ship?

R. Crouch. The *Coventry*. After we had been under Sail a matter of an Hour, we came to an Anchor with a little Wind; so, Sir, this *Thomas Vaughan* met with a Couple of Pinks, they were small Vessels, that he designed to take; but he saw us, and so lay by all Night.

Mr. Cowper. Who lay by?

R. Crouch. *Thomas Vaughan*, the Prisoner at the Bar.

Mr. Cowper. In what Vessel was he?

R. Crouch. In a Two-and-twenty-Oar Barge; he lay by at the *Gunfleet*: The next Morning we weighed Anchor at Day-light; we saw him, and chased after him; and we made them, and he made us; and we made what haste we could, and coming up, we fired a Gun at him, and then we fir'd another, and then we went ashore.

Mr. Cowper. What, do you mean that he run his Vessel on the Sands?

R. Crouch. Yes, and then we fired another Gun at him, and then he got off again; and then we fired another Gun, and could not bring him to, and then he got off the Sands again; and when we came up to him, we manned our Long-boat, and Pinnace, and Barge, and had him at last. When he came on Board, he said, I cannot deny but I am an *Irishman*, and that my Design was to burn the Ships at the *Nore*.

Mr. Cowper. Did he himself confess it?

R. Crouch. Yes, he did; that is the Man, I know him well enough.

L. C. J. When you took him, in what Ship was you?

R. Crouch. In the *Coventry*.

L. C. J. Out of what Ship was he taken?

R. Crouch. The Two-and-twenty-Oar Barge.

L. C. J. What Ship did he belong to?

R. Crouch. I reckon it was my Lord *Barclay's* Barge.

L. C. J. Who did it belong to then?

R. Crouch. To the King of *France*.

L. C. J. What Company was there in her? How many Men had she aboard?

R. Crouch. About five and twenty Hands.

Mr. Cowper. Did you ever hear him say any thing of a Commission he had?

R. Crouch. I heard he had a *French* Commission, but I did not see it.

Mr. Cowper. Did you hear him say any thing of it?

R. Crouch. No.

Mr. Cowper. But he told you his Design was to burn the Ships at the *Nore*?

R. Crouch. Yes.

Mr. Cowper. What Ships?

R. Crouch. The *English* Ships; there were several Ships there then.

L. C. J. Were there no *Frenchmen* aboard the Barge?

R. Crouch. No, that I can tell.

Mr. Lechmere. From whence did he come, from *England*, or *France*?

R. Crouch. From *Calais* in *France*.

L. C. J. Pristhee hear me, This Two-and-twenty-Oar Barge, did it belong to any other Ship?

R. Crouch. No, not that I can tell.

L. C. J. Did he call that Vessel the *Loyal Clencarty*?

R. Crouch. Yes, my Lord.

Then Edmund Courtney was called.

Mr. Sol. Gen. Mr. Courtney, pray tell my Lord and the Jury what you know of the going away of a Custom-House Boat?

Ed. Courtney. I will tell you, if you please.

Mr. Phipps. My Lord, I think they ought not to examine to that, because it is not laid in the Indictment. The carrying away of the Custom-House Barge is not mentioned in the Indictment; and by the new Act for regulating Trials in Cases of Treason, no Evidence is to be admitted or given of any Overt-Act, that is not expressly laid in the Indictment.

L. C. J. Nothing else? Suppose a Man be indicted for levying War against the King, or adhering to the King's Enemies, can't they prove any Act that makes out a levying of War, or an Adherence to the King's Enemy?

Mr. Phipps. With Submission, not by that Act, my Lord, unless it be laid in the Indictment.

L. C. J. Levying of War is the Treason; may they not prove that levying of War, without being confined to any special or particular Act?

Mr. Phipps. With Submission, by the 25th of *Edward III.* levying of War, as well as imagining the Death of the King, must have the Overt-Acts, that are to prove it, express'd in the Indictment.

L. C. J. Levying of War is an Overt-Act.

Mr. Sol. Gen. The Business of Overt-Acts is, where the compassing and imagining the King's Death is a Crime in Question; and this must be discovered by Overt-Acts. But if Treason be falsifying of the King's Money, this is Treason; but there can be no Overt-Act of that, for that is an Overt-Act it self; but there must be an Overt-Act to prove the compassing and imagining the Death of the King, and in no other Sort of Treason.

L. C. J. Levying of War, that is an Overt-Act; so is adhering to the King's Enemies. Now compassing and imagining the Death of the King is not an Overt-Act in it self, but is a secret Imagination in the Mind, and a Purpose in the Heart; but there must be external Acts to discover that Imagination and Purpose.

Mr. *Phipps*. What is the Meaning of the new Act then, that there shall be no Evidence of any Overt-Act, but what is laid in the Indictment?

L. C. J. What Overt-Acts are there in Clipping and Coining?

Mr. *Phipps*. That is not within the new Act of Parliament.

L. C. J. That is most true; the one is excepted, the other is not comprehended: But the Question is upon the Statute of 25 Ed. III. to which the late Act doth refer. Now proving an Adherence to the King's Enemy, is proving an Overt-Act. Suppose it be the killing of the Chancellor, or Treasurer, or Judge in the Execution of his Office, what Overt-Acts will you have then? Adhering to the King's Enemies, is a Treason that consists in doing an Overt-Act.

Mr. *Phipps*. Yes, my Lord, I take it that it is; for the new Act, by saying, *that no Evidence shall be admitted of any Overt-Act, that is not expressly laid in the Indictment*, must be intended of such Treasons, of which by Law Overt-Acts ought to be laid. Now the killing of the Chancellor, or Treasurer, or Judge in the Execution of his Office, are not such Treasons of which it was necessary to lay any Overt-Acts in the Indictment, and so not within the Meaning of this new Law. But levying War, and adhering to the King's Enemies, which are the Treasons in this Indictment, must by the express Purview of 25 Ed. III. be proved by Overt-Acts, which are to be alledged in the Indictment.

Mr. *Sol. Gen.* The new Act does not alter the Law in this Particular; what was Law before, is Law now; it leaves the Overt-Acts as they were before; and it says not that an Overt-Act need to be express'd, where it was not needful before. Now if a Man be indicted for compassing the Death of a private Person, there ought to be some Overt-Act to prove his Design; but if there be an Indictment for Murder, there needs no other Overt-Act to prove it, but the Murder it self.

L. C. J. But the Force of the Objection lies in this, *viz.* To say a Man levied War, or adhered to the King's Enemies, is no good Indictment; but it is necessary to alledge in what manner he levied War, or adhered to the King's Enemies; as that he appeared in such a warlike manner, or did adhere to and assist the King's Enemies, by joining Forces with them, or otherwise assisting them, or confederating with them; that must be specified. But if you indict a Man generally for adhering to the King's Enemies, and not say how and in what manner he did adhere to them, that is not a good Indictment; therefore, if you particularize what Enemies, and how and in what manner he adher'd to them, no Evidence can be given of any other kind of Adherence, but that which is so specified in the Indictment.

Mr. *Sol. Gen.* Then we must put all our Evidence into the Indictment.

Mr. *Phipps*. So you must, as to the Overt-Acts.

Mr. *Sol. Gen.* That will be the same thing as to put in all our Evidence, if we must give Evidence

of no Overt-Act but what is express'd in the Indictment. But I do not take it, that the Act requires all Overt-Acts to be put in the Indictment.

Mr. *Phipps*. The Act says so. Suppose you had left out the Overt-Act, would the Indictment have been good?

Mr. *Sol. Gen.* We did not intend to put in all the Overt-Acts, but only what related to that Part of the Treason.

Mr. *Phipps*. The Treason must be proved by Overt-Acts, and the Overt-Acts that prove the Treason must be mentioned in the Indictment.

Mr. *Sol. Gen.* What! the Overt-Acts of the Treasons before mentioned, as counterfeiting the King's Money, and the like, are all to be mentioned?

L. C. J. Consider, if you can make that a good Indictment, to say, that the Prisoner adhered to the King's Enemies, without mentioning any Overt-Acts to manifest such an Adherence, then your Answer to Mr. *Phipps* is full; but if it be not a good Indictment, without alledging particular Acts of Adherence, then it necessarily follows, that if Particulars are alledged, and you do not prove them as is alledged, you have failed in the Indictment, and so his Objection will lie hard upon you.

Mr. *Sol. Gen.* My Lord, we framed our Indictment according to the Letter of the Statute.

L. C. J. In compassing the Death of the King, you must shew how that is manifested by the Overt-Acts.

Mr. *Sol. Gen.* But compassing and imagining must be discovered by some Overt-Acts.

L. C. J. *Treby*. This is a Doubt I have often thought of; I thought it most natural that the Word Overt-Act should relate to the first Article, *viz. compassing and imagining of the King's Death*: For Overt-Act seems to be opposed to something of a contrary Nature: Act is opposed properly to Thought, Overt is properly opposed to secret. And that Sort of Treason consisting in secret Thought and internal Purpose, cannot be known, tried, and judged of, without being disclosed and manifested by some external open Act. Wherefore it is pertinent and reasonable, in order to attain a Man of such Treason, that the Indictment should charge and set forth the Act, as well as the Thought. And so it hath been used to be done.

But such Order or Manner doth not seem so natural or necessary, in framing Indictments for other Treasons, where the Treason consists in visible or discernible Facts; as, levying War, &c.

Nevertheless, I think an Overt-Act ought to be alledged in an Indictment of Treason for adhering to the King's Enemies, giving them Aid and Comfort. And the Overt-Act, or Acts, in this Case, ought to be the particular Actions, Means, or Manner by which the Aid and Comfort was given.

My Lord *Coke* declares his Opinion to this Purpose. His Words (which I read out of his Book here) are these: *The Composition and Connection of the Words are to be observed, viz. [thereof be attainted by Overt-Deed.] This, says he, relates to the several and distinct Treasons, before express'd, and especially to the compassing and imagining of the Death of the King, &c. for that it is secret in the Heart, &c.* Now the Articles of Treason, before express'd in the Statute of 25 Ed. III. are four. 1, Compassing, &c. 2, Violating the Queen, &c.

3. Levying War, and 4. This of Adhering, &c. (And yet it is hardly possible to set forth any Overt-Act concerning the second, otherwise than the Words of the Statute, that Article expressing so particular a Fact.)

I do observe also, that these Words [*Being thereof attainted by Overt Fact*] do, in this Statute, immediately follow this Article of Adhering, &c. And it would be a great Violence to construe them to refer to the first Article only, and not to this last, to which they are thus connected. If they are to be restrained to a single Article, it were more agreeable to the strict Rules of Construing, to refer them to this of Adhering only.

L. C. J. That which I insist on is this, whether the Indictment would be good, without expressing the special Overt-Act. If it be, then this is a Surplusage, and we are not confin'd to it; but if it be not a good Indictment without expressing it, then we are confin'd to it.

Mr. Phipps. I believe Mr. Solicitor never saw an Indictment of this kind, without an Overt-Act laid in it.

L. C. J. Can you prove the Facts laid in the Indictment? For certainly the Indictment, without mentioning particular Acts of Adherence, would not be good.

Mr. Cowper. Yes, my Lord; and as to the Evidence before you, we would only offer this; whether in this Case, if the Indictment were laid generally, for adhering to the King's Enemies in one Place, and in another Place levying of War, and nothing more particular, it would be good: I doubt it would not. But when there is laid a particular Act of Adhering, we may give in Evidence Matter to strengthen the direct Proof of that particular Act of Adhering to the King's Enemies, though that Matter be not specially laid in the Indictment: For the Act goes only to this, that the Prisoner shall not be convicted, unless you prove against him the Overt-Acts specially laid in the Indictment; but whether it shall not be heard, to make the other Overt-Act which is laid, the more probable? Now we have laid a special Overt-Act in the Indictment; and we have produced Evidence of it, and we would produce likewise collateral Evidence, to induce a firmer Belief of that special Overt-Act, by shewing you that he hath made it his Practice, during the War, to aid and assist the King's Enemies: But if the Jury do not find him guilty of the special Overt-Acts laid in the Indictment, they cannot find him guilty by the Proof of any other Overt Act not laid in the Indictment. But if we prove he has made this his Practice, in other Instances, during the War, whether that Proof shall not be received?

Mr. Phipps. My Lord, I desire the Act may be read. It expressly contradicts what Mr. Cowper says; for it says, That no Evidence shall be given in the Overt-Act, that is not expressly laid in the Indictment. [*The Act was read.*]

L. C. J. That is, you may give Evidence of an Overt-Act, that is not in the Indictment, if it conduce to prove one that is in it. And if consulting to kill the King, or raise a Rebellion, is laid in the Indictment, you may give in Evidence an acting in Pursuance of a Consult, that is an Evidence that they agreed to do it; though that doing of the Thing is, of it self, another Overt-Act, but it tends to prove the Act laid in the Indictment.

Mr. Phipps. The Overt-Act laid in this Indictment, is his cruising in the *Clencarty*; and this Overt-Act you would prove, is no Evidence of that, nor relates to it, but it is a distinct Overt-Act of it self.

L. C. J. You cannot give Evidence of a distinct Act, that has no Relation to the Overt-Act mentioned in the Indictment, though it shall conduce to prove the same Species of Treason.

Mr. Cowper. We would apply this Proof to the Overt-Act laid in the Indictment.

L. C. J. Any thing that has a direct Tendency to it, you may prove.

Mr. Cowper. We have laid the Overt-Act, that he did voluntarily put himself on Board this Vessel of the *French King*, the *Loyal Clencarty*, and did go to Sea in her, and cruise, with a Design to take the Ships of the King of *England*, and his Subjects. Now Part of the Overt-Act, is his Intention, in the Act of Cruising; we do not charge him with taking one Ship; so that his Intention is a Member of the Overt-Act: and it must be proved, to make his Cruising criminal, that he design'd to take the Ships of the King of *England*. Now we think it a proper Intention, to shew, that during this War, before and after the Time of the Treason laid in the Indictment, he was a Cruiser upon, and Taker of the King's Ships, and this fortifies the direct Proof given of the Intention.

L. C. J. I cannot agree to that, because you go not about to prove what he did in the Vessel call'd the *Loyal Clencarty*; but that he had an Intention to commit Depredation on the King's Subjects: So he might, but in another Ship. Now, because a Man has a Design to commit Depredation on the King's Subjects in one Ship, does that prove he had an Intention to do it in another?

Mr. Phipps. He was cruising in the *Clencarty*, that is the Overt-Act laid in the Indictment; and the Overt-Act you would produce, is his being in another Vessel.

L. C. J. Go on, and shew what he did in the *Clencarty*. You the Prisoner, will you ask this Man any Questions?

Mr. Phipps. *Crouch*, you said, that the Prisoner did say he could not deny but he was an *Irishman*; how came you to talk about it?

R. *Crouch*. He said, I cannot deny but I am an *Irishman*.

L. C. J. Did he say he was an *Irishman*? What were the Words he used?

R. *Crouch*. He told the Lieutenant he was an *Irishman*.

Mr. Phipps. What Discourse was there? How came he to say that?

R. *Crouch*. I went by only, and heard the Words spoken to the Lieutenant.

L. C. J. Did he speak *English*?

R. *Crouch*. Yes, my Lord.

L. C. J. If he spoke *English*, that is some Evidence he is an *Englishman*, though the contrary may be proved by him.

T. *Vaughan*. That would no more prove me an *Englishman*, than if an *Englishman* were in *France*, and could speak *French*, would prove him a *Frenchman*, because he could speak *French*.

L. C. J. You shall be heard by and by to say what you will on your own Behalf.

Mr. Phipps. Were there any *Frenchmen* on board the *Clencarty*?

R. Crouch. No, Sir.

Mr. Phipps. Mr. Vaughan, will you ask him any Questions your self?

Mr. Cowper. Call T. Noden.

T. Vaughan. How did you know that there were no Frenchmen aboard? Did I address my self to you when I came aboard?

R. Crouch. No, Sir.

T. Vaughan. Did I not address my self to the Captain when I came aboard? How came I to tell you I was an Irishman?

R. Crouch. They were all Scotchmen, Englishmen, and Irishmen.

Mr. Phipps. Mr. Vaughan, you need not take up the Time of the Court about that Matter.

Mr. Cowper. You may go on.

Mr. Sol. Gen. Did the Prisoner own that he acted by the French King's Commission? Did you know any thing of his having a French Commission?

R. Crouch. Yes, I heard he had one, but I did not see it; but I heard so by the Company.

L. C. J. Were there any Frenchmen aboard?

R. Crouch. No, not that I know of. They were Dutchmen, and Englishmen, and Scotchmen, and Irishmen.

Mr. Cowper. Call T. Noden. (*Who appeared and was sworn.*) Do you give my Lord and the Jury an Account of taking the Vessel, call'd the Two-and-twenty-Oar Barge?

T. Noden. Last Year, about June or July, to the best of my Remembrance, I belong'd to his Majesty's Ship the Coventry, and we took the Two-and-twenty-Oar Barge.

L. C. J. How many Dutchmen were aboard?

T. Noden. I do not know of above one.

L. C. J. Treby. What were the rest? Were there any Frenchmen?

T. Noden. Yes, there were several Frenchmen aboard. I belong'd to the Coventry; and as we were sailing by the Nore, and the Gunfleet, our Captain spy'd a small Vessel sailing by the Sands, and he suppos'd her to be a French Privateer, and he fir'd a Gun to make them bring to, and they did not obey; and at last fir'd a Gun, Shot and all, and they would not come to. Then the Captain order'd to man the Boat, and row after them: So the Barge, and Pinnace, and Long-boat were mann'd, and they came pretty near them. This Barge we took, was aground also; and they got her afloat, and she run aground again: And as they were aground, most of them out of the Boat, our Long-boat struck aground, and waded after them near half a League; and when we came to the Barge, there was this Captain Vaughan, and two or three and twenty more; and there was two Dutchmen, and, as I apprehended, some Frenchmen. There was in her a Blunderbuss, and small Arms, and a considerable Quantity of Hand-Granadoes.

L. C. J. What Vessel was you aboard?

T. Noden. The Coventry.

Mr. Sol. Gen. What Countryman did Captain Vaughan say he was?

T. Noden. I did not hear any thing of it. Our Captain examin'd the Dutchmen what Countryman the Commander was, and he said he was an Irishman; but I did not hear it my self. When Captain Vaughan was brought aboard the Coventry, I was put aboard the Prize we had taken.

Mr. Cowper. Had you any Discourse with Captain Vaughan?

T. Noden. No.

L. C. J. Did they endeavour to take your Ship?

T. Noden. No, but endeavoured to get away from us.

L. C. J. What Guns or Ammunition had they?

T. Noden. I cannot tell particularly; there was some Canvass Bags, every Man had a Carteridge Bag, and there were some Hand-Granadoes.

Mr. Whitaker. What Fire-Arms had they?

T. Noden. I cannot say how many; but they had Muskets, and Pistols, and two Blunderbusses.

Mr. Cowper. Did you understand whence this Ship, the *Loyal Clencarty*, came?

T. Noden. The Dutchmen said they came from Calais. As near as I can guess, we spy'd them about Eleven a Clock, and we weigh'd Anchor in the Afternoon, on Sabbath-day, and they took us to be a light Collier, and endeavour'd to board us, as the Dutchman said; but when they knew what we were, they endeavour'd to escape from us.

Mr. Cowper. Call Sam. Oldbam. (*Who appeared and was sworn.*) Mr. Oldbam, was you aboard the Coventry, when she took the Ship called the *Clencarty*?

Sam. Oldbam. Yes, I was.

Mr. Cowper. Pray give an Account what you observed of the Prisoner T. Vaughan then?

Sam. Oldbam. We weigh'd our Anchor first at the Buoy and Nore; so we saw a Prize in the Morning; the Captain said it was a Prize, and we made Sail after him, and they ran on the Goodwin Sands: And the Captain seeing the Barge run aground, we fir'd at her to bring her to; we fir'd a second, and she would not come to, but ran aground again. When she was aground, by the Captain's Order, we mann'd our Boats, and out we went after her.

Mr. Cowper. Did you take her?

Sam. Oldbam. We went, and our Long-boat ran aground; I was in the Long-boat, and we waded, I believe, a Mile and half after her.

L. C. J. What Frenchmen were aboard?

Sam. Oldbam. I cannot justly say whether there were any.

L. C. J. Were there any?

Sam. Oldbam. I think one or two.

Mr. Cowper. Were there any Dunkirkers or Walloons aboard?

Sam. Oldbam. There was a Dutchman, who they call'd a Fleming; and I discours'd him.

L. C. J. How many outlandish Men were there aboard? Was there a Dozen, or how many?

Sam. Oldbam. I cannot say the Quantity.

Mr. Cowper. Was there more than two or three?

Sam. Oldbam. Yes, more than two or three.

L. C. J. What, Foreigners?

Sam. Oldbam. Yes. And there were two Englishmen.

Mr. Cowper. What did you observe of the Prisoner at the Bar, at the taking of the Ship?

Sam. Oldbam. I did not come aboard along with the Prisoner, but with his Man; and his Man said he was an Irishman, and that he was Commander of the Boat.

Mr. Sol. Gen. What was their Design in that Ship *Clencarty*?

Sam. Oldbam. I cannot tell that.

Mr.

Mr. Cowper. Did they resist, in their being taken?

Sam. Oldbam. I cannot tell that; I saw no Arms.

M. Cowper. You were in the Action; was there any Resistance made?

Sam. Oldbam. I saw no Resistance; they offered to run, they were aground once, and got off again.

Mr. Phipps. You say there were Foreigners; what Countrymen did you believe those Foreigners to be?

Sam. Oldbam. I cannot justly say, I believe Dutchmen.

L. C. J. How many Dutchmen were there?

Sam. Oldbam. I cannot say.

Dr. Oldisb. But you said there were some two or three Frenchmen, and that they spoke French; do you understand French?

Sam. Oldbam. No, Sir.

Dr. Oldisb. Then how do you know they were Frenchmen, and spoke French?

Sam. Oldbam. They said they were; they did not speak English; several of the Ship's Company said they were French.

L. C. J. If they were all Dutchmen, and appear in a hostile Manner against the King of England's Subjects, they are Enemies, tho' we are in League with Holland, and the rest of the Seven Provinces.

Mr. Phipps. The Indictment runs, That the French King, *quandam Naviculam vocat' The Loyal Clencarty, cum quamplurimis Subditis Gallicis, Inimicis Dom. Regis nunc, ad numerum quindecim Personarum, replet' preparavit.*

L. C. J. Suppose it doth?

Mr. Phipps. It is *Subditis Gallicis*, my Lord.

L. C. J. They will be Subjects in that Matter, if they act under his Commission: They are Enemies to the King of England, and they have made themselves the French King's Subjects by that Act.

Mr. Phipps. It appears not that they are Frenchmen, my Lord.

L. C. J. If Dutchmen turn Rebels to the State, and take Pay of the French King, they are under the French King's Command, and so are his Subjects. Will you make them Pirates, when they act under the Commission of a Sovereign Prince? They are then *Subditi* to him, and so *Inimici* to us.

Mr. Phipps. It does not take away their Allegiance to their lawful Prince. They may go to the French King, and serve him; yet that does not transfer their Allegiance from their lawful Prince to the French King, and make them his Subjects. But however, to make them Subjects within this Indictment, they must be *Gallici Subditi*; so they must be Frenchmen as well as Subjects.

L. C. J. Acting by Vertue of a Commission from the French King, will excuse them from being Pirates, tho' not from being Traitors to their own State; but to all other Princes and States against whom they do any Acts of Hostility, they are Enemies: And their serving under the French King's Commission, makes them his Subjects as to all others but their own Prince or State. And tho' they be not Frenchmen, yet they are *Gallici Subditi*; for it's the French Subjection that makes them to be *Gallici Subditi*.

Mr. Phipps. Pray, my Lord, suppose a Subject of Spain should go over to the French, and fight

against England; I take it, he may be termed an Enemy of the King of England, tho' his Prince be in League with ours; but, with Submission, he cannot properly be said to be a Subject of the French King: For suppose an Indictment of Treason against a Foreigner, should say, *that he being a Subject, did commit Treason*; if it be proved he is not a Subject, with Submission, he must be acquitted.

Mr. Cowper. There is a local Allegiance while he is in the Country, or Fleets, or Armies of the French King.

L. C. J. Dutchmen may be Enemies, notwithstanding their State is in Amity with us, if they act as Enemies.

Mr. Cowper. Call R. Bub. (He was sworn.) Was you aboard the Coventry, when she took the Clencarty?

R. Bub. Yes, Sir.

Mr. Cowper. Give an Account what you know of the Prisoner, Tho. Vaughan, at the Taking of that Ship.

R. Bub. We came aboard the Coventry, and were at the Nore at Anchor; our Pennant was taken down to be mended. So in the Night Captain Vaughan, with his Two-and-twenty-Oar Barge, rounded us two or three times. In the Morning we weigh'd Anchor, and fell down, in order to go to the Downs; and we came up with them, and fir'd at Captain Vaughan, and he would not bring to. With that, our Captain order'd to have the Barge, and Pinnace, and Long-boat to be mann'd, to go after him. They follow'd him, and at last came up with him, and came up pretty near; but could not come so near with the Long-boat, but were fain to wade up to the Middle a Mile and a half. We hoisted our Colours, in order to fight them, and bore down still upon them, and they would not fight our Men: And we took them out; and when they came aboard, the Englishman that was a Pilot was to have his Freedom, to pilot them up the River. He confes'd to the Captain, that Captain Vaughan intended to burn the Ships in the Harbour: And the next Day after the Pilot had confessed it, Captain Vaughan himself confessed it on the Deck, that he came over with that Design.

Mr. Cowper. Who did he confess it to?

R. Bub. To the Boatwain and Gunner, as he was on the Deck, on the Larboard-Side; that he came on purpose to burn the Shipping in the Harbour.

L. C. J. Did he confess that himself?

R. Bub. Yes, my Lord.

L. C. J. Whereabout was this, at the Buoy in the Nore?

R. Bub. In the Downs, my Lord.

L. C. J. Where did the Ships lie that were to be burn'd?

R. Bub. At Sheerneys.

Mr. Sol. Gen. He own'd himself to be an Irishman, did he not?

R. Bub. Yes.

Mr. Cowper. And that he came from Calais?

R. Bub. Yes.

Mr. Cowper. Had you any Discourse with him about a Commission?

R. Bub. No. But our Lieutenant and Captain had, but it was not in my Hearing; I will not speak further than I heard, and what I can justify.

Mr. Sol. Gen. Will you ask him any Questions?

Mr. Phipps. No.

Mr.

Mr. Sol. Gen. Then call Mr. Jo. Crittenden, Marshal of Dover-Castle, (who was sworn.) Mr. Crittenden, Pray what did you hear the Prisoner at the Bar confess of his Design in coming to England?

Mr. Crittenden. I did not hear him say any thing of his Design.

Mr. Sol. Gen. What did he confess?

Mr. Crittenden. He confess'd he was an Irishman.

Mr. Whitaker. Upon what Occasion did he confess that?

Mr. Crittenden. When I enter'd him into my Book, I ask'd him what Countryman he was.

Mr. Cowper. What are you?

Mr. Crittenden. I am the Marshal of Dover-Castle.

Mr. Cowper. By what Name did he order you to enter him?

Mr. Crittenden. Thomas Vaughan, an Irishman.

L. C. J. Upon what Account did you enter him?

Mr. Crittenden. As a Prisoner.

Mr. Cowper. Did he speak any thing of a Commission?

Mr. Crittenden. I did not hear him say any thing of that.

Mr. Phipps. Have you your Book here?

Mr. Crittenden. Yes, Sir.

Dr. Oldish. Was he not in Drink when he said so?

Mr. Crittenden. I believe he was not very sober, indeed.

Mr. Phipps. Did you ever after hear him say he was an Irishman?

Mr. Crittenden. The next Day he deny'd it.

Mr. Cowper. When he had consider'd the Danger of it.

Mr. Crittenden. The next Day he was examin'd by some of the Justices of the Peace.

Mr. Sol. Gen. Was you by when he was examined by the Justices?

Mr. Crittenden. Yes.

Mr. Sol. Gen. What did he then say?

Mr. Crittenden. Then he said he was of Martenico.

Mr. Sol. Gen. Set up Mr. Bullock (who was sworn.) Mr. Bullock, Do you know the Prisoner at the Bar?

Mr. Bullock. Yes.

Mr. Sol. Gen. Pray what have you heard him say of his Design that he came into England for?

Mr. Bullock. He came to Dover about the 14th of July, 1695, as I remember: I went with several others, who were brought by the Captain of the Coventry, and the Lieutenant, and some others: And when we came thither, he there own'd himself an Irishman; but when he went the next Day to be examin'd, he said he was of Martenico. He told me he had that Barge from the Duke of Bulloign, and came on the Coast, and was chas'd into the Flatts, where they took him.

L. C. J. Did you ever hear him say he had any Commission from the French King?

Mr. Bullock. I know nothing of that; it was late, and we did not examine him then; but the next Day, when he came to be examined, he said he was of Martenico.

Mr. Sol. Gen. What did he say his Design was?

Mr. Bullock. He said, that seeing the Boat at Bulloign, he bought it of the Duke of Bulloign; and the Duke ask'd him what he would do with her? And he said, he would fit her up, and go and take a Ship at Sea, that is, upon our Coasts.

Mr. Phipps. We are in your Lordship's Judgment, whether we need give any Evidence; for

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we think they have not proved their Indictment: For the Indictment sets forth, That the French King fitted out the Loyal Clencarty, of which Thomas Vaughan was Commander; and that very many Frenchmen, Subjects of the French King, were put on board. Now the first Witness swears, there were no Frenchmen; and another swears there was one or two; another, that they were Foreigners; but does not believe they were Frenchmen. So there is no Proof of that Part of the Indictment; nor is there any Proof that he was Captain of the Loyal Clencarty: So that none can say, it is the same Vessel mention'd in the Indictment. Nor is any Act of Hostility proved; for all the Witnesses say, that Vaughan never pretended to attack them, but run from them. So that all they depend on, to support the Indictment, is to prove that he had a Design to burn the Ships at Sbeerness; which will not serve their Turn; for the Words of the Indictment are, *ad prædandum super altum Mare*. Now Sbeerness is not *super altum Mare*, but *infra Corpus Comitatus*; and then not within the Indictment.

Mr. Cowper. The Words Ships at Sbeerness, do not imply, that the Ships lay within the Town of Sbeerness, but off of Sbeerness, which is *altum Mare*.

Mr. Phipps. Then it is not in your Indictment; for that says, at Sbeerness.

Mr. Cowper. No, off of Sbeerness.

Mr. Sol. Gen. It is no Contradiction, to say the Sea is within Part of a County.

Mr. Phipps. The Indictment says at Sbeerness.

Mr. Sol. Gen. Off of Sbeerness is the high Sea.

Mr. Phipps. Sbeerness is not the Buoy in the Nore. Then you must prove he was Captain at this Time: For the Indictment says, *Ad tunc fuit Capitaneus & Miles*.

L. C. J. One Overt-Act of adhering to the King's Enemies, is, that he put himself as a Soldier on board the Ship.

Mr. Phipps. You will make one Part agree with another, That the French King did set out a Ship, and gave him a Commission to be Captain of her.

L. C. J. The Witnesses have prov'd he acted as a Captain.

Mr. Phipps. He was taken; and sure, if he was taken, he must have his Commission with him.

Mr. Sol. Gen. Examine the Marshal, he took an Account of him: And by Direction of Mr. Vaughan himself, he enter'd him as Captain; and he enter'd several Men in the Ship as Frenchmen, by their own Direction. (Mr. Crittenden was call'd.) Mr. Crittenden have you got your Book in which you made the Entry?

Mr. Crittenden. Yes, I have it.

Mr. Sol. Gen. By whose Order did you enter them?

Mr. Crittenden. By the Direction of Captain Vaughan, the Prisoner at the Bar.

Mr. Cowper. How did you know he was a Captain?

Mr. Crittenden. Because he told me he was Captain, and I enter'd him as such in my Book.

Mr. Sol. Gen. Captain of what?

Mr. Crittenden. The Loyal Clencarty.

Mr. Sol. Gen. Pray read your Entry in your Book.

Mr. Crittenden. Thomas Vaughan, Captain, Irishman, the 14th of July, 1695; and so of all the rest of the Ship's Crew.

Mr. J. Turton. Did you write these in the Presence of Captain Vaughan?

E

Mr.

Mr. *Crittenden*. Yes, in the same Room where he was.

Mr. *Phipps*. Did you write it by his Direction?

Mr. *Crittenden*. For his own Part, by his Direction; and for the rest, by their Direction.

L. C. J. Take all the Circumstances together, it is great Evidence, considering what they were about, and what Vessel they had. Mr. *Crittenden*, can you tell how many *Frenchmen* were there?

Mr. *Crittenden*. I will tell you presently. (*He counts them in his Book.*) There were thirteen.

Mr. *Sol. Gen.* Did Captain *Vaughan* hear any of them bid you enter them as *Frenchmen*?

Mr. *Crittenden*. I cannot be positive in that, I suppose he did; he was in the same Room.

L. C. J. Do you expect Witnesses from *France*, to testify where they were born and christen'd?

Mr. *Phipps*. One Witness says there was not one *Frenchman* there.

L. C. J. Not to his Knowledge.

Mr. *Sol. Gen.* What do you know of his having a *French Commission*?

Mr. *Bullock*. I did not see it.

Mr. *Whitaker*. Did he own his having any *French Commission*?

Mr. *Bullock*. I cannot tell.

Mr. *J. Turton*. He own'd himself a Captain.

Mr. *Phipps*. He might be a Captain in another Ship, but not in this Ship; they ought to prove he was Captain at that Time, in that Ship, by the *French King's Commission*.

L. C. J. All the Witnesses say he acted as a Captain at that Time.

M. *Cowper*. He own'd himself the Captain of the *Loyal Clencarty*.

Mr. *Bar. Powis*. What can be plainer, than that he own'd himself Captain?

Dr. *Oldish*. This seems to me a very strange Proof, to be built only upon the Sayings of these Persons, that they were *Frenchmen*; and this to a Man who had no Authority to examine them, when it might have been easily prov'd in a regular Way, in Case they had been so; they might have been examined before a Magistrate, and thereby it would have appeared whether they were *French* or no. And 'twas absolutely necessary in this Case, because of the Contrariety of the Witnesses; for the first Witness said, there were no *Frenchmen* aboard; the next said there were two *Frenchmen* and a *Dutchman*; and *Crittenden* said, there were thirteen. Now how can these be reconciled, unless there had been a legal Examination of the Parties? But the Thing we would chiefly go on is this; I think they have fail'd in the Foundation of the Treason; that is, to prove the Prisoner a Subject of this Crown; neither is there the least Colour of Proof thereof. At Night he came to Mr. *Crittenden*, and is in Drink; there he says he is an *Irishman*: The next Morning, when he is examin'd before the Justices, then he comes in a kind of Judgment, and then such a Confession would be of Moment; but then he confesses himself to be a *Frenchman* of *Martenico*. Now, my Lord, what Credit is to be given to these Confessions; when before the Marshal he shall say, I am an *Irishman*, and the next Day, when he is on Examination, he declares himself a *Frenchman*; in one Confession he is in Drink, in the other sober? Now, my Lord, I say, what Proof is here? Here then the Foundation of the Treason fails: For the Indictment is, *That he being a Subject of the King of England, levies War*. Now, my Lord, if this

Quality be not proved, all the rest of the Indictment falls to the Ground: For it is impossible for him to commit Treason, where he is not a Subject; because there can be no Violation of Allegiance. So that if he be a *Frenchman*, as he declared before the Justices, he cannot be guilty of Treason. So that here they have fail'd in the Foundation of all; that is, to prove him a Subject of *England*. And because they affirm him to be so, it lies on those that affirm it, to prove it. But, perhaps, now they will say, that these little Confessions of his will throw the Burden of Proof on him. By no Means; when here is a stronger Presumption on the other Side, a meer extrajudicial Saying to Seamen, that he is an *Irishman*, cannot ballance his Confession examined before the Justices, wherein he says he is a *Frenchman*; and so can never throw the Burden of Proof on him. Therefore it lies on them that assert this to prove it. But, my Lord, tho' it doth not lie on him, yet we will prove him to be a *Frenchman*, and born at *Martenico*, by those that were at the Christening of him, and have known him from Time to Time ever since. And because they say, he can speak *English*, if you please to examine him, you shall hear him speak natural *French*; so that that cannot prove him to be a natural *Irishman*.

Mr. *Phipps*. Such a Saying of a Foreigner will be of no great Weight; because, if a Man go into a foreign Country, he may say he is that Countryman to get the more Favour.

L. C. J. What, to hang himself?

Mr. *Phipps*. No, my Lord, a Man that comes into a strange Country, may very well think he shall find better Usage, by pretending to be of that Country, than by owning himself to be a Foreigner. But we will prove *Vaughan* to be a *Frenchman*. Call *Robert French*. (*Then Robert French was sworn.*) Mr. *French*, Pray give the Court and Jury an Account, whether you know Mr. *Vaughan*, the Prisoner at the Bar, and how long you have known him, and what Countryman you take him to be, and the Reason why.

Rob. *French*. I have known him this fourteen Years.

Mr. *Phipps*. Where did you see him then?

Rob. *French*. I saw him in *Saint Christophers*.

Mr. *Phipps*. Pray give an Account how you came to know him.

Rob. *French*. About sixteen Years ago I was at *Mount-Surat*, and I came to *St. Christophers*, and there I chanc'd to come into *English* Ground, among the Factors; and so they brought me to the *French* Ground; and coming there, I was in Company with several others that Night, and it happened I was told there was one Mr. *Vaughan* there; and I coming acquainted with him, he shew'd me this Youth (he was a Youth then :) He told me he was his Son, and recommended him to me, because he look'd on me to be a Man in Trust and Business.

Mr. *Phipps*. From that Time what has he been reputed?

Rob. *French*. A Sea-faring Man.

Mr. *Phipps*. But what Countryman?

Rob. *French*. To be born in *Martenico*.

Mr. *Phipps*. In whose Dominions is that?

Rob. *French*. In the *French King's* Dominion.

Mr. *J. Turton*. What Occasion had you to discourse of the Place of his Birth?

Rob. *French*. Because his Father was look'd upon to be a *Frenchman*.

Mr.

Mr. J. Turton. His Father was a Frenchman?

Rob. French. Yes, my Lord, and lived at Martenico.

Mr. Cowper. How old might he be at that Time?

Rob. French. About Fifteen or Sixteen.

Mr. Cowper. How came you to be talking of his Birth, and with whom?

Rob. French. One that was talking with me, told me, his Name was Vaughan, and that he was born there.

Mr. Cowper. What introduc'd this Discourse? How came he to tell you this, that he was born in that Place?

Rob. French. His Father told me so.

Mr. Cowper. You were talking of one Vaughan of his Name: How many were in Company when there was this Talk?

Rob. French. There were many of them.

Mr. Cowper. Name them.

Rob. French. It is so long ago I cannot remember them.

Mr. Cowper. Name as many as you can of them, as many as you do remember.

Rob. French. One Mr. Bodiken, a Factor.

Mr. Cowper. Who else?

Rob. French. Several others.

Mr. Cowper. You named one Vaughan before.

Rob. French. Yes, I did.

Mr. Cowper. But you had forgot him now.

Rob. French. No, there was one Vaughan.

L. C. J. Were there any more?

Rob. French. Yes, there was; I remember the Company that went along with me.

L. C. J. Who were they?

Rob. French. There were several Passengers that went over with me.

L. C. J. How came you to talk of this Man's Nativity?

Rob. French. Because his Father said, he had not been out of the Island in twenty Years; (*At which the People laugh'd.*)

Mr. Cowper. What Place was this Discourse in?

Rob. French. At St. Christophers.

Mr. Cowper. How did his Father's saying, he had not been out of that Island in twenty Years, prove his Son was born there?

Rob. French. Because he recommended him to me as a Sea faring Man.

Mr. Cowper. What is that a Reason of? What is that to his being born at Martenico?

Mr. J. Turton. What Countryman are you?

Rob. French. I am an Irishman born.

L. C. J. His Father acknowledg'd himself to be an Irishman born; Did he not?

Rob. French. No, my Lord, he did not say where he was born: I do not know.

Mr. J. Turton. Have you continu'd any Acquaintance with Mr. Vaughan. since? How long did you stay at St. Christophers?

Rob. French. I stay'd but four and twenty Hours, to take in Water.

L. C. J. How long was it after this, before you saw this Gentleman, Captain Vaughan?

Rob. French. I never saw him since, till I saw him in London. (*Then the People laugh'd.*)

L. C. J. Pray Gentlemen have Patience. How do you know now that this is the same Man, that you saw fourteen Years ago? For there must be a great Alteration in a Man in fourteen Years Time, from what was at that Time, being but fifteen Years of Age.

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Rob. French. I believe in my Conscience this is the Man.

L. C. J. Can you take it upon your Oath he is the Man?

Mr. Bar. Powis. In what Language had you the Discourse?

L. C. J. How long were you in Company with him and his Father?

Rob. French. I believe five or six Hours.

Mr. Bar. Powis. In what Language was this Discourse with his Father?

Rob. French. My Lord, he spoke English, a Sort of broken English.

L. C. J. Where do you live your self?

Rob. French. I live in Ireland.

L. C. J. How long have you lived there?

Rob. French. Nine or Ten Years.

L. C. J. Whereabout in Ireland?

Rob. French. In Connaught.

L. C. J. Nine or Ten Years?

Rob. French. Yes, my Lord.

Dr. Littleton. Did not Captain Vaughan, nor his Father speak Irish to you in that six Hours?

Rob. French. No, my Lord.

Mr. Justice Turton. How long have you been in England?

Rob. French. Not above two Months.

Mr. Justice Turton. Did you hear of Captain Vaughan being to be try'd?

Rob. French. No, my Lord.

Mr. Justice Turton. How did he come to hear of you then?

Rob. French. I heard he was in Town.

L. C. J. It is a strange Thing; you have a most admirable Memory, and Captain Vaughan has as good a Memory as you; that you should never have any Intercourse for fourteen Years, and yet should remember one another after so long a Time. It is a wonderful Thing too, that when he could not know you were in Town, yet he should call you a Witness on his Behalf; sure he must have the Spirit of Prophecy.

Rob. French. He did not send to me at all.

L. C. J. How did you come to be here then?

Rob. French. I will tell you. It was my Custom always to go and see Prisoners; and I heard there were Prisoners in Newgate; so I went to Newgate, and I met with one Dwall; and I ask'd him of another Gentleman that was there; and I went to the other Side by Chance, and I met with Captain Vaughan.

L. C. J. What was thy Design? Why didst thou visit Newgate?

Rob. French. Because it was my Custom, because it was an Act of Charity.

L. C. J. Did you go to Newgate out of Charity?

Rob. French. I went to see my Friend, and carried a Letter to him. I went out of Charity.

Mr. Phipps. You were in the West-Indies, upon the French Ground; don't they speak English on the French Ground, and French on the English Ground?

Rob. French. Yes.

Mr. Cowper. So they do here. Did you ever see Captain Vaughan before that Time?

Rob. French. No.

Mr. Whitaker. Did you visit lately any other Prisoners in Newgate, besides Captain Vaughan?

Rob. French. Yes.

Mr. Whitaker. Give their Names.

Rob. French. I have visited Mr. Noland, and another Gentleman that is with him; and I went into the House and drank with him there.

Mr. *Whitaker*. What is that other Gentleman's Name?

Rob. *French*. I do not remember his Name at present; but he is a Companion of Mr. *Noland's*.

Mr. *Whitaker*. Do you know him if you see him?

Rob. *French*. I, I would.

L. C. J. *Treby*. How long have you been in England?

Rob. *French*. But two Months.

L. C. J. *Treby*. Have you usually visited Prisoners in former Years?

Rob. *French*. My Lord, where-ever I have been, it was my Custom to do so.

L. C. J. *Treby*. But how doth it consist, that you, who are an *Irishman*, should come hither to visit Prisoners in *Newgate*?

Rob. *French*. I can prove under my Lord-Mayor of *Dublin's* Hand, that I came here upon Business; and I went to the Prison to visit the Prisoners for Charity-sake, and did bestow it according as I was able.

L. C. J. You had best stay there, and not go away; for we may have Occasion to ask you some Questions.

Mr. *Cowper*. Do you not use, out of Charity, to be Evidence for them?

Rob. *French*. No, never before in my Life.

Mr. *Whitaker*. What other Prisons have you visited, besides *Newgate*?

Rob. *French*. I did visit none.

L. C. J. *Treby*. Had you no Charity for other Prisons?

Mr. Bar. *Powis*. When you so visit Prisons, on what Account is it? Is it to give ghostly Advice?

Rob. *French*. Upon a charitable Account, my Lord.

L. C. J. Ghostly Advice and Charity.

Mr. *Phipps*. Where is Mr. *Lefleur*? (He did not appear.) Call Mr. *Gold*, (who appear'd.)

Cl. of Arr. That Man is attainted, but pardoned.

Mr. *Phipps*. Mr. *Gold*, how long have you known Captain *Vaughan*?

Mr. *Gold*. I never knew Mr. *Vaughan*, before I saw him in the *Marshalsea*.

Mr. *Phipps*. Is Monsieur *Lefleur* here? Is Mr. *Deberty* here? (Mr. *Deberty* appeared and was sworn.)

Mr. *Phipps*. Do you know Mr. *Vaughan*, the Prisoner at the Bar?

Mr. *Deberty*. Yes.

Mr. *Phipps*. How long have you known him?

Mr. *Deberty*. Five Years.

Mr. *Phipps*. What has he been reputed all along, since you have known him?

Mr. *Deberty*. A Frenchman.

Mr. *Phipps*. Did you know him in France?

Mr. *Deberty*. Yes, and he was reputed a Frenchman there.

Mr. Justice *Turton*. What Occasion had you to enquire into that, the Place of his Nativity?

Mr. *Deberty*. I did not enquire at all; but one that was his Servant, was my Comrade a great while.

Mr. *Phipps*. Now we will prove where he was christened, by one that was as his Christening. Mr. *Dafcine*. (He appear'd and stood up, being sworn, and spoke in French to the Court, pretending he could not speak English.)

L. C. J. If he cannot speak English, there must be an Interpreter.

Mr. Sol. Gen. They must find an Interpreter, he is their Witness.

Then a Person in Court stood up, and told the Court he could speak English as well as he; that he had been a Bailiff's Follower for several Years.

L. C. J. You can speak English, can you not?

Mr. *Dafcine*. I will speak as well as I can.

King's Messenger. I am a Messenger to the King, Do you know me?

Mr. *Dafcine*. Yes.

L. C. J. Prithee speak English.

Mr. *Dafcine*. As well as I can, my Lord, I will speak.

Mr. *Phipps*. Are you sworn?

Mr. *Dafcine*. Yes, my Lord.

Mr. *Phipps*. Do you know Captain *Vaughan*?

Mr. *Dafcine*. In 1669, I was in *St. Christophers*; I went from *Roan*, and from thence I went with Hats and Cloth to *Crebeck*, and had a Letter to one *Thomas Williams*, a Factor in *Martenico*. And after I had done, as I was coming away, Mr. *Williams* desired me to go to a Christening, a Mile and half from *Port-Royal*. He told me, there was one Mr. *Vaughan* had a Plantation there, and desired him to be Godfather. And about two Days after, I went from *Port-Royal* to *St. Christophers* again, and I came to *Roan* again in a Ship called *St. Joseph*. So in 1677, I went to *St. Christophers* again, and from thence to *Martenico*, to Mr. *Williams*; I asked him, what is become of that young Man we were at the Christening? and so he shewed me him that is here (pointing to the Prisoner.)

L. C. J. That was in 1677?

Mr. *Dafcine*. In 1677. So I came from *Port-Royal*; I went to *St. Christophers*, and so took Sail, and came to France again. And 13 Years ago I went to *St. Christophers* again, and to *Mountferat*, and *Martenico*; and so when I was at *Martenico*, and asked Mr. *Williams* of this young Man, that I was at his Christening, and he said, he is at such an House, and I saw him there.

L. C. J. Thirteen Years ago.

Mr. *Dafcine*. And we went and drank Punch together, and I came back for *Roan*.

L. C. J. When did you see him since that?

Mr. *Dafcine*. Never till I saw him here a Prisoner.

L. C. J. How do you know he is the Man?

Mr. *Dafcine*. He has a Bruise in his Side.

Mr. *Phipps*. What was the Gentleman's Name, at the Christening of whose Child you were?

Mr. *Dafcine*. *Thomas Vaughan*.

Mr. *Phipps*. What was the Child's Name?

Mr. *Dafcine*. *Thomas Vaughan*.

Mr. *Phipps*. When you went the next Time to *Martenico*, did Mr. *Williams*, you speak of, that was the Godfather, present this Person, Captain *Vaughan*, to you, as the Man who was then christened?

Mr. *Dafcine*. Yes, the next Time.

Mr. *Phipps*. Now is Captain *Vaughan*, that stands at the Bar, that very Gentleman?

Mr. *Dafcine*. I am sure it is he.

L. C. J. You say this Meeting was about 1669?

Mr. *Dafcine*. Yes.

Mr. Sol. Gen. Pray what was the Reason you were so inquisitive to know what became of that Person that was christened when you was there?

Mr. *Dafcine*. Because I being at the Christening, I ask'd him how the Child did?

L. C. J.

L. C. J. How came you to take such extraordinary Observation of that Child? Was he such a remarkable Child?

Dr. Newton. Where were you born?

Mr. Dascine. In France.

Mr. Whitaker. What are you?

Mr. Dascine. A Barber by Trade.

L. C. J. What Employment have you?

Mr. Dascine. An Officer in the Marshal's Court sometimes.

Mr. Justice Turton. What was this Man's Father, what Sort of Man was he?

Mr. Dascine. A tall Man.

Mr. Baron Powis. What was his Father's Name?

Mr. Dascine. Thomas Vaughan.

Mr. Justice Turton. Was his Father living when you was there the second Time?

Mr. Dascine. The last Time I was there I did not see his Father, but I saw his Father the second Time.

Mr. Justice Turton. But you saw Mr. Williams, his Godfather.

Mr. Dascine. Yes.

Mr. Phipps. Call Simon Danneau.

Tho. Vaughan. My Lord, he is sick, and not able to come out of his Bed.

Mr. Phipps. Call Francis Harvey. (*Who was sworn.*)

Mr. Phipps. Do you know Captain Vaughan?

Francis Harvey. Sir, in the Year 1693, I was in France, with one Captain Bontee, who was taken Prisoner in August the same Year; and my Captain he had the Liberty to go up to Paris with a Guard, for his Pleasure, and to learn the Speech. And, as it happened, we came to lodge in a Street, called *Dolphin Street*, at the Sign of the *Crown*; and there was some Gentlemen that were there to learn the Speech, that were my Countrymen; and there was a young Man there, and he was acquainted over the Way, where this Gentleman, Captain Vaughan, lodged; he lodged at his Aunt's, that sold Silks; her Name was *Madam Wotton*; I saw this Gentleman there; I am sure it is he; and with that I came acquainted with him, as well as the rest.

Mr. Phipps. What was he reputed there?

Fr. Harvey. A Captain of a Ship.

Mr. Phipps. What did he go for there? A Frenchman, or an Englishman, or an Irishman?

Fr. Harvey. He went for a Frenchman, as I heard; one Time his Aunt, she said, that he was born in the *West-Indies*, at *Martenico*, and that he was her Sister's Son, that lived in *Martenico*.

Mr. Sol. Gen. You say he was a Captain of a Ship; what Ship?

Fr. Harvey. That I cannot tell.

Mr. Sol. Gen. When was that?

Fr. Harvey. In 1693.

Mr. Phipps. Is Mr. Lefleur here?

Cl. of Arr. He is a Prisoner in the *Savoy*; he was taken in the same Ship with Mr. Vaughan.

Mr. Phipps. It is reasonable he should have been here, to give an Account of the Prisoner.

L. C. J. Then they should have taken care to have had him here. Have you any more Witnesses?

Mr. Sol. Gen. I think we have given sufficient Evidence that he is an *Irishman*: But now we shall shew you, that all your Witnesses have given a very extravagant Evidence to prove that he is a *Frenchman*. All he hoped for was, that the Prosecutors for the King could not be able to

prove him an *Irishman*; he believed there were but three Men could prove him so; that was *David Creagh* and two more; and so he writes to *David Creagh*, and tells him, *That his Life was in his Power, and he hoped he and the other two would not discover it.* This *David Creagh* was his Neighbour in *Ireland*; we will call him to prove that *Capt. Vaughan* was born at *Galloway* in *Ireland*.

Mr. Whitaker. And here is his Letter under his Hand. Bring *David Creagh*. (*Who was sworn.*)

Mr. Cowper. I desire, before he give his Evidence, he may look upon those that have given Evidence about the Prisoner, one by one. (*Then he look'd upon Robert French.*) Mr. Creagh, do you know him.

Dav. Creagh. No. (*Then he looked upon the rest.*)

Mr. Cowper. Have you had any of these Men come to you on a Message?

D. Creagh. No, Sir.

Mr. Sol. Gen. Do you know *Thomas Vaughan*, the Prisoner at the Bar?

D. Creagh. Yes, I do.

Mr. Sol. Gen. How long have you known him?

D. Creagh. About two Years.

Mr. Sol. Gen. Was that your first Acquaintance with him?

D. Creagh. Yes.

Mr. Sol. Gen. What Place was he born at, as you have heard?

D. Creagh. At *Galloway* in *Ireland*.

Mr. Sol. Gen. From whom did you hear it?

D. Creagh. From all Persons that I have heard speak of him.

Mr. Sol. Gen. Did he ever own to you that he was born there?

D. Creagh. Yes, oftentimes in my Company.

Mr. Sol. Gen. Did you ever receive a Letter from him about your giving Evidence in this Matter?

D. Creagh. Yes, Sir.

Mr. Sol. Gen. Do you know this Letter? (*Which was shewn him.*)

D. Creagh. Yes, Sir.

Mr. Sol. Gen. Do you know his Hand?

D. Creagh. Yes, I partly know it.

Mr. Whitaker. Did you ever see him write?

D. Creagh. This is the Letter I received from him.

L. C. J. Read it. Do you think it is his Hand?

D. Creagh. I cannot swear it; but I believe it is his Hand.

Mr. Phipps. Have you seen him write?

D. Creagh. I have seen him write several Times.

L. C. J. Do you believe it is his Hand?

D. Creagh. Yes, my Lord, but I cannot swear it.

[*Then the Letter was read.*]

To Mr. *David Creagh*, in *Newgate*, These.

Mr. Creagh,

I Have some Assurance that Mr. Whitaker has no Witness to prove me a Subject of England, but you, and two more, which I am glad of with all my Heart: I hope I may have none against me that wish me worse than you and Capt. Etherington. If Mr. Whitaker has not sworn you yet, I hope you will not appear against me. I declare, if I had more than my Life, I would lay it in your Hand. I am like to be sent to *Newgate* this Day, and it is like you and some more will be sent here, that we may

may not talk together. The Dutch Dogs took from me Eleven hundred Dollars in Money, which certainly troubles me more than the Thoughts of Death, which I value not a Straw; but I hope in four or five Days to be supplied. I fear they will keep me close. I have all the Liberty imaginable here to write, and my Friends suffered to see me. I can say nothing that is comfortable, but that I am very well in Health, and nothing concerned, if my Money come in time.

Friday Morning.

T. Vaughan.

Mr. Phipps. Is that Letter proved? That is not to the Purpose; nor of any Weight, considering who proves it.

L. C. J. No, that none could prove him a Subject, but he and two more?

Mr. Sol. Gen. We will produce only one Witness more. Call Mr. Jo. Rivet. The Court being informed by some Gentlemen then on the Bench, that there was a Gentleman then in Court, one Mr. Rivet, who being of Galloway, could probably give some Account of the Prisoner; he was immediately called, and required to depose what he knew.

Jo. Rivet. My Lord, I am sorry I am called, where Life is concerned, when I came hither only out of Curiosity; but the Service I owe to this Government, obliges me to speak what I know, now I am called to it. (*Then he was sworn.*)

Mr. Sol. Gen. Do you know the Prisoner at the Bar? What Countryman is he?

Jo. Rivet. I have known him a great many Years; we were Children together in the same Town; we liv'd in Galloway in Ireland. I knew his Father, and Mother, and Brothers, and Sisters; and I remember him a Child, as long as I can remember any thing, I cannot determine to a certain Number of Years; and I remember him not only a School-boy, but also an Apprentice to one Mr. Coleman. And I wonder very much at what Mr. French says, for by the Name and Place of his Birth, he must have sworn what he knows to be otherwise; for the Frenches are a Family in Galloway; his Father was an honest Gentleman, and went over into Ireland in the Rebellion, in 1641. and he there married a Woman, a Native of Galloway, and had several Children, one of which, in the latter End of King Charles's Reign, turned Papist, and I believe the Grief for it hasten'd his Father's Death. I own Part of the Evidence may be true, about his being in the West-Indies; but his Mother, I believe, was never out of Ireland in her Life.

Dr. Oldisb. What was his Father's Name?

Jo. Rivet. John.

L. C. J. You say, you knew this very Gentleman an Apprentice to one Tho. Coleman at Galloway.

Jo. Rivet. I did so, my Lord.

L. C. J. How long is it since you saw him?

Jo. Rivet. I cannot be positive, I think at the Reduction of Galloway in 1691. I cannot say whether at or after; but I saw him about that Time, and knew him, and have known him from a Child; I knew him a School-boy, and knew his Brothers.

Mr. Justice Turton. What Year did you know him first?

Jo. Rivet. I dare not be positive; I remember him particularly well.

L. C. J. Are you sure this is the Man?

Jo. Rivet. I know him as well as any Face I ever saw. I came accidentally into Court out of Curiosity; and one that knew me, that was of Galloway, gave Account to the King's Counsel, and so I am called to give Evidence.

L. C. J. Do you know this Robert French?

Jo. Rivet. I cannot say I know him, for I see him but in the Dark; if I saw him in a better Light, it may be I may. (*Then Robert French was set up for Mr. Rivet to see him.*) I think I recollect the Face, I am not certain.

L. C. J. Do you know this Gentleman?

Rob. French. No, my Lord.

L. C. J. Where did you live?

Rob. French. In Connaught.

L. C. J. Did you know John Vaughan of Galloway?

Rob. French. I have heard of him, my Lord.

Mr. Baron Powis. What Trade was the Prisoner's Father?

Jo. Rivet. He had the Market several Years; he lived very well, and kept a Publick House in the Town.

Mr. Phipps. Did you know any other Tho. Vaughan but this?

Rob. French. No, not in Galloway.

Jo. Rivet. This may be a Confirmation of what I say; if it be the same Gentleman, his Hair is reddish.

L. C. J. Pull off his Peruke. (*Which was done.*)

T. Vaughan. My Hair is not red.

L. C. J. How are his Eye-brows?

T. Vaughan. A dark brown, my Lord, the same as my Wig.

Mr. Baron Powis. Let Some-body look on it more particularly. (*Then an Officer took a Candle, and look'd on his Head, but it was shaved so close, the Colour could not be discerned.*)

Mr. Phipps. We can give an Answer to this, my Lord; we shall prove that there was one John Vaughan at Galloway, and he had a Son Thomas, that died ten Years ago. As for Mr. Rivet, he is a mere Stranger to us, we know nothing of him; and, by what I can perceive, he comes in as a Volunteer, not subpcena'd by either Side. And for Mr. Creagh, we shall shew he is not to be credited in any thing; for we shall prove him guilty of Felony, and that he swore, that if his Brother would not supply him with Money, he would swear Treason against him, and shop him in Newgate, and that he should not come out till he came upon a Sledge; and if so, there is Nobody surely can believe he will stick at Perjury or Forgery, or any thing else which may be for his Advantage. Call Mr. Christopher Creagh. (*Who was sworn.*)

Mr. Phipps. Pray do you know David Creagh?

C. Creagh. Yes.

Mr. Phipps. Is he any Relation to you?

C. Creagh. Yes, he is my Brother.

Mr. Phipps. Give the Court and the Jury an Account what you know of your Brother.

C. Creagh. It is an unnatural Thing to come on this Occasion, and I am sorry I am called upon this Account.

D. Creagh. Speak what you have to say?

Mr. Phipps. What do you know of your Brother, whether you have not found him guilty of stealing any thing?

C. Creagh. My Lord, I am upon my Oath, I have known something of it, he has stolen some Gold from me.

L. C. J.

L. C. J. You pretend to be so very nice; you are to answer to what you know of his Reputation in general, and of his Way of Living.

C. Creagh. His Reputation has been but very slender, I am very sorry for it; several in the Court can give Account of it, as well as I. He served a Relation of his in *Newcastle*; he served there some Time, and came to Town, and came to me, and depended upon me, and I subsisted him; and he took an Opportunity one Day, when I and my Wife were gone abroad, and No-body at home but the Maid, and went up Stairs, where my Wife's Room is, and there being a Sash-window, he opens it, and took out of my Wife's Closet several Pieces of Gold.

L. C. J. How did you know that he did it?

C. Creagh. I found it out afterwards; he was my Brother, and therefore I did not prosecute him. I did not know he had it, till afterwards, that I found to whom he had disposed of the Gold. I inquired who was in the House, and thought the Maid had it; and she said none had been there but my Brother; and he at last owned the Fact, and I had it again.

L. C. J. Have you any more to say of your Brother?

Mr. Phipps. Did he ever threaten to swear against you?

T. Vaughan. Or me?

C. Creagh. He has been confined in *Newgate* eighteen Months, and I subsisted him in Charity; I allowed him all along; and he has been sending to me by several Messengers, that if I subsisted him not with more Money than I did allow him, he would swear me into a Plot.

L. C. J. Did he tell you so?

C. Creagh. No, but he has sent me Word so.

L. C. J. Is the Man here that he sent this Word by?

C. Creagh. Yes, the Man is here.

Mr. Phipps. Let him stand up.

L. C. J. Where do you live?

C. Creagh. In *Walling-street*; I am a Merchant; I declare it is not in Favour or Affection, but only in Conscience, that I declare this.

D. Creagh. This is only to hinder me from giving my Evidence against a Merchant that I have taken up.

T. Vaughan. What Character had he in Spain?

[Then David Creagh spoke, but was not heard.]

L. C. J. What do you say of the Gold?

C. Creagh. He had it, my Lord.

D. Creagh. Why did you not prosecute me then, if I had it?

L. C. J. You are not sure he took the Gold.

C. Creagh. I was so sure he had it, because I had it from him again by another Hand.

L. C. J. Did he tell you so, that he had it?

C. Creagh. No, but I had a Letter about it.

L. C. J. Where is that Letter?

C. Creagh. I have it not here.

L. C. J. Give not an Evidence of a Letter, without the Letter were here; it ought to have been produced.

Mr. Phipps. Call *Christopher Heyden*. (He was sworn.) Do you give the Court an Account what *David Creagh* has said to you of swearing against any Body.

C. Heyden. Several Times, when my Master has sent me to him, to pay him Five Shillings

a Week, or Five and Six-pence a Week, to sub-
sist him.

Dr. Oldisb. Who are you Servant to?

C. Creagh. He is my Servant.

C. Heyden. This *David Creagh* has often told me, that I should tell his Brother, that if he would not supply him with more Money, he would swear against him. When I came to the *Sessions-House*, when the Pirates were tried the first Time, I was going thro' the Bail-dock, where this *David Creagh* called to me; and I asked him what he did there? He said he was to be Evidence against Captain *Vaughan*. No certainly, said I, you do not know him, do you? Says he, Here's the Thing, it had been better for me that I had been an Evidence against him before this; and I am forced to be an Evidence against him, to save my self: And he bid me tell his Brother, God damn his Soul to all Eternity, if he did not send him Supply that Day, he would have him in *Newgate*, and that he should not come out again, till he came out upon a Sledge?

L. C. J. Did he say so?

C. Heyden. Yes, my Lord.

C. Creagh. How long is it agon, Mr. Heyden?

C. Heyden. It was the Day the Pirates were tried; more than that, here was Mr. *Wrotb's* Man was with me at the same Time; and because he should not hear what you said, you took me to the Door.

Mr. Phipps. Is *Daniel Bryan* here? (He appeared and was sworn.)

Daniel Bryan. I was subpoena'd here for I know not what; for I know not Captain *Vaughan*.

Mr. Phipps. Give me Leave to ask you a Question: Do you know, or have heard of *David Creagh*?

Daniel Bryan. Yes, Sir.

Mr. Phipps. Will you give an Account of what he has said of swearing against any Body?

Daniel Bryan. He has threaten'd his Brother several Times, that if he would not send him Relief, he would bring him in for something, and would inform against him.

Mr. Phipps. Did he say he would swear against him?

Daniel Bryan. He did say he would inform against him.

Mr. Phipps. What did you hear him say of swearing against any one?

Daniel Bryan. He said, he had rather others should perish, than himself.

Mr. Whitaker. This Man was condemned for the same Crime.

Mr. Phipps. Mr. *Vaughan*, have you any other Witnesses? Call *Creighton*. (Who was sworn.) What Countryman are you?

Creighton. A *Connaught* Man, I was born in *Galloway*; I believe Mr. *Rivet* knows me.

Mr. Phipps. Did you know one *John Vaughan*, that lived at *Galloway*?

Creighton. I know him very well.

Mr. Phipps. Do you know the Prisoner at the Bar?

Creighton. No.

Mr. Phipps. Do you remember, that that *John Vaughan* had a Son *Thomas*, and what became of him?

Creighton. Yes, he had a Son *Thomas*; but I understood that he went somewhere into the Country, and there died; and it was spread all about the Town.

Mr.

Mr. Phipps. Do you know what he died of?

Creighton. I cannot tell.

L. C. J. How long ago did he die?

Creighton. About ten Years ago. I knew all the Brothers.

Mr. Phipps. Did you know that *Thomas Vaughan*?

Creighton. I knew him very well.

Mr. Phipps. Is that Gentleman, the Prisoner, he?

Creighton. No.

Mr. Phipps. Do you believe that is not the Man?

Creighton. I believe not.

Mr. Phipps. Did you ever know any other *Thomas Vaughan*?

Creighton. No.

Mr. Justice Turton. Had not *John Vaughan* a Son Apprentice at *Galloway* to one *Thomas Coleman*?

Creighton. No, as I know of.

Mr. Justice Turton. How old was that Son, *Thomas Vaughan*, when you knew him?

Creighton. I was born at the next Door to that *Thomas Vaughan* that was reputed to be dead.

Mr. Justice Turton. Was not that *Thomas Vaughan* Apprentice to Mr. *Coleman*?

Creighton. I cannot certainly tell.

Mr. Justice Turton. How old was that *Thomas Vaughan* when he went away from *Galloway*?

Creighton. I cannot tell.

Mr. Justice Turton. What is your own Age?

Creighton. My Age is about Five and Twenty.

L. C. J. You have not seen him in ten Years?

Creighton. No, my Lord.

L. C. J. Can you take it upon your Oath, this is not the Man you saw ten Years ago, that *Thomas Vaughan* you knew?

Creighton. Yes, my Lord.

L. C. J. How old was he when you were acquainted with him?

Creighton. I cannot tell certainly; I believe he might be about fifteen.

L. C. J. How long is that since?

Creighton. Ten Years.

L. C. J. What is your Name?

Creighton. Creighton.

Mr. Cowper. You say you knew him ten Years ago; pray what sort of Person was he, and how did he differ from this Man?

Creighton. He was better set, and not quite so tall as this Man, and full of the Small-Pox; he was the quarrelsomest Boy in the whole Town.

Mr. Sol. Gen. You say he was not quite so tall as this Man.

Creighton. No, he was not quite so tall.

Mr. Sol. Gen. Do you think he might not grow since? This was ten Years ago, when he was but fifteen Years old.

Mr. Cowper. You knew him at Fifteen; how long had you known him?

Creighton. From my Infancy, 'till he departed the Town.

Mr. Cowper. During all that Time, what Employment was he in? Tell some Circumstances.

Creighton. I think this *Vaughan* went to one Mr. *Russel's* School.

Mr. Cowper. What to do?

Creighton. To learn to write and read.

Mr. Cowper. And was he not an Apprentice in that Time?

Creighton. I cannot tell.

Mr. Cowper. Were you acquainted with him?

Creighton. Yes.

L. C. J. You lived next Door to him; sure you must be acquainted with him?

Creighton. He was a fighting Boy, for I remember he did once thrash my Coat soundly.

L. C. J. Where do you live now?

Creighton. At the *Castle and Falcon* in *Aldersgate-street*.

L. C. J. What Trade are you?

Creighton. A Shoemaker.

Mr. Baron Powis. How long have you lived here?

Creighton. This ten Years.

Mr. Baron Powis. What did that *Thomas Vaughan* die of, that you say was dead before you came away, as it was reported up and down?

Creighton. I cannot tell.

Mr. Cowper. Just now you said he went away from *Galloway*, and it was reported there that he was dead ten Years ago; now you say you have been in *England* ten Years.

Creighton. I came into *England* about ten Years ago.

Mr. Cowper. Did you hear it at *Galloway* before you came away?

Creighton. I heard it at *Galloway* before I came to *London*; and there are many can testify that there was a Report that he was dead.

Mr. Justice Turton. How long was he gone from *Galloway* before you came away?

Creighton. I cannot say to an Hour; I heard he was dead.

L. C. J. Well, well, he went away from *Galloway*.

Mr. Justice Turton. Have you not been here twelve Years?

Creighton. I think not; I came a little before the Revolution.

Mr. Justice Turton. That is eight Years ago: Just now you said you had been here ten Years.

Mr. Phipps. Call *John Kine*. (*Who was sworn.*) *John Kine*, did you know one *John Vaughan* in *Galloway*?

John Kine. Yes, I lived with him.

Mr. Phipps. What Children had he?

John Kine. Four Sons.

Mr. Phipps. Had he any one of those Sons that was named *Thomas*?

John Kine. Not of those four.

Mr. Phipps. Had he a Son *Thomas*?

John Kine. Yes, he had; he died about ten or eleven Years old of the Small-Pox.

Mr. Phipps. You say you lived with this *John Vaughan*; look upon the Prisoner at the Bar, is he any of those Sons?

John Kine. No, Sir, I never saw this Man 'till now.

Mr. Phipps. How long did you live with him?

John Kine. About eight or nine Years.

Mr. Phipps. But how long have you been come away from him?

John Kine. About ten Years.

Mr. Justice Turton. How well do these Two Witnesses agree together? The other said he died at Fifteen, and was pitted with the Small-Pox; this Man says he died at Ten, and of the Small-Pox.

L. C. J. Where do you live now?

John Kine. I live in the City.

L. C. J. How long have you lived there?

John Kine. Twelve Years.

L. C. J.

L. C. J. How long was this *Thomas Vaughan* dead before you came hither?

John Kine. Really I cannot be positive, I believe about eight or nine Years.

L. C. J. Did *Thomas Vaughan* die of the Small-Pox?

John Kine. Yes.

L. C. J. That you are sure of?

John Kine. I am sure that was the Disease he died of?

L. C. J. You knew him well, I believe.

John Kine. Yes, my Lord.

L. C. J. How old was he when he died?

John Kine. About ten Years.

L. C. J. Where was he buried?

John Kine. At Galloway.

Mr. Justice *Turton.* Why does not the Officer take Care? There is one talking with the Witnesses. Can you now reconcile your Evidence? (To the Prisoner's Counsel.)

L. C. J. Have you any more Witnesses?

Mr. *Phipps.* No, my Lord.

Mr. Justice *Turton.* What were the Names of all the Sons?

John Kine. The eldest was *John Vaughan*, the other *William Vaughan*, another *Edward Vaughan*, and another *James Vaughan*; that was all that he had alive.

Mr. *Whitaker.* There is never a *Thomas Vaughan* among these.

Mr. *Cowper.* *Thomas* died up and down in several Places.

Mr. *Phipps.* Mr. *Rivet*, do you know the Sons of that *John Vaughan*?

Mr. *Rivet.* He had all these Sons, *John*, *William*, *Thomas*, and *James*. He speaks of a Son *Edward*; I cannot exactly remember whether there was such a Son or no; tho' I have a rude Idea of it, but am not certain. I knew this *Thomas*, I went to School with him, and I saw him in the Year 1691. about the Surrender of *Galloway*.

Juryman. Is that Man at the Bar the same *Thomas Vaughan*?

Mr. *Rivet.* I am positive of that.

L. C. J. You saw him at the Surrender of *Galloway*?

Mr. *Rivet.* I did; it was about that Time.

Thomas Vaughan. I am a Subject of the most Christian King; and I desire, though I speak *English*, that I may be examined in *French*, in a Matter that touches me so near. And you may see by my Commission, my Lord, that I am a *Frenchman*; which I desire may be read.

L. C. J. We shall not trouble you with that.

Thomas Vaughan. I can shew you my Commission, wherein the King, my Master, declares me to be a Subject of *France*.

Dr. *Oldish.* Mr. *Vaughan*, I think, you need not trouble the Court to read the Commission; the Commission is the same as for all other Subjects of the *French King*, wherein he is look'd upon as a natural-born Subject of *France*; and so he owns himself upon his Examination before the Judge of the Admiralty.

L. C. J. Have you any more to say? As to the Examination, who can prove that?

Mr. *Cawley.* I can prove that, my Lord. (Mr. *Cawley* was sworn.)

L. C. J. Is that *Thomas Vaughan's* Examination?

Mr. *Cawley.* Yes, my Lord, it is signed by him, and taken before Sir *Charles Hedges* the 25th of *July*, 1695.

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L. C. J. Read it. (Then Mr. *Cawley* read the Examination of *Thomas Vaughan*.)

The 27th of *July*, 1695.

Officium Domini contra *Thomas Vaughan*, Capuem' *Navicule*, The *Loyal Clencarty*.

The Examination of *Thomas Vaughan*, late Commander of the Ship, the *Loyal Clencarty*, aged Twenty-six Years, taken before the Right Worshipful Sir *Charles Hedges*, Kt. Judge of the High Court of Admiralty of England.

THIS Examine saith, That he was born at *Martenico* within the Dominions of the *French King*, and is his Subject; but refuses to answer of what Parents he was born: That he came last from thence about four Years ago as Commander of a Ship called the *Hare*, which had been before taken from the *English*, and came in her to *Nantz* in *France*, and hath ever since been in *France*, or cruising in *French Ships*: That he hath been a Commander ever since he was sixteen Years of Age, and hath commanded several *French Privateers*, and was Commander of a *Privateer* of *St. Malo*, called the *Granada*, of 36 Guns, which about two Years ago took the *Diamond*; and the Examine was never till now taken. Being asked, whether he ever lived in *England*, or in *Ireland*? he refuses to answer. Being asked, Whether he knew any thing of the taking and carrying off a Custom-house Boat from the Downs to *Bulloigne*? Or, Whether he was then in *London*, or did give Directions to any Persons, or knew of her being carried off? he answered nothing, but said, That if any Person would prove it against him, he was present to answer it: But saith, That in *France* he heard of her being brought to *Bulloigne*; and he the Examine bought her at *Bulloigne* of the Men that carried her away, and that she cost him 900 and odd *Livres*, and was then called the *Elizabeth* and *Anne*, or *Michael* and *Anne*, but which doth not remember: That he the Examine still hath the said Vessel at *Bulloigne*; That he cannot tell the Names of the Persons he bought her of, and that took her away, but believes they had a Commission: That something above three Weeks ago the Examine went with a Commission from the *French King* on board a Two-and-twenty-Oar-Barge, called the *Loyal Clencarty*, then at *Bulloigne*, as Commander thereof; and on Monday last was a Fortnight was taken by the Coventry Man of War at the Buoy in the Gunfleet; and that the Commander of the Coventry took away this Examine's Commission. Being asked, Upon what Design he came out with the Barge? replied, That it was not to take the Air; That the Barge formerly belonged to the Lord *Danby*, and was taken by a *French Privateer* about a Year ago; That before he came out, he met with two *English Seamen* upon the Court of Guards at *Bulloigne*, who told the Examine, that they had been taken Prisoners, and the Examine took them in upon Charity; and afterwards met another *Englishman*, who told the Examine, that he had been taken in Land-Service, and believes it was before *Fort Kenoque*; and the said Person sitting upon a Stone at *Bulloigne*, and not knowing what to do with himself, the Examine took him on board for Charity, and designed to put the said three Persons ashore in *England*. Being asked, Whether he did not put in a Claim for the said Custom-house

from-House Boat, by Reason of her Captain? Or, Whether the Persons that took her had any Commission from him? he the Examinee answered, That they that took her, must answer for what they did, and he must answer for his Actions only.

Eodem die Capt'
coram me,
C. Hedges.

Thomas Vaughan.

L. C. J. Mr. *Vaughan*, have you any more to say?

Tho. Vaughan. It is very hard Circumstances I am under; if an *Englishman* was in *France*, under the Straights that I am here, it would be very hard for him to prove himself an *Englishman*.

L. C. J. You have had a very fair Trial, and you shall have Justice, be it for you, or against you.

Thomas Vaughan. I hope your Lordship will do me Right.

L. C. J. Gentlemen of the Jury, The Prisoner at the Bar, *Thomas Vaughan*, stands indicted for High-Treason, for adhering to the King's Enemies, viz. That he put himself as a Soldier in the Service of the *French King*, in a Vessel called the *Loyal Clencarty*, with divers other Persons on board her, that were Subjects to the *French King*, and Enemies to the King of *England*, with a Design to burn the King's, and his Subjects Ships; and for that Purpose went in that Ship. That the Prisoner was on board the Ship, and with such a Design, is proved, without all Contradiction, by several Witnesses that have been produced; that is, that the Two-and-Twenty-Oar Barge, which is the same called the *Loyal-Clencarty*, lay hovering about the Buoy in the Nore; those Men in the *Coventry* imagined they had some Design of Mischief to the Ships, and they made after him with the *Coventry*. It was apprehended by Captain *Vaughan*, and his Crew, that the *Coventry* would be too hard for them, and so they did submit, and were taken. And being examined on what Account he came on our Coasts, it is confes'd by him, That he came with a Design to burn our Ships. You may observe what Sort of Men were aboard. You have heard it proved to you, that *Crittenden*, the Marshal of *Dover*, entered those Persons taken aboard the *French Vessel*, of what Nation, and what Quality they were; and there were about a Dozen of these *Frenchmen*, for they were entered as such. Now, for a Subject of *England* to join with the King's Enemies, in pursuit of a Design to burn or take any of the King's, or his Subjects Ships, that is an Adherence to the King's Enemies. But it appears, not only that Captain *Vaughan* was in their Company, but that he was their Commander; which commanding the Vessel, on board which were *French Subjects*, Enemies of the King and the Kingdom of *England*, is High-Treason, and the particular Fact of Treason for which he is indicted. And it appears that he had a Commission from the *French King* to command this Vessel, the *Loyal Clencarty*.

Now the Prisoner having this Commission to be Commander of this Vessel, though they who served under him were not native *Frenchmen*, but other Foreigners, yet their subjecting themselves

to him, acting by Virtue or Colour of that Commission, makes them to be the *French King's* Subjects, during their Continuance in that Service; for otherwise all Prizes, which they should take, would make them to be Pirates; which none will pretend to maintain, when they acted by a Commission from a Sovereign Prince, that was an Enemy. And if they shall cruize upon our Coasts with a Design to take, or destroy any of the King's, or his Subjects Ships, they are Enemies, tho' they were the Subjects of a Prince or State in Amity with the King of *England*. But at this time there is no Necessity of entering upon this Question, because it is proved that divers, who were on board this Vessel, were *Frenchmen*; the joining with whom, in Prosecution of such a Design, is that Kind of High-Treason, of adhering to the King's Enemies. So that if Captain *Vaughan* was a Subject of *England*, he is proved guilty of High-Treason, if you believe the Evidence.

But now it is insisted on by Mr. *Vaughan* and his Counsel, that though he was exercising Hostility against the King of *England*, and designing Mischief to his Subjects; yet, says he, I was not a Subject of *England*, I was born a Subject to the *French King*. If that be true, then he is not guilty of High-Treason; he is an Enemy, but not a Traitor: And that is the Point you are now to consider of, whether he be a Subject of *England* or *France*?

Now as to that, he being taken under such Circumstances, and speaking *English*, it is reasonable to be presumed that he is a Subject of *England*, unless he proves the contrary. But then you have heard by several of the Witnesses, that when he was at first taken, he acknowledged himself to be an *Irishman*; and he did not only acknowledge it to them that assisted in apprehending him, but being carried to *Dover*, when the Marshal entered him in his Book as a Prisoner, he entered him not as a *Frenchman*, but he declared at that Time he was an *Irishman*. It may be, he did not consider the Consequence of it; for the next Day he was carried before the Mayor of *Dover*, and then having considered better of it, that it was not for his Interest to acknowledge himself an *Irishman*, he said he was born a Subject to the *French King*, and at *Martenico*. There were *Scotchmen* and *Irishmen* taken at the same Time, and they were entered as of the Nation they belonged to, and so were divers entered as *Frenchmen*. So that unless he hath given sufficient Evidence to the contrary, this is sufficient to induce you to believe him an *Irishman* born.

But he has endeavoured to take off this Evidence that hath been given. First, he says, it was when he was in Drink, that he did confes himself to be an *Irishman*; but when he was sober, he said he was a *Frenchman*. And besides that, he calls a Witness, whose Name is *Robert French*, to give an Account of him. And *French* says, that about fourteen Years ago he was at *St. Christophers*, on *French Ground*, and he did then see this *Thomas Vaughan*; he did take him then to be about the Age of Fifteen. He says he stay'd there about four and twenty Hours, and that he was in the Company of this *Vaughan* and his Father about five or six Hours. He says, his Father told him at that Time, that this young Man, who was then about fifteen Years of Age, was born at *Martenico*. He says farther, that his Father did recommend this Son

Son to him to be a Sea-faring Man, being the Employment he intended him for; and he is sure this is the Man. This *Robert French* was ask'd, whether he ever saw this *Vaughan* from the Time he first saw him at *St. Christophers* until this Time: He says he never saw him since that Time, till about two Months ago. He gives you this Account how he came to meet with him: He says he came to Town; and being a charitable Man, he used to visit the Prisons; and he came to *Newgate* to one *Noland*; and there he saw Captain *Vaughan*; and though he had not seen him for fourteen Years before, yet he knew him again, and is positive that he is the same Person.

Another swears he knew the Prisoner about five Years, and he was reputed a *Frenchman*.

There has been another Witness produced, which is that *Dafine*, who came up as a *Frenchman*, and talked *French*, pretending he could not speak *English*; but on Examination it was discovered that he had an Employment in *England*, and was a Bailiff's Follower; and it appears he can speak *English* very well; and notwithstanding his Pretence, has given his Evidence in *English*. And he tells you, That he, about the Year 1669, did go to *St. Christophers*, and afterwards to *Martenico*; and there he went to one *Williams*, who had a Friend whose Name was *Vaughan*, at whose House there was a Christening to be of his Son, to whom *Williams* was to be Godfather; and this Witness was carried thither, and the Child was christen'd *Thomas*. He tells you he went over again to *St. Christophers*, and to *Martenico*, in the Year 1677, and that then he enquired for this Child, and did see him. Then he says, after that he went over again to *St. Christophers*, and to *Martenico*, about thirteen Years ago, and then saw him again; and, I think, never saw him since until very lately; and this Prisoner, he undertakes to tell you, is the very Person.

But then one *Harvey* tells you he saw him in *France*, in the Year 1693, and there he was taken to be a *Frenchman*, and he lived with a Woman that sold Silk, that said he was her Nephew, her Sister's Son; and that he was born at *Martenico*. This is the Evidence he gives you to induce you to believe he is a *Frenchman*.

Now in the first Place, before I open the Evidence in Answer to it, I desire you to observe the Weight and Import of this Evidence that hath been produced by the Prisoner. First, for this *French*, that says he saw Captain *Vaughan* fourteen Years ago; when he was about fifteen Years of Age; he had no former Acquaintance with him; stay'd in his Company but six Hours; and came away within four and twenty Hours after his Arrival; and never saw him again in fourteen Years: It is a strange Thing that he should know him again so well as to be positive that he is the same Person; for in fourteen Years there is a great Alteration in a Man: For a Man that has known one at the Age of fifteen, and not seen him in fourteen Years after; though before he was very well acquainted with him, cannot so easily know him again. But however he is positive, upon his Oath, that he is the same Person that he saw at *Martenico*.

Then as for *Dafine*, you may consider him, that he should take Notice of a little Child that he saw christen'd several Years before; and that he should now remember him when he had not seen him in thirteen Years; sure he had a great Liking to this Child, that when he went to *Martenico*, many Years after, he should be so inquisitive after him:

I must leave these Things to you to consider of: That he might have an Aunt in *France*, that is very possible too.

But now consider how this Evidence hath been endeavour'd to be answered: Two Witnesses have been produced to contradict that which they have sworn. The first is *David Creagh*, who tells you he has known the Prisoner for two Years; and says he was always reputed to be an *Irishman*, and born in *Galloway*: He has often discoursed with him about his Country, and he told him that he was an *Irishman*, and born at *Galloway*. Then you hear what a Letter is produced, writ to *Creagh*, when he was to come upon his Trial; he mentions what his Defence was, and that it was impossible that any could do him any harm but he and two more. *Creagh* swears it is his Hand; that he hath seen him write, and he believes it is his Hand.

Then there is a Gentleman, *Mr. Rivet*, that came here by chance, who is a *Galloway* Man; he saith he knew the Prisoner's Father, who was reputed to come thither about the Time of the Rebellion in *Ireland*, in 1641. and lived at *Galloway*; and that this Prisoner, *Mr. Vaughan*, was his Son, and he knew him of a Child; was well acquainted with him; liv'd hard by him; remembers him an Apprentice in *Galloway*, and tells you to whom; and says he is sure this is the very Man; and that he saw the Prisoner in 1691, about the Time and the Reduction of *Galloway*; and he is confident that the Prisoner is the Son of *John Vaughan*, at *Galloway*; and he gives you a particular Account of him and his Family, viz. of the Reputation and Manner of living of his Father; and what other Brothers he had: So that there is no Objection against his Credit; and it is hard to believe, since he is so positive and circumstantial, that he can be mistaken.

But the Prisoner and his Counsel have endeavour'd to answer all this Evidence; and first they have call'd *Creagh's* Brother to prove that he is an ill Man; for that he came into this Town where his Brother lives, who subsisted him and took him into his House; and one Day, when he and his Wife went abroad, he made bold with some of his Money; but they thought the Maid had it, and he charg'd her with it; but to his Satisfaction, it did afterwards appear that *David* had it.

Then there is another, *Christopher Heyden*, *Christopher Creagh's* Servant, who says, he heard *D. Creagh* say he was forc'd to be an Evidence against *Vaughan* to save himself; and that he used to threaten his Brother, that if he would not give him more Money he would swear against him. *Bryan* saith much to the same purpose. These are produced to take off the Credit of *D. Creagh's* Testimony.

But then, Gentlemen, as to the Place of the Prisoner's Birth; two other Witnesses are produc'd to give you Satisfaction that this Captain *Vaughan* was not the Son of that *Mr. Vaughan* of *Galloway* whose Evidence I will open to you, and then you will see how coherent they are in their Testimony. The first is *Creighton*, a Shoemaker; he says he knew *Thomas Vaughan*, the Son of *John Vaughan* of *Galloway*, about ten Years since; he was a *Galloway* Man bred, and lived the next Door to *John Vaughan* that had a Son *Thomas*. He says he has been here about ten Years in *England*. He says he thinks that *Thomas Vaughan*, the Son of *John Vaughan*, was about the Age of fifteen Years; but that this Prisoner is not he; for that *Thomas*

Vaughan was disfigured with the Small-pox ; he remembered him well, he had Reason for it, for he once basted him soundly ; and that he went away from *Galloway* when he was about fifteen Years of Age, and was reported to be dead ; and if it were so, this Prisoner cannot be the Person.

The other Witness is as positive as *Creighton* ; for he saith, he knew this *John Vaughan* of *Galloway*, and his Son *Thomas* ; and that *Thomas Vaughan*, Son of *John Vaughan*, died about ten Years since of the Small-pox. So that they have found two *Thomas Vaughans* : One tells you of one that was fifteen Years old, and was disfigur'd with the Small-pox ; and the other tells you of *Thomas Vaughan*, who died of the Small-pox when he was ten Years of Age.

You are therefore to consider the Evidence on both Sides. The Question principally is, Whether the Prisoner be a Subject of the King of *England*. If you are satisfied that he is not an *English* Subject, but a *Frenchman*, then he is not guilty of this High-Treason ; but if you are satisfied, by the Series of the whole Evidence, that he is an *Irishman*, and that he had a Commission from the *French King*, and that he cruized upon our *English* Coasts, in Company with the King's Enemies, with a Design to take, burn, or destroy any of the King's or his Subjects Ships, you are to find him guilty of the High-Treason whereof he stands indicted ; otherwise you are to acquit him.

Cl. of Arr. Swear an Officer to keep the Jury. (Which was done.)

After a short Stay, the Jury returned into Court, and gave in their Verdict.

Cl. of Arr. Gentlemen, answer to your Names. E. Leeds.

Mr. Leeds. Here.

Cryer. Vous Avez, and so of the rest.

Cl. of Arr. Gentlemen, are you all agreed of your Verdict ?

Jury. Yes.

Cl. of Arr. Who shall say for you ?

Jury. Our Foreman.

Cl. of Arr. *Thomas Vaughan*, hold up thy Hand. (Which he did.) Look upon the Prisoner. How say you, is he guilty of the High-Treason whereof he stands indicted, or not guilty ?

Foreman. Guilty.

Cl. of Arr. What Goods or Chattels, Lands or Tenements had he at the Time of the Treason committed ?

Foreman. None to our Knowledge.

Cl. of Arr. Then hearken to your Verdict as the Court hath recorded it : You say that *Thomas Vaughan* is guilty of the High-Treason whereof he stands indicted ; but that he had no Goods or Chattels, Lands or Tenements at the Time of the High-Treason committed, or at any Time since, to your Knowledge ; and so you say all.

Jury. Yes.

Tho Vaughan. My Lord, let me beg one Favour, that I may be used like a Gentleman ; that I may be sent to a Chamber, and not to a Dungeon ; and that my Friends may come to me.

L. C. J. Captain *Vaughan*, they say you once made an Escape, and therefore the Keeper must keep you with Humanity, but with all Security.

Tho. Vaughan. I desire I may be kept like a Christian.

L. C. J. The Keeper must do his Duty.

Cl. of Arr. *Thomas Vaughan*, hold up thy Hand. (Which he did.) Thou standest convicted of High-Treason against our Sovereign Lord the King ; What hast thou to say for thy self why Judgment shall not pass against thee to die according to the Law ?

Tho. Vaughan. I am altogether a Stranger to the Law, my Lord ; I refer my self to my Counsel.

L. C. J. Well, then you refer your self to your Counsel. You have had a fair Trial, and have no Reason to complain of it : If your Counsel have any thing to say in arrest of Judgment, they shall be heard.

Mr. Phipps. My Lord, the Indictment has two Sorts of Treason laid in it ; the one for adhering to the King's Enemies, the other levying of War ; and with Submission, I take it, that the first is not well laid ; for it says that the Prisoner did adhere to the King's Enemies, but says not against the King. Now every Body knows that the *French King* is in War, not only with *England*, but *Holland*, and *Spain*, and the Emperor : But if a Man join with the *French* against any of them, he adheres to the King's Enemies ; and yet it cannot be said to be against the King ; therefore they ought to have laid it, that he did adhere to the King's Enemies *contra Dominum Regem* ; it must be aiding and comforting them against the King that makes the Treason.

L. C. J. It does say so.

Mr. Phipps. No, my Lord, it only says that Captain *Vaughan* did adhere to the King's Enemies, and does not say it was against the King ; and if that be Treason, is what we desire to know.

L. C. J. If he adhere to the King's Enemies, it must be against the King, though he assist them only against the King's Allies ; for thereby the King's Enemies may be more encouraged and enabled to do Mischief or Damage to the King. Suppose you assist the *French King* against the King of *Spain*, that is now in Alliance and League with the King of *England*, and the *French* in actual Enmity ; that is to adhere to the King's Enemies against the King.

Mr. Phipps. Would that be Treason, my Lord ?

L. C. J. Yes, certainly ; though that is not a Point in this Case, and so not necessary to be determined now ; for the Act of Parliament of 25 of E. III. defines Treason in adhering to the King's Enemies, and expresses the Overt-Act in giving them Aid or Comfort ; it is sufficient to alledge the Treason in the Words of the Statute, adhering to the King's Enemies. An Overt-Act alledged, shews it to be against the King ; and in pursuance of that Adherence, he did so and so : He was a Captain and Soldier in the Ship ; did join with the King's Enemies, &c. with a Design to destroy the King's and his Subjects Ships ; surely that is most manifestly an Adherence to the King's Enemies against the King.

Mr. Phipps. The Overt-Act, if it were alledged sufficiently, would not help it ; for if there can be an adhering to the King's Enemies, that is not Treason ; they ought to alledge such adhering as is Treason ; and if the Treason it self is not well alledged, the Overt-Act will not help it.

L. C. J. There is an Overt-Act to shew it to be against the King. It is said all along, he being in this Vessel *Clencarty, cum diversis Subditis*.

Mr. *Phipps*. But then that Overt-Act is not well alledged; for 'tis said only he went a cruising; whereas they ought to have alledged that he did commit some Acts of Hostility, and attempted to take some of the King's Ships; for cruising alone cannot be an Overt-Act; for he might be cruising to secure the *French* Merchant-Ships from being taken, or for many other Purposes, which will not be an Overt-Act of Treason.

L. C. J. I beg your Pardon. Suppose the *French* King, with Forces, should come to *Dunkirk* with a Design to invade *England*; if any one should send him Victuals, or give him Intelligence, or by any other Way contribute to their Assistance, it would be High-Treason in adhering to the King's Enemies.

Mr. *Phipps*. If the *French* King had design'd an Invasion upon *England*, and Captain *Vaughan* had assisted in his Vessel in forwarding the Invasion, it would have been Treason; but here is nothing mentioned but Cruising.

L. C. J. Cruising about the Coasts of *England* with a Design to destroy the King's Ships.

Mr. *Phipps*. That Design ought to be made appear by some Act of Hostility; for in the Case of *Burton* and *Bradshaw*, and others, which my Lord *Coke* cites, the agreeing to rise and pull down Inclosures, and meeting and providing Arms for that Purpose, is agreed not to be levying of War; and they were indicted for conspiring to levy War, upon the Statute of *Queen Elizabeth*. And in this Case, here being only a Conspiring, and nothing attempted, it can be no more Treason than it was in that Case.

L. C. J. When Men form themselves into a Body, and march Rank and File with Weapons Offensive and Defensive, this is levying of War with open Force, if the Design be publick. Do you think when a Ship is armed with Guns, &c. doth appear on the Coast, watching an Opportunity to burn the King's Ships in the Harbour; and their Design be known, and one goes to them, and aids and assists them, that this is not an adhering to the King's Enemies? Here are two Indictments, one for levying War, and the other for adhering to the King's Enemies; but the adhering to the King's Enemies is principally insisted on; and there must be an actual War proved upon the Person indicted in the one, yet need not be proved in the other Case.

Mr. *Phipps*. The same certainly is necessary in one as well as the other; for barely adhering to the King's Enemies is not Treason; but there must be an actual aiding and comforting them; and a meer Intention to assist the King's Enemies, is not an Adherence within the Statute of 25 *Ed. III.*

L. C. J. If there be not High-Treason in the Act alledged; that is, if it do not make out an Adherence to the King's Enemies, then your Objection would hold good.

Mr. *Phipps*. The going to cruise, my Lord, does not make out an Adherence to the King's Enemies; for his Cruising might be for other Purposes as well as to take the King's Ships; and your Lordship will intend the best in favour of Life.

Mr. *Whitaker*. To burn the King's Ships.

L. C. J. *Treby*. The Indictment is laid for adhering to, and comforting and aiding the King's Enemies. You would take that to be capable to be construed adhering to the King's Enemies in other Respects; but I take it to be a reasonable Construction of the Indictment, to be adhering to the

King's Enemies in their Enmity. What is the Duty of every Subject? It is to fight with, subdue, and weaken the King's Enemies: And contrary to this, if he confederate with, and strengthen the King's Enemies, he expressly contradicts this Duty of his Allegiance, and is guilty of this Treason of adhering to them. But then you say here is no aiding, unless there were something done, some Act of Hostility. Now here is going aboard with an Intention to do such Acts; and is not that comforting and aiding? Certainly it is. Is not the *French* King comforted and aided, when he has got so many *English* Subjects to go a Cruising upon our Ships? Suppose they man his whole Fleet, or a considerable Part of it; is not that aiding? If they go and enter themselves into a Regiment, lift themselves and march, though they do not come to a Battel; this is helping and encouraging; such Things give the Enemy Heart and Courage to go on with the War; or else, it may be, the *French* King would come to good Terms of Peace. It is certainly aiding and comforting of them, to go and accept a Commission, and enter into their Ships of War, and lift themselves, and go out in order to destroy their Fellow-Subjects, and ruin the King's Ships; these are Actings of an hostile Nature. And if this be not adhering, &c. it may as well be said, That if the same Persons had made an Attack upon our Ships, and miscarried in it, that had not been so neither; because that in an unprosperous Attempt there is nothing done that gives Aid or Comfort to the Enemy. And after this kind of Reasoning, they will not be guilty, 'till they have Success; and if they have Success enough, it will be too late to question them.

Mr. *Phipps*. Intending to levy War is not Treason, unless a War be actually levied.

L. C. J. *Treby*. Is it not actually levying of War, if they actually provide Arms, and levy Men, and in a warlike manner set out and cruise, and come with a Design to destroy our Ships?

Mr. *Phipps*. It would not be an actual levying of War, unless they commit some Act of Hostility.

L. C. J. Yes, indeed, the going on board, and being in a Posture to attack the King's Ships. As to the Fault you find with the Indictment, there is a Fault, but not in Point of Law; they might have laid it more generally, so as to have given more Evidence.

Mr. *Baron Powis*. However, it is well enough. But for you to say, because they did not actually fight, it is not a levying War; is it not plain what they did intend? That they came with that Intention, that they came in that Posture, that they came armed, and had Guns, and Blunderbusses, and surrounded the Ship twice; they came with an armed Force; that is a strong Evidence of the Design.

L. C. J. You would make no Act to be aiding and assisting, but fighting.

Mr. *Phipps*. Then next I am in your Lordship's Judgment, whether the Statute of 28 of *Hen. VIII.* by which Captain *Vaughan* is tried, is in Force, and be not repealed by the first and second of *Philip* and *Mary*, which saith, That all Trials, in Cases of Treason, shall be at the Common Law. Now by the Common Law before the Statute 28 *Hen. VIII.* Treason done upon the Sea, was tried before the Admiral, or his Lieutenant; and my Lord *Coke*, in the 12 *Rep.* in the Case of the Admiralty, saith the Jurisdiction of the Admiralty is by the Common Law. By the Statute 33 *Hen. VIII.*

Trea-

Treason confessed before three of the Privy-Council might be tried in a foreign County, but that Statute is repealed by the Statute 1 and 2 of *Philip and Mary*; for by the Statute 33 *Hen. 8. c. 4.* Treason committed in *Wales*, might be tried in what County the King would assign; but since the Statute of *Philip and Mary*, it must be in the proper County; so that we are in your Lordship's Judgment, whether the Statute of 28 *Hen. 8.* be in Force; and whether, since the Statute of 1 and 2 *Philip and Mary*, Treasons done upon the Sea, ought not to be tried before the Admirals, or anciently at the Common Law?

L. C. J. This is Treason by the Common Law, and the Trial is by the Method of the Common Law.

Mr. *Phipps*. 'Tis true that my Lord *Coke*, and other Authorities say, that the Statute 35 *H. 8.* for trying Treasons committed beyond Sea, is not repealed by the Statute of 1 and 2 *Philip and Mary*; but they do not say that this Statute is not repealed by the Statute of *Philip and Mary*; and the Books being silent in this, is the Reason why I propose this Question for your Lordship's Judgment.

L. C. J. It is no more a Question than the Trials of foreign Treason, and then the Determination of the Trials upon the 35th determines the Question upon this.

Dr. *Oldish*. We must have two Witnesses by the Rules of the Civil Law; an extrajudicial Saying of a Party may be retracted by them at any Time, that is the Civil Law, and so there can be but one Witness.

L. C. J. That is not the Law of *England*.

Dr. *Oldish*. I do humbly conceive that the Civil Law is not taken away in this Case; for though the Statute prescribes the Form of Proceedings according to the Rules of the Common Law, yet as to the Crimes and Proofs, the Civil Law is still in Force; and then the Party may retract his Confession in Judgment, much more any extrajudicial Saying.

Mr. *Whitaker*. You are arraigning the Verdict.

L. C. J. That you should have taken Notice of before the Verdict was given. But we think there is no Danger in hearing this Objection, because it is so easily answered. How many Witnesses were to the Confession?

Sir *Charles Hedges*. We are not in a Court that proceeds according to the strict Rules of the Civil Law; but if we were, that Law is not so absurd as to allow that a Party may retract his Confession at any Time, so as to make it have no Effect.

Dr. *Oldish*. There must be two Witnesses at any Time.

Sir *Charles Hedges*. So there are here to the Confession; but you mistake if you think that every Particular is to be proved strictly as the Civil Law requires; for the End of the Statute which directs the Proceedings of this Court, was to facilitate the Method of making Proofs, that being found difficult by the Course of the Civil Law; and therefore was that Statute made, as plainly appears by the Preamble thereof.

Dr. *Oldish*. There is a new Statute that revives that Statute again, and that requires two Witnesses; whereby it is reduced to the Rules of the Civil Law again.

L. C. J. Two Witnesses there must be; but then consider it is not necessary to have two to every individual Overt-Act: For suppose there be two Overt-Acts laid in the Indictments, for one Species of Treason, compassing and imagining the Death of the King; if there be one Witness that he bought a Dagger, and said he would kill the King, and he is seen, it may be, going to the King's Bed-Chamber with the Dagger; another Witness says, he said he would kill the King with a Pistol, and bought a Pistol, and he stood waiting to kill the King as he came by; that is another Overt-Act of the same Treason. If one Witness prove one, and another Witness prove the other, this is sufficient Proof with us.

Dr. *Oldish*. It is another Question, Whether he be a Subject?

L. C. J. That is not an Overt-Act; if there be one Witness to that, it is enough, there needs not two Witnesses to prove him a Subject; but upon the Trial there were above two Witnesses to prove it; that was *Crittenden*, the Marshal of *Dover*, *Creagh*, and *Rivet*. I must tell you, as to the Doctrine of the Civil Law, it is not universally received in all Countries; it is received in several Countries as they find it convenient, and not as obligatory in itself.

Dr. *Oldish*. Yes, in all Places, as to Proof; for 'tis the Law of God and Nations, *ex ore duorum, vel trium*, &c. and one Witness is no Witness.

Sir *Charles Hedges*. Two Witnesses may be necessary to convict a Man of any capital Crime, but then it doth follow that there must be two Witnesses to prove every particular Fact and Circumstance. In this Point, touching the Place of the Nativity of *Thomas Vaughan*, was there not sufficient in his own Confession, together with the other Proofs on the King's behalf, to throw the Burden of Proof upon the Prisoner? You yourselves seem to have been of that Opinion; you undertook to prove it, and 'tis you that have failed in that Particular.

L. C. J. Our Trials by Juries are of such Consideration in our Law, that we allow their Determination to be the best, and most advantageous to the Subject; and therefore less Evidence is required than by the Civil Law. So said *Fortescue* in his *Commendation of the Laws of England*.

Dr. *Oldish*. Because the Jury are the Witnesses in Reality, according to the Laws of *England*, being presumed to be *ex vicineto*; but when it is on the high and open Seas, they are not then presumed to be *ex vicineto*, and so must be instructed according to the Rules of the Civil Law by Witnesses.

Mr. *Baron Powis*. This is not a Trial by the Civil Law; for that Statute was made to avoid the Niceties of your Law.

Mr. *J. Eyre*. He is tried with like Evidence, as in other Cases of High-Treason.

Dr. *Oldish*. No, the late Act requires two Witnesses.

Cl. of Arr. Make Proclamation of Silence.

Cryer. All manner of Persons are commanded to keep Silence, while Judgment is giving, upon Pain of Imprisonment.

And then Judgment was given, according as the Law directs in Cases of High-Treason

The Commission of Capt. *Thomas Vaughan*, which he had by Order of the French King.

Lewis Alexander of Bourbon, Earl of Toulouse, Duke of Amville, Commander of the King's Orders, Governor and Lieutenant-General for his Majesty in the Province of Britany, Peer and Admiral of France; To all those who shall see these present Letters, Greeting. The King having declared War against his Catholick Majesty, the Favourers of the of the Crowns of England and Scotland, and the Estates of the United Provinces, for the Reasons contained in the Declarations published by his Majesty throughout the Extent of his Kingdom, Countries, Lands, and Lordships under his Obedience; and his Majesty having commanded us to take Care that the said Declaration be observed, in what doth depend upon the Power and Authority which his Majesty hath been pleased to commit to our said Charge of Admiral; We have, according to the express Orders of his said Majesty, given Leave, Power and Permission to *Thomas Vaughan*, living at Bulloigne, to arm and set forth in warlike Manner a Bark, called *The Loyal Clencarty*, of the Burthen of Ten-Tons, or thereabouts, which is at present in the Port of Bulloigne, with such Number of Men, Cannons, Bullets, Powder, Shot, and other Ammunitions of War, and Provisions which are necessary to set her out to Sea, in a Condition to sail and cruize upon the Pirates, and others without Commission, as also upon the Subjects of his Catholick Majesty, the Estates of the United Provinces, the Favourers of the of the Crowns of England and Scotland, and other Enemies of this Estate, in what Places soever he can meet them, whether it be upon the Coasts of their Country, in their Ports, or Rivers; also upon their Shores, or Places where the said Captain *Thomas Vaughan* shall think fit to land to annoy the said Enemies; and there to make use of all the Means and Arts permitted and used by the Laws of War, to take them and bring them Prisoners, with their Ships, Arms, and other Things in their Possession.

Provided the said *Vaughan* shall keep, and cause those of his Crew to keep the Maritime Orders, and that he shall carry, during his Voyage, the Flag and Ensign of the King's-Arms, and of Ours, and cause the present Commission to be registred in the Registry of the nearest Admiralty where he shall be equipped, and leave there a Roll signed and certified by him, containing the Names and Surnames, the Births and Residence of his Crew; and make his Return to the said Place, or some other Fort of France, and make his Report before the Officers of the Admiralty, and no

others, of what shall have happened during his Voyage, and give us Advice thereof, and send his said Report to the Secretary-General of the Marine, with the Papers justifying the same, that we may give such Orders thereupon as may be necessary.

And we pray and require all Kings, Princes, Potentates, Sovereigns, Estates, Republicks, Friends and Allies of this Crown, and all others, to whom it shall appertain, to give to the said *Vaughan* all Favour, Aid, Assistance and Succour in their Ports, with his said Vessel, Company and Prizes, which he shall take during his Voyage, without doing, or suffering to be done to him any Trouble or Hindrance; offering to do the like when we shall be by them thereunto required.

And we do command and require all Marine Officers, and others, to whom it shall appertain, to let him safely and freely pass with his said Vessel, Arms and Company, and the Prizes which he shall take, without doing, or suffering to be done to him any Trouble or Hindrance; but on the contrary, to give him all Succour and Assistance that shall be necessary. These Presents to be of no Force after one Year, from the Day of the Date hereof.

In Witness whereof We have signed these Presents, and caused them to be sealed with the Seal of our Arms, and counter-signed by the Secretary-General of the Marine, at Versailles, the tenth Day of the Month of July, One Thousand Six Hundred Ninety Five.

L. A. de Bourbon.

L. S.

By my Lord de Vallencour.

The present Commission was registred in the Registry of the Admiralty of Bulloigne, after having been seen by us *James Abbot de la Cocherine*, the King's Counsellor, deputed to the Intendency of Bulloigne, exercising the Charge of Lieutenant-General of the Admiralty, in the Presence of the King's Proctor, at the Request of the said Captain *Vaughan*, being present, whom we have permitted to sail and cruize upon the Enemies of the Estate. Done at Bulloigne the fourteenth of July, One Thousand Six Hundred Ninety Five.

Maginon.

Versionem hanc Anglicanam in omnibus, cum suo Originali Gallio convenire testor,

Wilhelmus Rocke, Notar. Publ.

He was afterwards executed according to his Sentence.



CLXIII. *Proceedings in Parliament against Sir John Fenwick, Bar. upon a Bill of Attainder for High-Treason, November, &c. 1696. 8 Will. III.*

Proceedings in the House of Commons.

Veneris 6 die Novembris, 1696.



Admiral *Russel* acquainted the House of Commons, that his Majesty had given Leave to lay before the House several Papers in the Nature of Informations of *Sir John Fenwick*, in which he and several other Persons of Quality were named; and desired that they might be brought up to the Table and read; and that he might have an Opportunity to justify himself, or if he did not, that he might fall under the Censure of the House. And Mr. Secretary *Trumbal* being present, did say, That he had his Majesty's Leave to lay those Papers before the House; and if the House pleased he would bring them up to the Table.

And accordingly (the House shewing a general Inclination for it) they were brought up to the Table and read (being the Account he gave of the last Plot under his own Hand; and his Examination taken by Mr. *Vernon*, afterwards upon his Trial produced); and after the same was read, the House ordered, That *Sir John Fenwick* should be brought immediately before them; and that no Person should in the mean Time speak with him, or give or receive any Paper from him. And the House further order'd, That the Lord *Cutts*, Sir *Henry Hobart*, and Mr. *Norris*, three of their Members, should see their Order executed.

And in the mean Time adjourned to the Afternoon.

About Five a Clock in the Afternoon *Sir John Fenwick* was brought with a strong Guard (which the Lord *Cutts* had taken Care for) to the House; and being brought to the Bar, Mr. Speaker spake to him thus:

Mr. Speaker. *Sir John Fenwick*, the House understand that you have shew'd some Inclinations to make a Discovery of the Designs and Practices of the Enemies of the Government; you have now an Opportunity to do it; and the House require it from you, that you make a full and ample Discovery of all you know of that Matter.

Sir John Fenwick. Mr. Speaker, I suppose the House is not ignorant of my Circumstances. I am indicted of High-Treason, and have been arraigned: What I have done to serve the King and Nation his Majesty knows, it hath been communicated to him by his Privy-Council. I do not know but what I say may hurt my self; and therefore I desire that I may have some Security for my self, and I am willing to tell the full of all I know.

Mr. Speaker. Sir, if you please to withdraw for the present, the House will send you their Pleasure.

Sir John Fenwick withdrew. Was call'd in again.

* Mr. Speaker. *Sir John Fenwick*, since you withdrew, the House have consider'd of what you said at the Bar. * Paul Foley, Esq;

They do not think what you said is an Answer to what they require; they do expect a full and candid Confession from you of what you know; and they think that the best Way for you to obtain the Favour of the House is to deal ingenuously with them.

Sir John Fenwick. Sir, I am in the Hands of the Law, and I would not do any Thing that his Majesty might be angry with me; for I do not know it is with his Majesty's Consent: I have acquainted him fully with all I know of the Matter; this is all the Account I can give you at this Time. 'Tis a dangerous Point that I am under; I know not but I may come to my Trial in a few Days; and what I may say may rise up against me in a Court of Judicature: I humbly propose it to the House, if they do not think it a hard Case for me to make any Confession here, when his Majesty hath all that I know. I shall be very ready to do what this honourable House pleases to command me; but I desire this House will consider my Circumstances; I would not offend the King, nor offend this House.

Thereupon Mr. Speaker again spake to him to withdraw. And being withdrawn, the House debated, whether they should acquaint him with their having those Papers of Information. But they did not think fit to do it for this Reason, because they thought those Papers were a Contrivance, and made by others for him; and that the best Way to get the Truth out of him, would be for him to tell his own Story. Besides, if the House should let him know they had those Papers, he would only refer to those Papers, as he had lately done, when he was examined by the King and Council.

'Twas also debated, whether there should be any threatening Words used towards him; but they thought that not proper; for his Confession ought to be free and natural. It was also debated, whether they should take Notice of his Majesty's Consent; but that was not thought fit, being thought derogatory to the Privileges of the House. So the House ordered him to be called in again; and Mr. Speaker delivered the Sense of the House to him in these Words.

Sir John Fenwick at the Bar.

Mr. Speaker. Sir *John Fenwick*, the House has considered of what you have said, to excuse your making a Discovery of your Knowledge of the Designs and Practices of the Enemies of the Government; and they think what you stand upon is only an Excuse; they think you have no Reason to apprehend the King should be angry with you for making any Discovery to this House, this being the proper Place to enquire of all Things that do relate to the King and Government, especially his Majesty's Safety; and you ought to discover to them what you know. As to what you stand upon, that you should not be prejudiced by what you discover here, I am commanded to tell you, they do take Notice by what you have said here, that you have already, notwithstanding what you say, discovered it to the King and Council: And they command me to tell you, that you have no Reason at all to apprehend, that you shall suffer any thing if you make a full and free Discovery here; no Man that ever did so, and dealt candidly with this House, ever did: 'Tis in your Power to deserve the Favour of the House; 'tis requir'd by the House, that you make a Discovery; and this is the last Time that you are like to be asked to do it.

Sir *John Fenwick*. Mr. Speaker, I know not what Answer to make to this House; I would not willingly offend it; what I have informed the King of, is a great deal; and a Man would have some little Time to recollect himself; and I have been kept a very close Prisoner, and had no Conveniency of Pen, Ink, and Paper; 'tis hard to remember just of a sudden; and I would willingly be secure his Majesty will not be angry with me. I was in hopes that his Majesty would have informed the House himself; he hath all that I know; my Circumstances are hard, I am in danger every Day to be tried, and I desire to be secured, that what I say shall not rise up in Judgment against me; 'tis hard to make me accuse my self under these Circumstances, and very hard to put me on it now.

Mr. Speaker. As to what you say relating to the Fear of his Majesty's Displeasure, and the other Excuse, you have had your Answer already. As to what you say relating to Time, if you will now declare what you know and remember, the House will take it into Consideration, whether they will give you farther Time to make up the rest.

Sir *John Fenwick*. Sir, his Majesty hath all exactly; 'tis impossible for me to inform you of it without accusing my self: I do not really know what to ask but a little Time, if they would please to give it me.

Mr. Speaker. Sir, you know already what the House requires of you.

Sir *John Fenwick*. I do: But 'tis no Excuse that I have made: What I have told is Truth, to the best of my Knowledge: I am not very good at Speaking; and if I might have a little Time, I shall do what they please to command me.

Mr. Speaker. If that be all you have to say, if you please to withdraw, you shall know the Pleasure of the House.

Sir John Fenwick withdraws. Is called in again.

Mr. Speaker. Sir *John Fenwick*, this House have

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considered what you stood upon when you were here last, that your Memory was bad, and that you desired Time; but the House think it a Matter of great Moment to the King and whole Nation, that those that are their Enemies should be discover'd as soon as possible; and this being a Matter within your Knowledge, the House do not think fit to give you Time; but if they find by your Discovery, that you deal candidly and ingenuously with them, and have told them as much as you know upon your Memory, they will consider of your Request of giving you Time for the rest.

Sir *John Fenwick*. When first I spake to the Privy-Counsellor, I propos'd it to him, whether I might have a Pardon without being an Evidence against any Man; and in that Case I would serve the King so as to tell him all that I knew. It was upon Honour that I did it to him, and he took the Words in Writing from me, and sent them to the King in *Flanders*. The King's Answer was, That he made no Objection as to my being an Evidence, nor his giving me a Pardon; but that I could expect no Pardon 'till he knew what I could say: Upon that, I was encouraged to do what I did for his Majesty's Service; and I have found in all my Business since, whatever I do or say, the Answer is, 'Tis not satisfactory, and I am where I was. When this was done, there was a Message sent to me from the Lords Justices, That this was not satisfactory, and I must tell all I know: Now when a Man hath told all he knows, and this must still be the Answer, 'tis very hard. The King's Answer was, That I should more fully make good what I had said. Sir, I did afterwards explain what I had informed that honourable Person, and still it was not satisfactory. I hope I shall not find this from this honourable House: I am upon my Life, and I hope this House will consider of it: I know this House is good Security if I had it; but 'till I have it, I am under these Circumstances, and I may at last be told all is not satisfactory: I desire the House will please to consider of it.

Mr. Speaker. Sir, you know the Pleasure of the House, you know what they require of you.

Sir *John Fenwick*. I am very unwilling to offend the House; but these are very hard Circumstances, to be told, when I have done all I can, 'tis not satisfactory.

Mr. Speaker. Sir, you know what the House does expect; you must either give them Satisfaction in it, or withdraw.

Accordingly he withdrew.

And a Motion was made for Leave to bring in a Bill to attain Sir *John Fenwick* of High-Treason; and after a Debate thereupon, the House divided.

Yeas — 179.

Noes — 61.

So it passed in the Affirmative.

Lune 9 Die Novembris, 1696.

The Bill for attainting Sir *John Fenwick* of High-Treason was presented to the House; and after a long Debate of several Hours, the Question was put for the second Reading of it; whereupon the House divided.

G

Yeas

Yeas—196.

Noes—104.

So it passed in the Affirmative, and *Friday Morning* was appointed for it.

The same Day the House order'd, That *Sir John Fenwick* should have a Copy of the Order for reading the Bill the second Time, and a Copy of the Bill; and that he should be allow'd Pen, Ink, and Paper.

And further order'd, That Mr. Attorney-General, and Mr. Solicitor-General, should prepare and produce the Evidence against him on *Friday Morning*.

And Mr. Speaker this Day acquainted the House, that he had received a Letter from Mr. Fuller, which he thought fit to acquaint the House with; but upon a Question for reading of it, it passed by a very great Majority in the Negative; so that there was no Division upon that Matter, but the Letter was writ in the Words following:

SIR,

I Presume that no Person whatever, in the Interest of the present Government, hath been more actually engaged with *Sir John Fenwick* than my self, it being my Fortune several Times to bring Letters to him from the late King and Queen at St. Germain's, and to carry his Answers: I have also been with him at private Consults of the late King's Adherents, as my Informations assert; so that if I may be serviceable to the detecting his Treasons, I shall be very ready to serve the Government, and to demonstrate my Integrity.

I am, Sir,

Your Honour's most humble
and devoted Servant,

W. Fuller.

Martis 10 die Novembris, 1696.

Sir John Fenwick sent the Speaker a Letter in these Words,

SIR,

Newgate, Nov. 10.

I Would have address'd my self in the humblest Manner I could to the Honourable House of Commons, from whom I received a Copy of a Bill against me with their Order; but my Keeper will not carry any Paper from me but to your self, to whom I durst not presume to send a Petition to deliver for me. Therefore I beg the Favour you will please to acquaint the House, that it is my humble Petition to them, That they would give Leave for my Counsel *Sir Francis Pemberton*, *Sir Thomas Powis*, and *Sir Bartholomew Shower*, to come to me, with my Solicitor, *Christopher Dighton*, to advise with alone. The Keeper will not so much as let me send the Copy of the Bill and Order to my Solicitor, so it is of no Use to me: I humbly beg they will please to give Order, that I may have all Assistance that is necessary for me, and that you will pardon this Trouble from, Sir,

Your most humble Servant,

JOHN FENWICK.

Upon this Letter they did readily order that he should be allowed two Counsel to make his Defence, and that they might be alone with him; and after some Debate, did give Leave that he

might have the Solicitor he desired, though it was said, his Solicitor was a very great Jacobite; and it was insinuated, that he was suspected to be concern'd in the Escape of *Goodman*; but it was also said, that he had been made use of as his Solicitor to prepare for his Trial, and before that, in other Matters; and so that it might not be thought that there was any Hardship upon him, in that Respect, the House thought fit to allow Mr. *Dighton* to be his Solicitor.

Jovis 12 die Novembris, 1696.

A Petition was presented from *Sir John Fenwick*, as follows:

To the Honourable the Knights, Citizens, and Burgeesses in Parliament assembled,

The humble Petition of *Sir John Fenwick, Bar.*

Sheweth,

THAT there being a Bill of Attainder brought into this House for the Attainting of your Petitioner of High-Treason, and your Petitioner is advised, That there are many weighty Reasons to be offered against the said Bill;

Your Petitioner therefore most humbly prays, That your Honours will be pleased to bear him by his Counsel against the Passing of the said Bill at the Bar of this Honourable House; and to appoint such Time for the same, as to your Honours shall seem meet. And your Petitioner shall ever pray, &c.

J. FENWICK.

Which Prayer of his Petition was granted.

Veneris 13 die Novembris, 1696.

Sir John Fenwick was brought to the House (by Order) from the Prison of *Newgate*; and there being a very great Company of Strangers, both in the Lobby and Speaker's Chamber; and the House being full of Members, to prevent the Inconvenience that such a Number of People crowding in might occasion, the Lobby was ordered to be cleared of all Persons that were not concerned, and also the Speaker's Chamber, and that the Back-door of the same should be lock'd, and the Key laid upon the Table: But it having been said, that the Lords did admit the Members of this House to hear their Debates; there was private Intimation given the Serjeant to let them remain in the Speaker's Chamber, when others were remov'd.

Then *Sir John Fenwick* was order'd to be brought to the Bar: But it being a Proceeding of that Nature, that none of the ancientest Members could give a Precedent, it was necessary to settle some Preliminaries; and the first Question that was moved, was, Whether the Mace ought to lie upon the Table when *Sir John Fenwick* was in the House, or whether the Serjeant ought not to stand by him with it at the Bar?

Mr. *Smith*. *Sir John Fenwick* being a Prisoner, the Mace ought to be at the Bar, and then no Member can speak.

Mr. *Boyle*. This Hearing of any Thing I can think of, is most like the Hearing of an Election; and then the Mace is upon the Table, and every one has Liberty to speak and ask Questions.

Mr.

* Mr. Charles Montague. *Mr. Chanc. of Excheq.* The Mace ought not to be upon the Table, because he is a Prisoner: The Sheriffs of London can't have him in Custody here, and so they deliver him into Custody of the Serjeant.

Mr. J. Howe. That Argument would be good, if he could not be in Custody of the Serjeant unless he had the Mace in his Hand.

Mr. Brotherton. The Mace ought to be upon the Table, because the Bill is to be read.

Mr. Cbr. Musgrave. The Mace ought to be upon the Table. Never any Bill was read but the Mace was upon the Table.

Col. Granville. If the Mace be not upon the Table, it would be a great Hardship to the Members that they cannot speak, and a great Hardship upon the Prisoner that he can't ask any Questions. My Lord Torrington was brought Prisoner from the Tower, and upon Account of his Quality the House did not let him go to the Bar: But while he was in the House, the Mace was upon the Table, and he gave an Account of the whole Campaign; and every Body was at Liberty to ask what Questions they pleased.

* Sir Tho. Trevor. *Mr. Att. Gen.* The Matter is very new; and I think 'tis necessary you resolve upon the Method before you call in the Counsel, that you may acquaint the Counsel with it: I think it not proper that the Mace should be upon the Table, because he is a Prisoner; though it may not be necessary that the Serjeant should have it upon his Shoulders all the Time, but he may ease himself. I believe you will ask Sir John Fenwick what he has to say, but no Questions to make him accuse himself: And I humbly propose it to you, that after the Counsel is called in, they may open the Nature of the Evidence against Sir John Fenwick; and then, whether you will permit them to go on, or they shall withdraw, and the House will consider what Questions shall be asked.

Col. Mordaunt. I hope the Questions will be taken down upon a Paper by the Speaker, and then read to us, that we may see if they be right, and so asked by the Speaker.

Sir Will. Williams. If the Mace is not upon the Table our Mouths are muzzled: We are in the Nature of Judges; and shall we pass a Vote that the Judges shall not ask any Questions?

Sir Tho. Dyke. I can't be informed without asking of Questions: I know not whether you are a House without it, without having the Mace upon the Table. And will you act in your highest Capacity without being a House? I do not know how it was when the Lord Torrington was here; but when the Duke of Leeds was here, the Mace was upon the Table.

Mr. Boyle. I wish you had appointed a Committee to have settled the Preliminaries, and that the Bill had not been brought in at all; what they labour, as a Matter to avoid Delay, may occasion more. For though when you carry the Mace to the Table, no Member should have the Liberty to speak, yet any Member hath Liberty to desire that the Counsel may withdraw, and then they must withdraw, and the Mace must be brought upon the Table.

Mr. Chanc. of Excheq. That Gentleman is certainly in the right: But I think the Mace must not be upon the Table till when the Prisoner is here; and I think the Questions must be ask'd by the Chair.

The longest Examinations that I remember was of the Admiralty, and then the Questions were asked by the Chair. For the Instance of my Lord Torrington, 'tis true, he had not the Mace with him, but he came at his own Request, he came to give you an Account of his Proceedings; and in that Case not a Question was asked by any Member; any Member hath Liberty to propose any Question, but it must be ask'd by the Chair.

Afterwards the Question was put, and it passed, That Sir John Fenwick should stand with the Mace at the Bar.

Then a Question arose about reading of the Bill: Some Gentlemen said, it could not be read when the Counsel was present, for the Mace would be off the Table; (and they seemed to be under a Difficulty by having passed the last Question;) others said, it was not necessary to read it whilst Sir John Fenwick was present, he having had a Copy of it; but at last it was thought reasonable, it being in the Nature of a Charge upon him, that it should be read to him when present with his Counsel; and 'twas said, it was done so in the Case of Indictments, tho' Copies were delivered to them: But it should be read only as a Matter of Form, as a Charge to which he was to answer; but it could not be reckoned a second Reading, according to the Rules of the House, the Mace being off the Table; and therefore it should be read again when the Counsel and he was withdrawn.

And it was said, that the Journals did take notice, that in some Cases, as in the Case of an adjourned Debate, some Bills had been read four times; and so it was agreed, and that Difficulty was solved.

And the Serjeant took the Mace, and brought Sir John Fenwick to the Bar; and Counsel was admitted for him, and for the Bill, viz.

Mr. Serjeant Gould, King's Serjeant, and Mr. Recorder Lovel, likewise King's Serjeant. And Sir Thomas Powis, and Sir Bartholomew Shower, for Sir John Fenwick.

And Mr. Speaker opened the Matter thus.

Mr. Speaker. Sir John Fenwick, the House have received Information that you have been in a horrid Conspiracy against the Life of his Majesty, and for bringing in a French Force to invade this Kingdom, that you have been indicted thereof; and they have considered the Nature of the Crime with which you stand charged, and how destructive it would have been (if it had succeeded) to the very Being of this Kingdom; and therefore, that you may not go unpunished, if you are guilty, have ordered a Bill to be brought into this House to attain you for High-Treason, which hath been once read, and will be now read to you at the Bar; and then you will hear the Evidence against you, and have Liberty to make your Defence: And though you cannot claim any Right thereto, this House (to shew how ready they are to favour you, in giving you any reasonable Help to make your Defence) do allow you Counsel to assist you therein; and having granted you this their Favour, they do expect that you will make a good Use of it. I am likewise to acquaint those that are your Counsel, that this House do reckon their own Prudence will so guide them, as not to give any just Offence to this House; and that they will not be allowed to question the Power of Parliaments to pass Bills

of Attainder, when they judge it requisite; of which this House is more proper to judge than any private Person, and therefore they will not allow you to debate that Point.

Let the Bill be read.

[*Clerk of the House of Commons reads.*]

Whereas Sir John Fenwick, Bart. was, upon the Oaths of George Porter, Esq; and Cordel Goodman, Gent. at the Sessions of Oyer and Terminer held for the City of London, on the 28th Day of May, 1696. indicted of High-Treason, in compassing and imagining the Death and Destruction of his Majesty, and adhering to his Enemies, by consulting and agreeing with several Persons (whereof some have been already Attainted, and others not yet brought to their Trial for the said Treason) at several Meetings, to send Robert Charnock, since attainted and executed for High-Treason, in conspiring to assassinate his Majesty's Sacred Person (whom God long preserve) to the late King James in France, to invite and encourage the French King to invade this Kingdom with an armed Force, by promising to join with and assist him with Men and Arms upon such Invasion. And whereas the said Sir John Fenwick did obtain his Majesty's Pardon to have his Trial delayed from Time to Time, upon his repeated Promises of making an ingenuous and full Confession of his Knowledge of any Design or Conspiracy against his Majesty's Person or Government, and of the Persons therein concerned. And whereas he has so far abused his Majesty's great Clemency and Indulgence therein, that, instead of making such Confession, he hath contrived and forged false and scandalous Papers as his Informations, reflecting on the Fidelity of several Noble Peers, divers Members of the House of Commons, and others, only by Hearsay; and contriving therein to undermine the Government, and create Jealousies between the King and his Subjects, and to stifle the real Conspiracy. And whereas Cordel Goodman, one of the Witnesses against the said Sir John Fenwick, to prove the said Treason, lately and since the several Times appointed for the Trial of the said Sir John Fenwick, at one of which Times the said Sir John Fenwick had been accordingly tried, had it not been for the Expectation of the said Discoveries so often promised, is withdrawn; so that the said Cordel Goodman cannot be had to give Evidence upon any Trial. Be it Enacted by the King's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this Parliament assembled, and by the Authority of the same, That the said Sir John Fenwick is hereby Convicted and Attainted of High-Treason, and shall suffer the Pains of Death, and incur all Forfeitures as a Person attainted of High-Treason.

Mr. Speaker. Mr. Serjeant Gould, the House expects from you, and Mr. Serjeant Lovel, that you open the Evidence you have to prove the Suggestions of the Bill.

Mr. Serjeant Gould. Mr. Speaker, we are here in Obedience to your Commands, to give an Account of the Charge, and likewise of the Evidence of the Fact, that is against this Gentleman, Sir John Fenwick. The Charge against Sir John Fenwick is for High-Treason, and High-Treason of the highest Degree; 'tis no less than a Design of deposing

the King, and subverting the Government, and subjecting it to a French, arbitrary, and slavish Power. It further charges, that in Prosecution of this Conspiracy, he hath met, together, with several others, who have consulted, consented, and agreed together, to bring in a French Army upon us; and in order to that, as a particular Overt-Act, it is charged, that they contrived to send one to the late King James to bring in a French Power upon us. It is charged likewise, that he conspired to levy War upon us, and for that Purpose did provide Pistols, and other warlike Arms. This I take to be the Substance of the Charge, as laid in the Indictment.

Now, may it please you, Mr. Speaker, as for the Evidence of the Fact charged and alledged in this Indictment: It is no Secret certainly to any at this Time of Day (after so many Trials, so many Convictions, so many Attainders) that for some Years last past there hath been a wicked Conspiracy to bring in a French Power upon us, to subvert this good Government, and to depose the King; but God Almighty, by special Providence, hath always prevented and disappointed them. We know ever since the Business of *la Hogue* (in which, even by a Miracle, God disappointed them) they have been still restless, and have been industrious to set up again this Design; and for this have plotted to bring in a French Power, and have not had any Regard to the King's Mercy shewed to them, and that in passing several Acts of Parliament, but have still persisted in the same Designs.

As to the Charge upon this Gentleman at the Bar, we shall shew you that in Time: In the Year 1694. for several Months there was a Conspiracy carried on, but did not take Effect; afterwards, in Time, I think the Beginning of June, or latter End of May, there were several Consults, or Meetings, at the King's Head Tavern at the Upper End of *Leadenball-street*, where this Gentleman that now stands charged at the Bar was present; there were several Gentlemen, and among the rest (as it hath and will appear upon Evidence) there was Sir John Fenwick, my Lord Montgomery, and several others, whereof Captain Porter and Goodman were there likewise present: It was then proposed, that one Charnock (since executed, and agreed upon by all to be present) should go over into France to the late King James, to communicate to him their Resolution and Sincerity in being serviceable to him in levying War here to depose the King, and subvert the Government; who was to intercede with the French King, so that there might be Forces sent from France. But after this, Charnock (present still this Gentleman) comes and proposes this thing again, and tried whether they were sincere and real in their former Resolutions. To which they all replied, and did agree and assent, that it should be done, and they were very zealous in the Matter, and the Forces were at that Time proposed. And what was that? Why truly, no less than 8000 Foot, and 2000 Dragoons of French, with an Assurance of 2000 Horse from this Country. Charnock did go into France, and did communicate this Matter; and after he had communicated this Matter he came back, and brought Answer, that King James had endeavoured to answer their Expectations, but at that Time the French King could not spare his Forces, but however returned his Thanks to them.

This passed on till towards *Christmas* last; then comes over Sir *George Barclay* upon this Expedition, and there was a Commission prepared for that Purpose: And as to one Part, he brought along with him a Detachment of some of King *James's* Guards, who was to assassinate the King. The next Part was for raising a Rebellion; now that fell to Sir *John Fenwick's* Part. As to the assassinating Part, you have had several Examples made already. This we have Evidence to prove; and if we prove this Matter as we have opened it, then I think there is no Person whatsoever, but will agree that this is High-Treason in the highest Degree. Now, Sir, here stands our Matter: Here was an Indictment found according to the Law you made last Sessions of Parliament, by two Witnesses to one Species of Treason against Sir *John Fenwick*; we have one of these Witnesses here *viva voce*: But Sir *John Fenwick* hath protracted his Trial by frequent Assurances of making a Discovery, which hath terminated in what you have already mentioned in your Bill; by Means of which, Sir *John Fenwick* hath not been try'd; whereas he had been try'd in course, without these Applications, and found guilty: But now he hath had all this Time, that *Goodman* is withdrawn is plain, and we think (but that we must leave to the Judgment of this honourable House) may be reasonably supposed, by Contrivance, to take off this Prosecution of Sir *John Fenwick*. For why? The Inference is from a Fact that we shall prove to this honourable House: There hath been the like Attempt upon Captain *Porter*, but Captain *Porter* hath been more steadfast; he hath been so resolved, that he stood his Ground; and, to speak the Truth, notwithstanding he hath been highly attempted: For we shall prove to you, that one *Clancy* comes to Captain *Porter*, and tempts him to withdraw into *France*, with Assurance of a Pardon, and he hath Three Hundred Pounds paid him in Hand, and Three Hundred more he was to be paid when he should come into *France*, to be remitted by Bills of Exchange: Besides, he was to have 300 *l.* a Year; 100 *l.* from my Lord *Aylebury*, 100 *l.* from my Lord *Montgomery*, and the other 100 *l.* a Year from Sir *John Fenwick*, and this to be an Annuity during his Life: And thus far we suspect Sir *John Fenwick* may be concerned; for his Lady came) he did not come personally, but his Lady did) and gave her Honour and Assurance, that it should be all performed, and much more, if he would withdraw himself.

Captain *Porter* presently made a Discovery of this, and takes the 300 *l.* which was paid down; upon this it hath been so far proceeded, that *Clancy* hath been indicted for it, and convicted, and hath received Judgment, and I suppose there hath been Execution: We have the Record of all these Proceedings.

We have this Circumstance farther in the Case, (which it is my Duty to open to this House) to shew what Labour there hath been to stifle the Truth of the Fact, upon taking of Sir *John Fenwick*: There was one *Webber* taken with him, and he slid a Letter into one *Fowl's* Hand, and this was to be sent to my Lady *Fenwick*: And what is the Import of this Letter? The Import of it is (they could not prevail with *Porter*, as I opened just now, therefore) you must influence the Jury, get two or three stout Jurymen to starve the rest, for we have nothing else to depend upon: These Things we shall humbly offer to prove, according to our

Duty, and according to the Order of this House, and then leave Sir *John Fenwick* to make his Defence.

Mr. *Recorder*. Sir, in what I say, I shall endeavour, as I ought to do, to pursue the Method of this Bill: And first, I will take Notice, that it is the Pleasure and Direction of this House, that we should attend this House this Day, to produce the Evidence against Sir *John Fenwick*.

The Crime for which he stands indicted is High-Treason: I presume the learned Gentlemen on the other Side will not deny, but that the compassing and conspiring the Death and Destruction of the King, is High-Treason; and that to endeavour it, or shew it by an Overt-Act, to cause a foreign Power to invade the Realm, or to hold Correspondence, or adhere to the King's Enemies, is likewise High-Treason; and therefore I shall not trouble the House to say any thing to it one way or another, because I believe they will not deny it.

In the next Place the Bill does take Notice, that Sir *John Fenwick* hath been indicted at the *Old-Baily* in May, 1696. Sir, by the Law of this House of Parliament made last Sessions, no Man ought to be indicted of High-Treason without two Witnesses; pursuant to that Law, Sir *John Fenwick* hath been indicted upon the Oaths of two Witnesses, Captain *Porter* (whom we have here) and *Goodman* (whom we then had, and he did swear) and upon the Evidence of these two Witnesses the Jury found the Bill.

We have this farther Matter: For before the Time the Bill was presented to the Grand-Jury, there was an Examination taken both of *Porter* and *Goodman* in Writing, and I think it was before a worthy Member of this House, to whom I appeal in this Case, and in those Informations (if I mistake not) the same Informations they gave against Sir *John Fenwick* as they gave against Mr. *Cook*; and upon the Trial of *Cook* they were sworn, and did justify and verify the Informations they gave before: And then, if you please, we shall call Witnesses to prove, that upon the Trial of *Cook*, *Porter* and *Goodman* gave that Evidence that did equally affect Sir *John Fenwick* (for he was then withdrawn, and could not be taken); and the Evidence was, That *Cook*, Sir *John Fenwick*, with my Lord *Aylebury*, my Lord *Montgomery*, Sir *William Perkins*, Sir *John Friend*, *Cbarnock*, *Goodman* and *Porter*, were all together at a Consult especially appointed for the carrying on these traitorous Purposes; they gave the Court a great deal of Trouble, whether *Goodman* was there at that Time, and they did call some Servants of the House that did prevaricate, but the Court was thoroughly satisfied, and it hath appeared more plainly since, that they did abuse the Justice of the Court, for that *Goodman* was undoubtedly there. Sir, *Cook* upon the Trial was convicted, and had Judgment of Death. And, Sir, he is attainted; but it does not become me to say, why he is not executed: His Majesty, no doubt, hath great Reason for it. But this I may say, being present at the Trial, nothing was made more plain; and Sir *John Fenwick* appeared to be equally concerned.

To shew Sir *John Fenwick* is guilty, I crave leave to add this, he did withdraw himself, and fled, and was enquired after with Diligence; and at last he was found.

We shall make good all we have with, by Evidence (we hope) to the Satisfaction of this House.

Mr. Speaker. If you please, Mr. Baker, that is Solicitor for the King in this Case, does attend at the Door with all the Papers; we desire that he may be let in.

Mr. Speaker. Serjeant, call in Mr. Baker. (*Which was done.*)

Mr. Speaker. What do you call Mr. Baker for?

Mr. Serjeant Gould. To give an Account of this Indictment, for we have a true Copy from the Record.

Sir Thomas Powis. Mr. Speaker, since I am here assigned Counsel for the Prisoner, by the Allowance of this Honourable House, upon his Application, without my Privy, I crave Leave humbly to acquaint you, in Behalf of my Client: I take it for granted, that he is, I am sure we that are Counsel for him are, a little surpris'd in what the King's Counsel are going about; for in Truth, we were not aware, nor do we find that any Notice was given to the Gentleman at the Bar, that there would be any Proceeding against him by examining of Witnesses, or giving of Evidence; he had (it seems) the Vote of the House sent to him, and likewise a Copy of the Bill; but I could not understand that the House had given Notice that he should be prepared by Witnesses, if he had any, or be at Liberty to produce them. Nor was there the least Notice to him, that there would be a Proceeding against him by Way of giving Evidence. He did, as I find, humbly apply himself, by Petition, that he might be heard by Counsel, against the passing of the Bill, and I shall very carefully observe those Directions you gave us, which I hope we should not have stood in need of, but have behaved our selves as becomes us, and not have drawn in question the Power of Parliaments: I never had a Thought to do such a thing; but this I humbly lay before you for your Consideration, whether, without any sort of Notice, that I perceive, he had from this House to make his Defence to any Evidence, and consequently there could be no need of Witnesses on his Behalf; whether you will so proceed, unless he had had Forewarning to provide himself otherwise than by the printed Votes, which (I suppose) he had no Opportunity of seeing; and, whether, within the Words you are pleas'd to acquaint us with, we may be heard as to the Reasonableness of this Proceeding, that by and by we must crave Leave to speak unto.

Mr. Speaker. Sir John Fenwick did petition, it is true, that he might be heard by Counsel at the Bar against passing the Bill; but he likewise petitioned for Counsel and a Solicitor; and the Answer from the House was, That he should be allowed Counsel to make his Defence.

Sir Tho. Powis. Yes, Sir, I have seen the Order of the House; and truly there did not any Thing occur from it to me, that it should be expected that he should produce Witnesses; for he praying that he might be heard against passing of the Bill, and the Order of the House being that he might have Counsel for making his Defence, I did not apprehend that it empower'd us so to be prepar'd as to bring Witnesses, especially there being no Notice given to him to bring Witnesses, nor no Way for him to compel them to come here.

Sir Bart. Shower. Mr. Speaker, we do acknowledge that we are so far ready as to offer some

Considerations against the Reasonableness of the Bill, not against such Bill in general, but against Sir John Fenwick in particular, and upon those Suggestions in the Bill; but in respect of his making his Defence against Matter of Fact, and to answer the Charge of the Bar, we are not ready. The first Time we had Notice that Sir John Fenwick should attend, or be brought to the Bar, was last Night at Nine or Ten a-Clock

Note. This Order was made the Day before at the Rising of the House.

at Night; 'tis true, the Order said the King's Counsel should produce Evidence for the Bill upon this Day; but it was not order'd that there should be Evidence produced for Sir John Fenwick, or at that Time that he should be personally present: We are ready, with Submission, to offer what we have to say against the passing of this Bill, upon the Suggestions made in the Bill, as Sir John Fenwick's Case is there represented; but to answer them in respect of Truth or Falshood, that we are not prepared to do: Whether you will hear them to that, before you have heard us, in the other Particular, that we submit to you.

Mr. Speaker. Sir, you had Notice on Wednesday last, that Sir John Fenwick should have Liberty to make his Defence by Counsel; and if you had doubted whether he should be admitted to do it by Witnesses, you might have applied to have known the Pleasure of the House: But if that be what you stand upon, if you will withdraw, you shall know the Pleasure of the House.

Mr. Serj. Gould. I must confess we depended on it, and expected no other Thing than the Bar Evidence. This was our Order, and I apprehended that the Petition meant the same Thing: For, as I remember, it was an Order likewise that the King's Counsel should produce the King's Evidence: What Reason was there for that Evidence, unless Sir John was to apply himself to answer it?

Mr. Recorder. I beg your Leave to observe with what Reason the Counsel on the other Side make this Objection; when 'tis the Import of this Bill, that Sir John Fenwick is guilty of High-Treason: And your Order says, They are to be heard against the Bill, that is to say, they are to be heard against the High-Treason charg'd upon him by this Bill. Therefore the House did direct us to produce the Evidence against Sir John Fenwick, to verify the Suggestions of this Bill: And so I cannot apprehend what can be more proper at this Time, but to prove the Fact against Sir John Fenwick; and 'tis their Business to defend it as well as they can.

Sir Tho. Powis. What was said by the learned Gentleman on the other Side, I hope, will be some Reason why we might be of Opinion, that we should not have Occasion to produce Witnesses: And the Truth is, this Bill does no where so much as say, Sir John Fenwick is guilty of High-Treason; and therefore Mr. Recorder was under some Mistake, when he said the Bill charged that he was guilty. The Bill does not any where make such an Allegation; there is nothing but a Recital that he was indicted for such a Treason; and then it recites, That whereas he had protracted his Trial by such Means, and Goodman had withdrawn himself; (but it does not say with his Privy;) and then follows the enacting Part; *Be it enacted*, &c. So that there is no such Thing

as any Allegation that he is guilty, whereby we could imagine that that was the Fact or Question between us. We now offer these Things humbly to you, and shall readily submit to what you think fit to do in it.

Mr. Recorder. Sir Tho. Powis says, That Sir John Fenwick is not charged with his doing any Act, or being guilty of High-Treason; but the Bill takes Notice that he stands indicted for it: Then it will be enough for us to prove, that he stands indicted, unless the House think fit to let us go into the Evidence of his being guilty.

Sir B. Shower. We do not oppose the producing Evidence to prove the Suggestions of the Bill, and the Recitals of the Bill specified: But if they attempt to prove him actually guilty, by living Witnesses, as they have opened it here, that we humbly beg Leave to oppose. But if they think fit to prove the Suggestions of the Bill, that there was an Indictment, that there were Witnesses sworn, and one is withdrawn, and the Promises of making Confession, and his prevaricating in that Matter, we are ready to make our Defence to that.

Mr. Speaker. Gentlemen, you must withdraw before you have the Directions of the House.

Accordingly Sir John Fenwick, and the Counsel of both Sides, withdraw.

And being withdrawn.

Mr. Speaker. Gentlemen, you have heard what is stood upon by the Counsel for Sir John Fenwick: They say, if you call only Evidence to prove the Suggestions of the Bill, they are ready to answer them; but if you call any Evidence to prove Sir John Fenwick guilty of a Conspiracy, by living Witnesses, they pretend they are not ready, and say, They did not know they should be allow'd Liberty to produce any Witnesses.

Sir Tho. Littleton. Mr. Speaker, the Counsel could not think that the Bill should set forth that Sir John Fenwick was indicted, but that the House would know by what Means; and that Goodman was gone away, and we should not enquire by what Means. What are the Objections by the Counsel against the Bill? Say they, We are ready to give Reasons against the Bill; they do not say down-right against your Jurisdiction: But, say they, we are ready to shew 'tis not reasonable in this Case, as stand Circumstances, to pass this Bill: Sir John's Petition was to be heard down-right against the Bill. If that was your Intention to hear him to that, and to that only, I conceive you would not have worded your Answer as you did: You order'd him Counsel to make his Defence; and at the same Time order'd the King's Counsel to produce the Evidence: How could they understand it, but to make Defence to the Evidence? It may be they have a Mind to have another Fee: Whether you will think fit, in the Circumstances you stand, to give them further Time, I do not know: But the Circumstances of the Kingdom, and the King's Life, must be considered as well as Sir John Fenwick. What is the Meaning that they are not prepared? I suppose it is to have further Time; but I think your Order is so plainly worded, that they could not ignorantly mistake it.

Lord Norryes. I rise up to the Matter of Fact: That Gentleman tells you your Order is plainly

worded; 'tis so, if they had timely Notice of it: But the Counsel at the Bar tell you, they had no Notice of this Order till Ten a-Clock last Night.

Mr. Speaker. That noble Lord does mistake; for that which they say they had no Notice of till last Night, was, that Sir John Fenwick should be brought hither; but the Notice that he should be heard by his Counsel for his Defence was sent him the Day before.

Lord Norryes. This very Order, for his Majesty's Counsel to produce the Evidence, was made but upon Thursday.

Mr. Speaker. Then I mistake. But the Order that was made upon his Petition, I sent away immediately: But the Order they mean, I suppose, is that for bringing him hither.

Mr. Cowper. Say the Counsel for Sir John Fenwick, We come prepared to make Defence to every Thing charged in the Preamble of the Bill, but what is not charged, we do not come prepared to make Defence to. Now they conceive the Fact of High-Treason is not charged upon him by the Bill; and if true, it is of great weight; but as it is, 'tis none: For first, 'tis plain, the Preamble recites that he was indicted for High-Treason by the Grand-Jury; that is a Charge of High-Treason within the Bill; for it says, he was charged by the Oaths of his Country upon the Oaths of two Witnesses; and there is the very Overt-Act recited in the Preamble of the Bill. Now, allowing this its due Weight, Can any one think, that fits here as a private Judge, that the High-Treason thus recited, as found by the Grand-Jury, was no Part of his Charge? The very Nature of the Bill speaks; for could any one think, that you would ground a Bill of Attainder upon a Suggestion, that he being indicted of High-Treason, had spirited away one of the King's Evidence, or for giving false Information? So that this is trifling with the House, with Submission.

Sir Rich. Temple. Can any Body say any Thing of the Intention of the House, when 'tis reduced into a Bill? Is it not the Bill that he is to make his Defence to? And the Gentleman that spake, says, that no Body could think otherwise: Why, Sir, no Body is to think otherwise than the Bill states it.

Now the thing before you is, Whether upon the Suggestions of this Bill 'tis fit for you to pass it? The Case of Mortimer was, That he had made his Escape, being under an Indictment of High-Treason; and it came before the House, Whether upon the Statute of 25 E. 3. it was High-Treason: But they did not debate the Fact.

Now you have brought a Bill here, and all the Ground is, that he was indicted for High-Treason, had thus and thus prevaricated and delay'd his Trial, upon Promises of Confession, and in Conclusion, one of the Witnesses is withdrawn: Sir, no Man is to make his Defence but to what is in the Bill; nor can you examine to any Thing but what is suggested in the Bill. If you had put the Issue upon the Guilt of Sir John Fenwick, he must have a fair Trial in some Place, and that he cannot have here upon Oath; for upon all Bills of Attainders they have had a fair Trial above.

Mr. Smith. I always thought when a Bill of Attainder was to pass through this House, that every Man was concerned to hear what Evidence he could,

could, to make it appear whether the Person was guilty of the Facts that were alledged against him to condemn him for; and, I take it, the principal thing to be considered is, whether he be guilty of such a Crime as deserves such a Punishment. So that, I take it, the Question now is, Whether Sir *John Fenwick* hath had that Notice to produce his Evidence, as is convenient? For I think we should lose Time to let Counsel ramble upon the Reasonableness of our Proceedings; the Question is, Whether he is guilty of the Fact? Sir, I can never think the Counsel could understand your Order, when it says, to make his Defence, but it must be to the Fact upon which he is to be condemned. You have already determined that Point, as to his prevaricating, but that is not the Matter that shall make me find him guilty; but the Evidence that will weigh with me is the Evidence of High-Treason, and how far they can answer it.

Mr. Hooper. The Question is, Whether or no there be a sufficient Guilt laid to this Man's Charge? For in all Courts of Judicature this is a certain Rule, You must proceed *secundum Allegata & Probata*; and you shall not go about to prove a Thing unless it be alledged. Now the Question is, Whether this Thing be alledged in the whole Bill, that Sir *John Fenwick* is guilty of High-Treason? And if not, you will go about to prove what is not alledged. 'Tis true, it hath been alledged that a Bill hath been found; but several have been indicted who have been acquitted. It is possible the Prisoner at the Bar may be guilty; but I think we must observe that Method here, that is observed every where else, and that is not to go about to prove any thing that is not alledged.

Mr. Clerk. The learned Gentleman hath made an Objection that perhaps would hold very well in *Westminster-Hall*: But I suppose he may remember this Bill must have a second Reading before you, as a House; and then perhaps the Allegations may be different from what they are now. But the principal Matter before you is, Whether this Gentleman be guilty of High-Treason, or no? And if they did not prepare to that Part, I think they were negligent to their Client; for it appears to be that Part that is most sensibly like to affect him.

Mr. Howe. The more I hear the Matter debated, the more it seems strange to me. I have heard the Bill read, and took Notice of the Heads of it: I always understood the Preamble of the Bill to be the Inducement to the End of it; I was mightily surprized to hear the King's Counsel attempt to make good—I think they did not speak materially to one Point of the Allegations in the Bill, so that the Allegations do signify nothing: Or else, if they intended these Allegations should signify any thing, we must have these Allegations proved before we pass our Judgments upon the Bill: Whereas the Counsel, instead of endeavouring to prove that he was indicted for High-Treason, (tho' hinted at) would prove him guilty of High-Treason; instead of proving that he had prevaricated, they say not one Word of it; instead of proving that he has forged Papers, in order to alienate the Minds of the King's Subjects, they say nothing to it, tho' in the Bill it is alledged as High-Treason.

We must not go here upon private Fancies and Opinious; no Man that heard my Lord De-

lamere's Trial but believed him to be guilty of the Fact; yet he was acquitted, because there was not Evidence sufficient against him. I think you must stick to one of these Points; if you stick to this, to prove him guilty of High-Treason, you must alter the Bill; and then that must be proved out of the Mouths of two Witnesses. If you please to stick to the Bill, then I hope the King's Counsel will go on to prove the Allegations of it, or let us know why they do not: I shall no more give my Vote to hang him, because he is indicted of High-Treason, than I shall because he hath been in *Newgate*.

Mr. Sloane. I think a great deal of your Time in debating this Matter may be saved; though I will allow the Bill might have been drawn better, and that a Bar-Indictment is not a sufficient Ground of it self for a final Decision of this Matter: But when at the Time of the finding the Indictment there were two Witnesses, and one of them is withdrawn, and as is supposed by his Means; if the Bill seems imperfect for any thing before you now, you will not stay all the Proceedings upon it; but if you see it imperfect, and it may be amended, you will amend it at the Committee. I think the Favour you have given is abused, and that 'tis perfect trifling from the Bar. In one Breath they say, they could not get ready, for they had no Notice 'till last Night; and in the next Place they say, they will go on to every thing but his being guilty; and I believe they never will be prepared for that.

Mr. Att. Gen. Sir, I am very unwilling to speak any thing in this Matter; because, Sir, by the Place I have the Honour to serve his Majesty in, as one of his Counsel, if it was in the Courts below, I must prosecute on Behalf of the King: But I am very sensible while I am in this House, I am in another Capacity; I am to vote here as a Judge, and not as a Party.

That which I do now trouble you about, is in Relation to the Matter that hath been objected; That the Bill does not expressly affirm, that Sir *John Fenwick* was guilty of High-Treason, but only that he was indicted for it. Truly I thought, and do still, with humble Submission to the House, that that Matter of affirming him to be guilty of High-Treason was not to be inserted in the Bill; for that will be the Consequence of your Judgment, and Opinion, upon hearing of the Evidence. That worthy Member that spake last said, the Bill might be better drawn; I am sorry we had not his Assistance in it: But, with Submission to his Understanding, I think that had been too much Presumption, 'till you are satisfied whether he was guilty or no. We could only go so far as to set forth the Faults that we knew; as, that he was indicted, that we can verify, and can't take this to be like the Case of an Indictment; for there you must affirm such and such Things that cannot be altered afterwards. But a Bill in Parliament hath many Steps; you read it several Times, and commit it; so that you alter the Suggestions of the Bill, as the Case appears to you to be verified; and if you be of Opinion that he is not guilty, you will not condemn him because he is indicted: However, that is not immaterial, but proper to be set forth for a Ground of your Proceedings, that there was a
Proba-

Probability of his being guilty from that Accusation. Therefore, Sir, I confess I can't think that those Gentlemen that are Counsel for Sir *John Fenwick* could think, that you did intend to proceed otherwise than to hear Counsel as to the Fact; they could not think that upon Proof of his being indicted, that that would be Ground enough for you to proceed to pass the Bill: For how could any Body think, but you would come to examine the Fact? I can't see how they should come to mistake, unless 'twas wilfully.

Mr. *Price*. The Matter now debated, is, What Method shall be followed, or what Evidence shall be given upon this Bill; or whether Evidence shall be given of any other Matter than is suggested in the Bill. I must confess, making a false Step at first setting out, hath put us out of the Way hitherto; for in the Case of my Lord *Strafford*, Witnesses were examined, and Adjudication that he was guilty, before any Order for a Bill of Attainder. But since you are in this Way, consider whether the Counsel against the Bill have gone according to their Order: The Order was, that Counsel should be heard to prove the Suggestions of the Bill, and the Counsel for Sir *John Fenwick* do not oppose that; but the Counsel for the Bill open more Things than are comprehended in the Suggestions of the Bill: for the Suggestion is only a Recital, and hath no positive Averment. And though the Bill and an Indictment is not the same, yet they must be the same in this, to put a Charge upon the Person. If the Preamble is not to any Purpose, what need they have made any, but have said only, Let him be attainted? To what Purpose does Sir *John Fenwick* come to the Bar? If it is to any Purpose, 'tis to answer the Charge of the Bill. That learned Person says, to suggest that he is guilty till the Matter is proved, then there must be an Amendment in that Point, and that will make it a new Bill, and then he must have another Day to answer the new Charge: But they might as well have said he was guilty of High-Treason, as to say in the enacting Part, that he should be attainted. Therefore if the Gentlemen for the Bill will proceed and prove the Preamble of the Bill, let them; otherwise let there be another Day for Sir *John Fenwick* to attend, and let them do all together.

Sir *Christopher Musgrave*. I think, as to that learned Person, nothing is to be laid to his Charge, for I think they have drawn the Bill pursuant to the Directions; and I am sure if they had drawn it otherwise, before they had known the Sense of the House, I think they had been guilty of a Crime.

That which seems to be before you, is, what was opened by the King's Counsel, and that was to prove the Treason. Now, Sir, I would be glad to know of any Person, whether any thing is to be admitted to be proved at your Bar but what is in your Bill. For let us have a little Regard to the Proceeding in *Westminster-Hall*: Can any Person, upon an Indictment of High-Treason, offer Evidence of any Treason but what is express'd in the Indictment? And I think this is the same in Effect; for here you draw a Bill of Attainder against Sir *John Fenwick*, and in Justice you send him a Copy of it, and, with great Favour too, you allow him Counsel to defend himself to that, as to the Suggestions that are in the Bill; otherwise, to what End did you send him the Copy of the Bill? Now if you will admit of any thing to be proved but what is in your Bill, I know not of what dan-

gerous Consequence it may be, for 'tis impossible to be prepared for it.

Mr. *Sol. Gen.* If the Counsel against the Bill could be any way mistaken, or think the Bill defective, I am for giving them longer Time to make their best Defence; but think neither one nor the other of them true; but your Order was to draw a Bill for attainting Sir *John Fenwick* of High-Treason; and I think if the Bill had gone no farther, but enacted that he should be attainted of High-Treason, we had strictly pursued your Order; for the Preamble is no necessary Part of the Bill.

A Bill and an Indictment are of quite different Natures; there is a Form for an Indictment, but no Precedent for an Act of Parliament.

As to the Preamble, the Debate, when it was ordered, went no farther than that he was accused of High-Treason, and was like to have been brought to his Trial; and to delay it, he pretended to make an ingenuous Confession, and instead of that, there was produced a Paper which you have censured (as you thought fit) and upon that you voted a Bill to be brought in to attain him of High-Treason: What then could be expected more for the Inducement, but the Debate upon which it was ordered?

If this House had thought fit to examine Witnesses before (as now) no doubt but the Bill would have suggested that he was guilty of High-Treason; but 'tis Time enough for you to suggest that, after you have heard what Witnesses there are. If the Counsel did not know this, notwithstanding all that I have said, I am for giving them Time; but (with Submission) it was impossible for them to mistake it: If the Bill had went no farther than, Be it enacted, that he should be attainted of High-Treason, then they had some Colour to say there were different Species of High-Treason, and they could not tell to what particular Facts they must apply themselves: But when the Indictment is recited, which charges him with particular Facts, and tells him by what Witnesses the Bill was found, it was impossible not to know that this was the High-Treason you did intend to enact that he should be attainted for: But when they say they are not ready, truly there may be some Reason for it; for I believe they never will be ready: Sometimes Men will be wilfully mistaken, and sometimes 'tis their Misfortune to be so. They say they are mistaken; which of these are true, I know not, but we have seen already the Time when he hath trifled with the Courts of Justice; he hath delay'd his Trial till one Witness is withdrawn; if you give him longer Time, he may have the good Fortune to have the other gone too. I see no Reason for you to forbear hearing of the Evidence.

Mr. *John Montagu*. I am not surprized to hear Sir *John Fenwick* desire Time; for giving him Time is giving him Life; nor for his Counsel to tell you his Witnesses are not ready; 'tis a common Excuse; I hardly ever knew a Person brought upon his Trial, but that was his Excuse; and yet I have seldom known it allow'd as a good Excuse: But 'tis objected, you must go *secundum allegat' & probat'*; and nothing being in this Bill like what the Counsel for the Bill did open, 'tis not fit to hear them call Witnesses to what is not alledged in the Bill. I grant that; and yet I think they ought to be allowed to call Witnesses to prove every thing they have opened to you: 'Tis agreed they ought not to have brought in a Bill, to say

in point blank Terms, he is guilty of High-Treason; but, they say, you should have charged with what Treason he is accused of, and then they should have been admitted to prove it. With Submission, the Bill does that thing; for the Bill does recite, that he is indicted of High-Treason, in compassing, &c. This is the Treason that is charged upon him by this very Bill: Now sure you will permit them to prove what is alledged in the Bill. What did the Counsel for the Bill open? That at several Meetings they met to consult of the Matter that this Bill takes Notice of. Did not he tell you when *Charnock* came first there for that Purpose, and when *Charnock* met them again for their Assurance? Now this being so plainly set forth in the Bill here, which recites, that this Matter was proved by two Witnesses, upon the Credit of whose Testimony this Matter was found, and that one of them is gone away; and, say they now, we are ready to prove the Matter then sworn: Is not that proper to satisfy Gentlemens Consciences that won't convict this Man without Evidence?

Sir *Fr. Winnington*. Mr. Speaker, I humbly conceive the Question is not now, Whether Sir *John Fenwick* is guilty or no? But, Whether the Objections the Counsel for him have made, be so strong as you will grant what they move to you? They tell you, if Counsel will proceed upon nothing but what is suggested in the Bill, according to your Order, we are ready to make our Defence. It was said the King's Counsel was ordered to give their Evidence; that can have no Interpretation but as to the Matters in the Bill.

Says the King's Counsel, We will prove him guilty: Says the Counsel on the other Side, I hope the House will give us Time to encounter them in that, for you have no such Thing in the Bill; the sending them the Copy of the Bill was as much as to say, You need not prove any thing but what is therein asserted. 'Twas said by the learned Gentleman there, that there might have been an Act of Parliament which might have said only, Be it enacted, that such a Man be attainted, without giving any Reason. I cannot deny but it might be so without any Reason, but I don't believe it will be so. And another learned Person was for mending of the Bill: Says he, When you have the Matter of Fact proved before you, it may lead you to the amending of the Bill, and inserting what you please, and enacting of it; but does not answer what the Counsel said on the other Side? Would you have us answer what we did not know that you would stand upon? The Question is not, Whether he be guilty or no? But, Whether the Objections that are made be good to give them Time?

Col. *Granville*. Sir, the Counsel (by what I observed from them) have started two Difficulties, and really (to me) both seem very material; the first is, Whether the King's Counsel shall be at Liberty to prove any thing that is not suggested in the Bill: The other is, Whether Sir *John Fenwick* had due Notice to make his Defence.

The first is a Matter of very great Moment: You are proceeding upon a Bill where not only the Life of Sir *John Fenwick*, but the Life of every Man in *England* is in some measure concerned: When a Precedent is made in this Case, No-body knows who may be affected or hurt by it; and therefore I desire you will settle that Matter, and

have the Judgment of the House, whether they will admit the Counsel to prove any thing that is not suggested in the Bill: If you will, I do not see how any Man that stands at the Bar of your House, can be prepared to make his Defence. For there shall be one Crime alledged in the Bill, and when he comes to the Bar, the Counsel that are to prosecute, shall go quite off from that which is laid in the Bill, and produce you Evidence to a new Crime; and he stares and looks round him, and you had as good allow him no Counsel, or Copy of the Bill. This you thought so necessary for every Man that was to come upon his Trial for his Life for Treason, that you altered that Trial, and declared no Man should have any Treason proved against him that is not alledged against him in the Indictment.

We have had great Complaints of *Westminster-Hall*, and if the Parliament should proceed in this manner, may have the same again. If they are too rash in their Proceedings, they will be countenanced mightily in them, if you should proceed against a Man, and condemn him for one Thing, when he is accused of another. I desire to know, how we can proceed in a Bill upon which Sir *J. Fenwick* is to be proved guilty, and he hath no Opportunity to answer it? I take it, as this Bill is drawn, Sir *J. Fenwick's* Guilt is no way concerned in it: For whereas the worthy Gentlemen tell you the Treason is specify'd, there is no Treason specify'd, otherwise than he is indicted for it.

Mr. *George Rodney Bridges*. Sir, I think the proper Question before you is, Whether you will allow Sir *J. Fenwick* Time to produce such Witnesses as he shall desire for his Justification. 'Tis a little strange to me, that the Gentlemen that are of Sir *J. Fenwick's* Counsel, should insist upon those Things, to desire farther Time for his Preparation, when (I think) 'tis very plain, they were told what they were to prepare for by the Bill; which was, they were to justify Sir *J. Fenwick* against those Things he stands indicted for; and the Matter of the Indictment is the Thing to be proved before you, and the Witnesses to make it good are likewise mentioned; one of them is gone, but his Testimony remains upon Oath, not only to the Grand-Jury, but in another Place, that I am told of: I do not think you will think it reasonable, after the King's Counsel have made out their Evidence, to give him Time to make their Observations upon the Charge; so you will consider before you hear the King's Counsel, whether you will allow him farther Time, or no.

Sir *Jos. Williamson*. Mr. Speaker, the Gentleman that spoke last, states the Case to be, Whether you will think it reasonable to allow Sir *J. Fenwick* farther Time to produce his Witnesses? You may, Sir, make that the Question; but that will depend upon another, which is, Whether you think that Sir *J. Fenwick* had not Notice enough to prepare to defend himself against the Charge contained in the Preamble of the Bill? And I add this further, Whether the Manner and Way of expressing that particular Charge in the Bill, is not so worded, so charged, as here expressly to become a Charge that he is to answer for, and not only as a Matter of Fact historically related, not to come in Proof here: For if it proves to be well charged in the Preamble, 'tis a particular
Fact

Fact of Treason he is to answer for in this House; and then he hath had Time enough; so that now you are to judge of your own Way of expressing your selves. I believe every Gentleman knows it was the Sense and Meaning of the House, that those are the particular Treasons mentioned in the Indictment with which he should be charged at the Bar, and have Time and Liberty to defend himself; and not only to the Allegations, that he had been indicted, &c. Now, Sir, if you shall allow these Gentlemen to except against your Way of expressing your selves, that I submit to you: But 'tis clear to me, that this was a very good and proper Way of expressing your selves, to charge him with these Facts, and to give him Liberty to disprove it. If he and his Counsel understood it otherwise, the Question is, Whether their differing with you in the Way of expressing it, shall be allowed to them, without taking a reasonable Exception to it? You are ty'd here to the strict Rules of Justice; but as to the Forms of Proceeding below, I do not think you are. Our Meaning was most certain (though he was indicted, that was nothing to us) that they should bring their Proof to our Bar to prove him guilty; and if you should give him two or three Days Time, you must mend your Bill to their Way of Expression, and to their Sense.

Mr. Brotherton. I take the Question to be now, Whether the King's Counsel should give Evidence of any other Matter than what is alledged in the Bill? As to that I must observe to you, that this Bill does not set forth any particular Charge against him; it does not say, that he such a Day did such a Fact, whereby he can make his Defence; 'tis only the Recital of an Indictment; and it does not say the particular Time and Place where the Fact was done. Now as to what that Gentleman says, if it had been said generally, that he should be attainted, it had been sufficient. 22 H. 8. the Statute for attainting one for putting Poison into a Pot, &c. there is the Day and Year when the Fact was committed; and so he might make his Defence. Then the King's Counsel offer to prove, that this Goodman was convey'd away by Sir John Fenwick; and there is no such Charge in the Bill; for the Bill only says, that he is withdrawn; and I am of Opinion they ought to give Evidence of nothing but what is in the Bill.

Mr. Whitaker. As to the Exceptions made by the Counsel to the Insufficiency of the Bill, by which they pretend Sir John Fenwick was led into an Error, so that he had no due Notice, I must needs say, if they were in Westminster-Hall they would be in the Right: But this House is not bound to those Forms; for I believe the enacting Clause would do the Business of Sir John Fenwick well enough, if all the rest were laid aside; and I will consider it with as much Tendernefs and Conscience for the Prisoner at the Bar, as any that brings Arguments from Westminster-Hall. I would consider, whether such a Defence as they have made, that from the Bill (as to what is laid in it) he had not Notice enough to prepare to make his Answer: They say, a Recital is no direct Affirmation in civil Matters: It is an Affirmation; for to say, *Whereas such a one is Bound*, is good in a Declaration upon a Bond. Now I would know, whether this be not enough, to say, That he is indicted, without any Allegation that he is guilty? Had the Bill no Recital at all, it had been an Objection; but it may be, it had been such an Objection,

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that they ought to have done something of their Parts, as to have desired the Opinion of the House to what they should have answered: For suppose there had been no Recital at all (and you may make what Recital you think fit) what should Sir John Fenwick have done? There are some Instances at Common Law: A Man is indicted for being a common Barrater, and there are no Instances given in the Indictment; why then he comes and prays the Court, that they may declare what Instances they will give, and that they may give no other Words in Evidence: Therefore I question not but that should have come on his Part; he is to be heard as to the enacting Part of the Bill; and under Favour, you could do no otherwise. Now if they do offer to give Evidence of any Treason that is not specified in the Recital of the Bill, and the Counsel make an Objection to it, I shall agree with them.

Sir Ed. Seymour. My Lords and you Mr. Speaker, what hath been said to you by that worthy Person that spake last, no doubt, is true; *Because many Lords in the Gallery.*

That if there had been no more than the enacting Clause, it would have done Sir John Fenwick's Business with a Witness, or rather without a Witness: But that is not the Question we are disputing here; but the Question is, Whether you will give Sir John Fenwick longer Time to make his Defence to that Part he insists on, that is not contained in the Bill. *Past Three a-Clock.*

You are well satisfied that you cannot go through with the Suggestions to Night, and the Debates, and what relates to it; and I find no Person against putting it off, but because it would be a Delay; and if it be no Delay, that Reason is out of Doors.

They tell you the Counsel could not but take Notice of the Matters suggested in the Indictment: I cannot think that is reasonably argued; because they do know the Practice and Method is such, that they can take Notice of nothing but what is specified and contained in the Bill. And therefore there being no Guilt charged upon Sir John Fenwick in the Bill, is it reasonable they should come and accuse themselves here, or make a Defence to what is not charged? No; but, say they, it is implied: This is an untrodden Path, and you ought to walk as securely in it as you can. 'Tis extraordinary that you bring Sir John Fenwick here to answer for Treason, when 'tis allow'd in the Suggestions of the Bill, you have but one Witness to that Treason; and when you take these extraordinary Steps, you should comply with him as much as you can in the Forms. For if Treason be not Treason unless it be proved by two Witnesses, and you will give him Liberty to make his Defence, I think it no Loss of Time; for you cannot go through the Bill to Night, to see whether Sir John Fenwick be guilty of what is contain'd in the Indictment. And I will give you one Reason why he could not be prepared to make his Defence in so short a Time; for he could not produce his Evidence if he had any; and if you give him longer Time, I suppose you will think fit that Sir John Fenwick should give an Account of what Witnesses he shall make Use of for his Defence; and you will give an Order for those Witnesses.

Mr. Harcourt. If Sir John Fenwick's Business must be done, I hope we shall do it like rational Men, and what we enact, be able to give a reasonable Account of it in the Preamble of the Bill.

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As to the Question proposed, your Debates have run several Ways: The first is, Whether Sir *John Fenwick* shall be allowed further Time? And in this Case, whoever I differ with, 'tis of that Nature that I must desire the Liberty of speaking my Mind. I must confess, I see no Room for enlarging the Time; and I shall humbly submit my Opinion to other Gentlemen, whether he should have further Time to prepare his Witnesses: And for that, pray consider the Nature of the Matter before you.

Sir, there is nothing certain that is alledg'd in the Bill; and should you allow him further Time to answer that which is not alledg'd, I cannot imagine what Effect you would have of it. 'Tis said indeed, he stands indicted; but 'tis no where suggested, that he is guilty of that Indictment. This general Charge seems a great Hardship: There is no one Thing that so many have been unjustly taken off by, as the Uncertainty of alledging general Facts in Indictments of High-Treason; nor has any Thing been complain'd of in such Trials for a greater Grievance. What have you done in the Bill for regulating of Trials in Cases of High-Treason? In that Bill you have reformed that Abuse, and taken Care, that whatever Treason a Man might be guilty of, yet he shall never, upon his Indictment, answer to any Fact, unless the particular Overt-Act be expressly laid and affirmed in his Indictment.

That which seems most reasonable in this Case to be done, is not to enlarge the Time; but when you think fitting to proceed, proceed upon what is before you. Here are some Matters expressly alledg'd; let them go over the Recital, see whether they can prove that; but I cannot imagine to what Purpose you should give the Prisoner further Time to answer nothing; for that which is not charged is so.

Mr. *Finch*. Mr. Speaker, Sir, this is a Question, in my Opinion, of very great Consequence: You are very well told from below, that this is an untrodden Path; and I am the more confirm'd 'tis so from this Debate.

We are told, that Sir *John Fenwick*, or his Counsel, could not be ignorant of what they were to prepare themselves for. For this was our Meaning, says one Gentleman, though I find the Path is so untrod we are very unfortunate in expressing of it, for we have not said it at all in this Bill; we have said, Sir *John Fenwick* was indicted, &c. Sir *John Fenwick* hath had a Copy of this Bill sent him, Counsel allow'd him, and upon a second Reading he comes to make his Defence. We are told, the Proceeding upon this Bill is not to be resembled to the Proceeding in *Westminster-Hall*, and this is sufficient in a Bill (tho' in an Indictment it would not) without alledging that Sir *John Fenwick* is guilty. But one would think, that if Sir *John Fenwick* is guilty, every Allegation in the Bill, that is, the Inducement to the Bill, which is for attainting him, should be a good and just Ground for the Attainder; and then, this Gentleman that hath had a Copy of the Bill to prepare for his Defence, and shew you Reasons why the Bill should not pass, though our Proceedings are not to be resembled to the ordinary Proceedings, yet we are to expect from him such a Defence as the ordinary Proceedings in *Westminster-Hall* would require: But I think this is hardly to be expected; one might have thought, and reasonably enough, that it might have come into his Imagination, that if

there had been Ground to attain him, by the ordinary Proceedings and Methods of Justice, the Parliament would not have taken an extraordinary Course to come at it: For I can never think it a good Reason to proceed this Way, that is, for the saving of Time; and if there be extraordinary they must guess at that out of the Bill: Now that is grounded upon those Suggestions that I have cited; and then I should have imagined, that whereas he had been indicted upon the Oaths of two Witnesses, as the Law requires, and one of them was withdrawn; that you had rather intended to have charged him with some Contrivance to elude Justice, whereby you had Reason to exert your extraordinary Authority to proceed against him by Way of the Legislative; and I do not find we have any Precedent to warrant this Proceeding, tho' in our Debates we have endeavoured to find one; yet I cannot but observe the Consequence of this hereafter: For whether we can find a Precedent to warrant this Proceeding in former Ages, or not, we are making a Precedent for our Posterity. And consider the Consequence of this Precedent you are making; I think all the Bills in Parliament are grounded by the most serious Ways of Deliberation, before you come to Judgment: And Bills of Attainder ought much more, sure, to require the Seriousness of your Debates; but I cannot but observe the Steps now made; I am afraid there was a wrong Step at first; I was not here the first Day: But I recollect some Things from the Bill it self; the Tenderness of those Things upon which this enacting Clause does stand. Here was no Evidence given to induce the House to bring in this Bill of Attainder; when this Bill is brought in the House, and the Preamble that suggests that which is the Ground of the enacting Part, consider'd in the House; and the House did not think it reasonable to proceed to the Reading of it a second Time; I remember we were told, Won't you read it a second Time, when you may have an Opportunity of having those Suggestions prov'd to you? This was the Ground why this Bill was read a second Time. For consider, otherwise a Gentleman may in any other Case as well as this, desire Leave to bring in a Bill for attainting such a one; and tell you, you shall have a good Reason given to you for it afterwards; and tho' the Reasons suggested in the Bill, are not sufficient, you may have Reasons out of the Bill that are sufficient. What a Precedent will this be! Why, Sir, Length of Time gives a Sanction to those Precedents which the Age that makes them think not of; and they become good Examples to Posterity, that were even very heinous Precedents to the present Times. Now if this shall stand, as now in the Bill, I would ask, what Man in *England* is secure when a Parliament shall arise that hath a Mind to attain him? Why then, Sir, if you do amend the Bill, consider the Method of your Proceedings; you do your selves, in effect, declare, that for bringing in of the Bill, for twice reading of the Bill, you had no Ground at all; for otherwise you had good Grounds recited in the Bill, and that must be a sufficient Ground to attain him; and if you declare it no sufficient Ground to attain him, you declare you have brought in a Bill, and read it twice, without any Ground. Whether you will allow Liberty to offer at your Bar any Suggestions otherwise than in the Bill, that I must submit to you; and for giving Time, since that is a Question of a very extraordinary Nature; but have

have humbly offered my Thoughts, whether any thing shall be offered otherwise than is suggested in the Preamble of the Bill? I hope you will not, for the Precedent sake you are now making; which if you do, I am afraid Bills of Attainder may become now as frequent as Bills of Attainder were in *Richard II's* Time; which I hope never shall be.

Lord *Norreys*. Mr. Speaker, I will not pretend to tell you that you are bound by other Rules than Rules of Justice; but what is Justice in *Westminster-Hall*, is so here, and every where. And last Year you thought it Justice, that no Man should be brought to a Trial, but he should know what were the particular Facts that were alledged against him.

Lord *Cutts*. I think it, in some measure, a Misfortune, that a Matter of this Nature, as is your present Debate, hath held you so long; and conceive it a Thing to be wished, that every Gentleman that speaks upon this Occasion, would apply himself more closely to Reality, and less to Forms; I mean, to Forms, consider'd merely as Forms; for it ought to be true Reason that is convincing to you: And you ought not to tie your selves to any Forms upon this Occasion, but such as are grounded upon Reason; and really I have not heard any thing that fell from any Gentleman that shews his Doubt of the Nature and aggravating Circumstances of the Crime of the Prisoner; but it hath consisted with the great Candour and Justice of this House, to shew this Favour to the Prisoner before you. The Counsel say, they are unprepared; if they mean they should prepare themselves for more Grounds of Difference and Chicanry, I would not give them farther Time; I can't perceive there is any Reality of Argument in it; and there is Reasoning, as in Religion, sometimes a Form without a Power.

Sir *Tbo. Dyke*. Sir, you have now two or three Questions before you; I desire you will confine our Debates to one Point: I think, whatever Opinion Gentlemen may be of concerning the Proof, I think the Point under your Consideration, if you will make a right Judgment, is the Preamble of your Bill, which I take to be the Foundation of it, and the Cause for which you attain this Gentleman: Now the Preamble does not recite, and say, he is guilty, but only indicted; nor set forth any Time; nay, it does not say he was arraigned. So that these Things are very uncertain, and yet you must attain him for the Things recited in your Bill. And you know these Acts of Attainder are extraordinary Methods in Cases of Treason; and if you put it upon this Point, that the Act attains him for one thing, and the Counsel shall prove another, it makes it more uncertain than it is, and no Man can be safe; and therefore I hope you will confine the Counsel to Proofs of the Matter contained in the Bill.

Mr. *J. Howe*. Sir, I shall not move you to any thing that may tend to a Delay of the Matter before you: I think, if you please to go on upon the Matter suggested in the Bill, they are Allegations which must be proved before the Bill is committed; and that will not hinder Sir *J. Fenwick* from being examined to the Treason likewise. Therefore all that is alledged in this Bill, I suppose, being thought necessary to be proved, I desire he may be called in, and the Counsel may go on to prove what is alledged in the

Bill, and afterwards Sir *J. Fenwick* may answer them.

Lord *Coningsby*. If the Question was, whether you should grant this Gentleman Time or no to make his Defence, I should not have troubled you. But the Question now seems to be, Whether the Bill does depend upon the bare Suggestions of the Bill, or upon the Guilt of Sir *J. Fenwick*? And therefore if Gentlemen do insist upon it, that he should have longer Time to defend himself, as to his being innocent or guilty, I shall not oppose it; but if you think fit to put it off, as if the Fate of the Bill did depend upon the Suggestions of it, I can't agree to that Matter; therefore I desire a short Time may be given him to answer the Matter of his Guilt.

Mr. *Harley*. I find all Gentlemen that speak of this Subject, to say this Matter is of a very extraordinary Nature, and you have entered into it by very extraordinary Methods: But I must only observe, that this being the first Bill of this kind that hath been brought into the House, before any Proof, Gentlemen must be excused if they are cautious what Steps they do take; and when the Wisdom of the House has thought fit to take quite different Methods, as to the Preliminaries, 'tis not to be wondered if they meet with Difficulties in their Proceedings.

Some Gentlemen press for more Time to be given to Sir *J. Fenwick* to be prepared; and others urge, that you should declare, whether the Counsel should be heard to any thing but what is suggested in the Bill. And I think you must give a Determination to the last Question, though the whole House agreed to give him longer Time: For if you give him longer Time, it will after come to the same Debate, whether they shall be heard to any thing but what is suggested in the Bill? If you should think fit to add any thing, then it will be reasonable that he also should be heard to that; for in the Case of the Death of a Man, let him deserve never so much, yet he does not deserve to die unjustly by your Hands.

It seems a very plain Proposition, that when a Man is accused, he should not answer to what he is not charged with; and to charge it with *Innuendo's* and *Implications* is so uncertain, that as I always have seen it denied in this House, so I hope I shall not see so great an Assembly give any Countenance to it. They did tell you, they were prepared to speak to the Reasonableness of the Bill; but this Matter not being suggested in the Bill, they are not prepared to speak to it.

Sir *Tbo. Littleton*. I see now where your Debates have led you: I thought the regular Subject of our Debates had been the Point upon which the Counsel withdrew; and that was for Time. For what? Why, to prepare themselves to answer any Evidence that might be given against them; because they perceived you did expect the Counsel for the Bill should produce their Evidence. But they made an Objection: Say they, We did not understand your Order was, that we should come prepared to oppose any Testimony *viva voce* to be given against us, but only prepared to speak to the Reasonableness of the Bill. Now, Gentlemen, after five or six Hours Debates, have been willing to accommodate the Matter (that no Body might think that any one pressed a Matter unreasonable) that they might have

have Time: But some Gentlemen will not be satisfied with granting what the Counsel desired, but they desire more. And what is that? Why, that is, to know the Opinion of the House, whether you will admit any one thing to be proved that is not suggested in the Bill? And I do take this to be within the Suggestions of the Bill, as fully as can be expressed. For what does the Bill say? The Bill does say he was indicted of High-Treason, and that one of the Witnesses is gone: And, Gentlemen, come to the Conclusion, and skip over the immediate Part of the Bill; for the Bill does say, that he did incite and consult, &c. And the Objection of the Counsel was not against the Evidence; but they said, they were not prepared at that Time to answer it, and there they leave it; and thereupon the House go on upon the Debates. What can we expect that they intended? They might think, either we shall gain our Point, and the House will give us Time; or otherwise, if they go on and hear this Evidence, then we say we wanted Time. And that will be only Evidence *ex Parte*, and not carry so much Weight with it, tho' we have nothing to say to it; or they might think it may have this Effect, that the House will not go on, and hear any Evidence at all: In either of these Cases, we have the fairest Advantage that we can have, on the second Reading of the Bill, in Defence of our Client: All they desired was, that they might have Time; and I hope that which satisfied them that are most concerned, may satisfy any Gentleman of the House.

Mr. J. Howe. The Question is not, what they asked, but what is reasonable for us to grant: I was in the Beginning against any Delay, and I think there is no Occasion of Delay: All I desire is, Sir, that the King's Counsel may be desired to prove the Suggestions of the Bill *ex Toto*.

Mr. Sol. Gen. Most that have spoke of this Matter have said, that the Matter is very generally laid in this Bill, and the Counsel could not very well know to what to apply themselves: That it speaks of High-Treason in general, and of aiding the King's Enemies, which is very general: It recites that indeed; but the Indictment is legal, according to the late Act of Parliament. 'Tis not only said, that he designed the Death of the King, but for that Purpose he and others met together and agreed to send *Charnock* to France, to go to King James, to induce the French King with an armed Power to invade England. Now how can any thing be more particularly charged? And the Indictment is so charged in your Bill. I think therefore the Counsel could not be ignorant to what they ought to apply themselves: But by what I perceive, Gentlemen are very well contented to give him further Time. I remember, when the Bill was first brought in, there was a long Debate for a second Reading; and some Gentlemen thought it hard to be tried by so great an Assembly, and said, they had rather be tried by a fewer Number: But I shall observe, that you have sent the Copy of the Bill to Sir J. Fenwick beforehand, and you sent him Notice that he should provide himself. But I remember a much better Man than Sir J. Fenwick, who had the Misfortune to be under an Accusation of High-Treason, had his Indictment one Hour, and was tried the next; and tho' he pleaded to have his

Trial put off 'till the Afternoon, he could not prevail with the Court of Justice to do it: Sir John Fenwick hath had a Copy of his Bill for two or three Days, but he never had any Copy 'till he had pleaded.

Mr. Waller. I stand up only for my Information; that which I would know is, whether the Counsel did not ask you the Question, whether they should be bound to answer any thing that is not in the Bill? If they asked that, then the Gentleman that spake here is answered; and the Gentlemen of the House do not insist upon what Sir J. Fenwick's Counsel did not insist on. And I do think the King's Serjeant, who opened the Proceedings, after he had opened what had been before the Grand Jury, seemed to make it a Charge, as if Sir J. Fenwick had been condescending to the withdrawing of Goodman. Now that seemed as if they designed to make that a Part of the Evidence.

Sir Richard Temple. The Counsel did not insist upon it only to answer the Suggestions of the Bill: Every Body knows, they objected to the others going on with the Evidence they opened, because it was not in the Bill; and the King's Counsel could not so much as alledge, that it was in the Bill; and they would have gone on to have prov'd the Indictment. There is another Thing: It is told you, as if the Preamble had suggested something of this kind, that there was a Meeting. Now that Gentleman that spake last but one, has cleared it, that it only recites he was indicted for these Things, and this brings nothing in Issue, whether he be guilty or no? Now I think the present Question, and only Question before you, is upon the Suggestions of the Bill; for you can bring nothing in Issue here, but what is in the Bill; and Nobody can insist, by the Rules of Reason or Justice, that any Man should be heard to any Matter of Fact but what is in the Bill. And therefore I think there is nothing before you, but that you should give Direction to hear them to what is suggested in the Bill.

Mr. Melbwen. Sir, I speak to the Method of your Debates: Your Debates arise upon an Objection that was made by Sir J. Fenwick's Counsel, against the Counsel for the Bill going on with their Evidence to prove Sir J. Fenwick guilty of High-Treason.

I must beg Leave to differ, as to what the Counsel did say, from some of the Gentlemen that spake last; the Force of their Objection was, that they should not now go on, for they were not prepared to answer them; and the Reason they gave was, that they had not formal Notice; and the other afterwards spake to the Shortness of the Time: Your Debates for a long Time went pursuant to this, whether you should allow them further Time or not? But the Length of your Debates hath raised a new Matter. Though I think that Doubt, though it was not made by the Counsel, may be very properly made by any worthy Member that hath that Doubt, whether, as the Bill is brought in, the King's Counsel might at any Time speak to that Point, though Sir J. Fenwick be acquainted with it? And I must always agree, that Doubt ought to be resolved, before you come to resolve, whether farther Time shall be allowed him or not; and therefore I propose it, that this Question may be put, Whether the House will hear, at the Bar of the House, the Evidence there is to prove Sir John Fenwick guilty

guilty of the High-Treason whereof he was indicted?

Col. *Wharton*. You have three or four Questions upon your Paper; and now after so long a Debate as we have had, I hope Gentlemen will not think fit to start new ones; and I hope you will take Care that Gentlemen shall not rise up three or four Times to speak to this Matter. You have another Rule of the House, That when a Question is moved, and seconded, though another Question is moved afterwards, yet that must be the first Question that is to be put; and I hope you will keep us to these Rules.

I wonder at some Objections: 'Tis told you, that this is such a Proceeding that never any Thing of this Kind was before; and that you are here going to read a Bill of Attainder before you have had any Manner of Evidence, upon which you should ground the bringing in of this Bill. Gentlemen must remember, or should have informed themselves; for 'tis very certain that you had very good Grounds to vote this Bill to be brought in: I see the Gentleman that brought in his own Accusation; you had his own Discovery read, and Mr. Attorney did inform you what was against him, and how he stood indicted. And another Gentleman by me, told you, he was with him, and there was a Treaty for his Pardon; this was Evidence for reasonable Men to go upon. And to tell you that these Precedents will endanger your Liberty! Under Favour, this is the Ground of all your Liberty. 'Tis by this Power of Proceeding, when you have not that Evidence that *Westminster-Hall* requires, by which you will keep great Men in Awe.

Now give me Leave to speak to the Question that I think you ought to put: 'Tis told you, by the Counsel for the Prisoner, that they are not apprised what the Sense of the House was, and upon that Account they desired further Time: I confess, when you allow'd Counsel, I was of Opinion it was a Favour; and now since they have made this Objection, though I do not believe you are obliged to allow them further Time; yet I had rather err on that than the other Side; and therefore I think the fairest Thing is to allow them some further Time.

Mr. Secretary *Trumbal*. Mr. Speaker, I have attended all this Day to your Debates, which are now in my Opinion of a very extraordinary Nature; for a great deal of your Time hath been spent upon Motion of the Counsel for the Prisoner at the Bar, whether you should allow them further Time or no: And now, by what I recollect from the Sense of several Gentlemen, the House seems willing to allow them further Time; even that is oppos'd at this Time of Day.

Sir, the King's Counsel have open'd the Matter of Fact, upon which they did intend to produce their Evidence; and when they had open'd the several Heads, the whole Objection that I heard made by the other Side, was, They did not think the King's Counsel could have proceeded to examine Witnesses upon those Facts; and that they were not prepared to bring Witnesses on the Side of the Prisoner, and therefore pray'd for further Time: Truly, whether that be reasonable or no, or whether upon one Favour, the House think fit to grant another; I cannot tell what might appear, if it had come to a Question; since the Life of a Man is concerned, we ought to be tender of it, and I shall be as tender as another; there-

fore I am of Opinion, that a reasonable Time should be allow'd. To do what? Why, upon the Evidence the King's Counsel should produce, they shall bring their Witnesses on the other Side to answer them. Whether the King's Counsel will produce Evidence that is foreign to the Bill, that will be in Judgment of the House; but it was a good Motion made below, which I close withal, that a short Time may be allowed them to make their Defence, and bring their Witnesses.

Mr. *Speaker*. Gentlemen, you have had a long Debate; I do not remember any formal Question that was propos'd at first, till such Time as I read to you what I thought was the Question upon the Debate; when I read you the Question for further Time, there were several Members stood up, and said, that was not the Question; and took Exceptions to it, and propos'd that the Counsel should be confined to produce Evidence only to the Matters suggest'd in the Bill; so that now I have two Questions upon my Paper, which I will read to you, and put which you will. One Question is, That they be confined to make their Proof to what is suggest'd in the Bill. The second Question is, That Sir *John Fenwick* be allowed further Time, &c.

Sir *Christopher Musgrave*. A Gentleman said, the second Question upon your Paper was but lately started; but I remember, a little after the Counsel was withdrawn, it was moved, Whether you would give them further Time? And I, presently after, in the Debate, did take the Freedom to ask, Whether it was intended they should answer to any Thing but what was contained in the Bill? And, I remember, there was a Gentleman of the long Robe said, That there was nothing offer'd by the King's Counsel, but what was within the Suggestions of the Bill. Another Gentleman said, When they may have longer Time, they'd not seem so fond of it; 'tis indifferent to me, provided he be prepar'd to answer. But I cannot but observe, that the Conclusion of that honourable Person was, that at last you must come to determine the Question. You are likewise told, by an honourable Person nearer the Bar, Why do you dispute this, now you have order'd the King's Counsel to produce the Evidence; and so you have concluded your selves? But for my self, I must confess, I did never think the Evidence was to be heard otherwise than as to the Suggestions of the Bill. And if that Point be to be determined, why will not you determine it now, rather than to have another Debate upon it?

Mr. *Boscawen*. That which is press'd by some Gentlemen, is begging of the Question. What have we here brought Sir *John Fenwick* for? Was it not to satisfy our selves, whether Sir *John Fenwick* was guilty of High-Treason? Now that is suppos'd, by some Gentlemen, not to be within the Bill: If it be not within the Bill, I desire you would throw out the Bill. But the Thing is, we must not examine to those Things that will make Sir *John Fenwick* guilty. Sir, this is a very nice Thing, and very curiously woven. The great Thing, say some Gentlemen, we must take Care of, is the Blood of a Man: Does any one say he is innocent? No: But we must have some Way or another that he must not be brought to his Trial. I desire, as *English* Men, you will not only take Care of the Life of one Man, but of the Life of the King; of the Lives of our Wives and Children,

dren, and all our Families. What will they say without Doors? You are afraid to meddle with Sir *John Fenwick*; and therefore you will slide it away upon another Point; that his being guilty of High-Treason is not within the Bill. I am not for taking the Advantage of Time; I desire, as it was moved before, that you will give him Time, and try whether he be guilty of this Treason or no, or otherwise do nothing in it at all.

Then the Order was made for Candles to be brought in.

Sir *Thomas Littleton*. Now you have Candles brought in, it will be fit for you to return to the Question: For my Part, I am willing to put both: But I think the last Question that you have upon the Paper, properly speaking, is to be put first; and that is, That the House will proceed to examine Witnesses to the Treason in the Bill for which he stands indicted.

Mr. *J. Howe*. I think the Question ought to be, That his Counsel be directed to bring Witnesses to the Allegations in this Bill.

Sir *Thomas Littleton*. I propose it to you thus; That the House will proceed to examine Witnesses at the Bar, to the Treasons mentioned in the Bill for which he was indicted.

Mr. *J. Howe*. I think that Gentleman might very well have moved the Question without that Limitation; for that is as much as to say, that Witnesses shall be examined to none of the Treasons in the Bill, except those for which he hath been indicted; and that is a Limitation, I hope, shall not be put to the Enquiries of this House. I hope you will put it, That they shall bring Evidence to the Matters alledged in the Bill generally: There are several other Allegations in the Bill which I would have him answer to; as the alienating the Affections of the King's Subjects from him, which I take to be High-Treason.

Members. No, no.

Mr. *J. Howe*. Why? If it be not High-Treason, it hath nothing to do in that Place. I believe 'tis a very high Crime, and would induce me very much for the Punishing of Sir *John Fenwick*.

Mr. *Norris*. Sir, I do not know how the Questions may be carried since Candles are come in; but I think 'tis for the better. I think there are two Things have been spoken to; one is this Bill: I find those Gentlemen that were against the Bill on Friday, are more against it now. I was for the Bill then, and am now for a second Reading of it: I think the Bill is very plain, and know not what they would have mentioned in it more, unless they would have had the *King's-Head Tavern*, and what Wine they drank there. I think there is all the Reason in the World to hear the Witnesses to prove him guilty of High-Treason. As to the Point of Time, I should be very willing to allow it them, if that Question was put; and, I think, you have been very favourable to him already, in allowing him Counsel.

Mr. *Smith*. I would only observe, when the Bill was to be brought in, the Objection was, that you had not Witnesses. And now the Question is, Whether you can hear Witnesses upon Facts not particularly assigned in the Bill. I believe no Man can say, but that in the Indictment there are particular Facts that ought to be examin'd: I do own for my Part, if Sir *John Fenwick* was a greater Man than he is, it were better he should escape, than you should spend so much Time about him.

Sir, the Indictment is mentioned in the Bill; no Man thinks that *Goodman's* going away, is Reason enough for bringing in such a Bill against Sir *John Fenwick*.

Mr. *Speaker*. Shall I read you the Question?

That Sir John Fenwick be allow'd further Time to produce Witnesses in his Defence, against the Charge of High-Treason, and that he name his Witnesses.

Which Question was put, and passed in the Affirmative.

Mr. *Speaker*. The other Question is,

That the Counsel, who are to produce their Evidence against Sir John Fenwick, be allowed to prove Sir John Fenwick guilty of High-Treason.

Sir *Thomas Littleton*. I do think one of the Reasons why this Bill was brought, was, because possibly, by the Absence of this Witness, he could not, strictly speaking, be proved guilty; though all Mankind is satisfied in his Guilt. And therefore I question whether it will amount to a legal Proof: And if you had such a Proof as would convict him by the common Proceedings of Law, I should not have been for a Bill of this Nature; for 'tis against the Honour and Dignity of this House, to do the Work that an inferior Court can do. But probably, by the Absence of this Witness, Sir *John Fenwick*, at a Trial in the *Old-Bailey*, might escape; though at the same Time 'tis highly probable, the Witness that is wanting to convict him, is by his Means gone out of the Way. Therefore I speak to the Wording of the Question; you say, *Shall be allowed to prove*. I would willingly prevent what may be objected when we come upon this Debate: If you do use the Word *Prove*, they may say, this is not Proof; for still *Goodman* is not here. If you please to say, That we will examine Witnesses to the Treason, and we will be Judges how far it appears to us, whether he be guilty, or not guilty.

Mr. *Speaker*. Will you let me propose it to you thus then? That the Counsel, in producing their Evidence against Sir *John Fenwick*, be allowed to examine Witnesses touching the Treasons mentioned in the Bill, for which Sir *John Fenwick* is indicted.

Mr. *Montagu*. I do not observe, that in reading of it, you say any Thing as to the other Allegations of the Bill: I think you should word it, That the Counsel be allowed to produce Evidence to the Allegations in the Bill, and the Treasons whereof he stands indicted.

Mr. *Speaker*. Well then, the Question is this, That the Counsel that manage the Evidence against Sir *John Fenwick*, be allow'd to produce Witnesses touching the Allegations in the Bill, and the Treasons whereof he stands indicted.

Which Question being put, it passed in the Affirmative.

Mr. *Speaker*. Will you please to appoint a Time for it?

Mr. *J. Howe*. That I would move you is this: You were so extremely late before you went upon this Information, that you had not Time to go through any Part of it; therefore I would move you

you, that you would appoint early in the Morning for Sir John Fenwick to be here.

And thereupon it was Ordered, That Sir John Fenwick should be remanded to Newgate, and brought to the House on Monday Ten a-Clock.

Mr. James Montagu. Sir John Fenwick now insisted he had not Notice; I humbly move, that he may be brought in, and acquainted with what you have ordered. (*And accordingly Sir John Fenwick was brought to the Bar.*)

Mr. Speaker. The House have consider'd of what Sir John Fenwick hath said at the Bar, by his Counsel, and they are of Opinion, That Witnesses ought to be examined there, to prove the Allegations of the Bill, and to prove him guilty of High-Treason whereof he stands indicted; but in Favour to you, because your Counsel said you were not prepared, the House is willing to give you Time till Monday next, to make your Defence; and they require you to give in a List of your Witnesses; and if you send to me, you may have a Warrant for their appearing at that Time; and they require you to be here, so that they may proceed upon the Bill exactly at Ten a-Clock.

And Sir John Fenwick being withdrawn,

Resolved,

That the Bill for Attainting Sir John Fenwick of High-Treason, be read a second Time on Monday next.

Lunæ 16 die Novembris, 1696.

Mr. Speaker. Gentlemen, I would receive your Directions in one Thing: You have ordered a Member to produce a Letter, and the Counsel, in opening the Evidence, have referred to it. That Member desires to know the proper Time for him to do it; Whether, while the Counsel are managing the Evidence at the Bar, or whether he must stay till they are withdrawn?

Mr. Sloane. As to this Matter, I do not question but 'tis to be offered as an Evidence: and by the same Reason that you give him the Favour to examine the Witnesses that are produced against him, for the same Reason the Letter ought to be read in his Presence, that he may explain it, or deny it: And give me leave to tell my Thoughts of another Matter: If that worthy Member is to offer Evidence of what he took from Sir John Fenwick's Mouth, (though a Member commonly gives his Evidence in his Place, after the Counsel is withdrawn) I think 'tis not only fit to produce the Letter in his Presence, but that Sir John Fenwick should hear what he says, and deny it if he can.

Mr. Speaker. Is that your Pleasure, that the Letter be produced before Sir John Fenwick, and that the Evidence to be given by Mr. Vernon shall be in the Presence of Sir John Fenwick?

The Question being accordingly put, it passed in the Affirmative.

Then the Serjeant was ordered to take his Mace, and go into Westminster-Hall, and summon the Members.

And being returned, The Order of the Day for proceeding on the Business of Sir John Fenwick
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was read. [It being a Quarter before Eleven a-Clock.]

Then Sir John Fenwick, and the Counsel and Solicitors on both Sides, were brought in.

Mr. Speaker. Sir Thomas Powys, when you were here last, you insisted upon it, That the Counsel against Sir John Fenwick should be kept to the Proofs relating to the Allegations in the Bill only; or else that you might have further Time, because the Witnesses were not ready. The House have considered that Matter, and in favour to Sir John Fenwick, that he might have no Surprise, have given him to this Day; but they do allow the Counsel to give Evidence not only as to the Allegations in the Bill, but to prove Sir John Fenwick guilty of High-Treason; and therefore, Mr. Serjeant Gould, you are at liberty to go on with your Evidence.

Mr. Serjeant Gould. May it please you, Mr. Speaker, We are here to give in our Charge, and the Evidence that we have against Sir John Fenwick. I find by your Order, that we are now allowed to produce Evidence touching the Allegations of the Bill, and likewise of the Treasons for which he stands indicted; therefore I shall beg leave to open first, how he stands charged by the Indictment.

The Indictment first charges him with Compassing and Designing to depose the King, and put him to Death. The second Charge is, For inciting the French King to send an Army of Soldiers to invade this Kingdom, and to make a miserable Slaughter amongst the Subjects of this Kingdom. The third Thing is, For adhering to the King's Enemies. The fourth Part is, That to effect this, he, together with several others, that is to say, Charnock, Sir John Friend, and others, did consult, propose, treat, and agree to invite the French King to send a Number of Soldiers to invade this Kingdom, and to procure great Numbers of armed Men against the King, to rise and be formed; and with these Enemies, upon their landing and invading this Kingdom, to join, for to make and carry on a Rebellion and War in this Kingdom. And further it charges, That he did consult, consent and agree, to send Charnock as a Messenger from Sir John Friend, and others, into France to the late King James, to propose to him, to procure the French King to send Soldiers and armed Men to invade this Kingdom. Then likewise to effect this, the Indictment charges him with providing Horses, Pistols, and other warlike Arms. This is the Charge of the Indictment; and these Matters are in the Bill: For the Bill does charge him with compassing and imagining the Death and Destruction of the King, with adhering to his Enemies, by consulting and agreeing with several Persons at several Times, to send Charnock to the late King James in France, to invite and encourage the French King to invade this Kingdom with armed Forces, and Promises to join them, and assist them with Men and Arms.

Then the Bill does take notice of other Matters, That Sir John Fenwick hath protracted his Trial, by giving Assurances to the King to make a plain Discovery; by Reason of which he did not come to his Trial, and now one of the Witnesses against him is withdrawn. May it please you, Sir, This is the Charge as it stands before this honourable House; and the Evidence we shall charge him with, will be of this Nature: We shall give you

an Account, That the latter End of May, or Beginning of June, Sir John Friend and Charnock, and several other Persons, met at the King's-Head, and upon that Meeting they consulted how to invade this Kingdom; and they concluded in this, That they would send Charnock into France; and he was to propose it to King James, That he should procure 8000 Foot, and 2000 Horse and Dragoons; and upon their Landing they were to join them with 2000 Horse. After this they had another Meeting; for Charnock, to be sure of the Matter, would have another Meeting; and then he proposed it to them, Whether they continued in the same Resolution? And they all then declared, particularly Sir John Fenwick, That they did approve of it, and stuck by it; and that Charnock should go for that Purpose to France. Charnock, in pursuance and execution of this Treason, does go to France, and brings back a Message, That the Matter had been communicated to the French King, but at that Time he was not ready for them, and could not spare his Soldiers, and his Troops. Then it rested for some Time, till towards Christmas, when Sir George Barclay came into England, and he brought with him a Detachment of about Sixteen, and their Province was to assassinate the King. But there was another Part, and that was the Invasion; and in that Part was Sir John Fenwick concerned, which we shall produce our Evidence to prove upon him; but it does fall out that we have but one Witness to this Matter, that we can produce *viva voce*; though when this Indictment was found, (for it was found upon the Act last Sessions, which required two Witnesses to each Species of Treason) we had two, but one is since withdrawn, and that is touched in the Bill, as in Truth the Fact is. Now if Sir John Fenwick had come on in the ordinary Course of Proceedings to be tried, Sir John Fenwick might have been tried upon this Indictment, for then Goodman had been there; but he procrastinates his Trial, he makes Application to the King, and gives him Assurances from Time to Time of an ingenuous Discovery; but instead of that, when Goodman now is withdrawn, these Assurances have terminated in this counterfeit Confession that hath been laid before the House, and is charged in the Bill.

But, Sir, to supply this, we shall produce the Examination of Mr. Goodman; we shall prove to you not only the Evidence that hath been given upon this Indictment, upon which he hath been arraigned, but also the Evidence which hath been given upon the Trial of Cook, who was convicted upon that Evidence. We shall go by these further Steps in the Case; and humbly offer it to the Consideration of this House, how far Sir John Fenwick will be affected with it: And that is this; Here hath been Goodman, and Captain Porter who still stands his Ground; but they have tempted him with 300 Guineas in Hand, and 300 more was to be remitted to him upon his first landing in France, with Assurance likewise of King James's Pardon, and likewise 300 l. a Year; 100 l. a Year whereof was to be settled by Sir John Fenwick. This Proposition sprung from one Clancy: It could not be expected that Sir John Fenwick should appear in his proper Person, but he did by his Lady, who was with Captain Porter, and gave him Assurance of all that was proposed by Clancy, that That should be performed, and a great deal more.

We shall further give this Account, That when Sir John Fenwick was taken, there was a Letter handed to a third Person; and it appears by That, that he thought himself at that Time not safe, unless they could corrupt the Jury: For, says he, we must now get two or three stanch Persons that will starve the rest. These Steps we shall proceed upon, and begin with the Indictment, and call our Witnesses to it.

Mr. Serjeant Lovel. Mr. Speaker, I shall not repeat what hath been said; because I know what hath been materially said, can't pass the Observation of this House. The Method we desire leave to proceed in, is the Method you have prescribed us; and that is, first to prove the Allegations of the Bill. And that we shall make appear to you by undoubted Proofs, That Sir John Fenwick does stand indicted for these Treasons at the Sessions at the Old Bailey, the 28th of May, upon the Oaths of Porter and Goodman; that we shall prove by Records, and that is not capable of any Traverse or Denial. We shall also prove, by Matter of Record, That several who were concerned with Sir John Fenwick in this Conspiracy have been tried and attainted; and then we shall call a living Witness to prove Sir John Fenwick guilty of Treason in the highest Manner. Mr. Tanner, deliver in the Indictment of Sir John Fenwick.

Which was delivered in, and read at the Table.

Mr. Serjeant Lovel. The Bill does charge, That he stands indicted upon the Oaths of these two, Captain Porter and Mr. Goodman; Besides, I must beg leave to observe, that by the Act of Parliament made last Sessions, 'tis enacted, That no Person shall be indicted unless upon the Oaths of two Witnesses: Had not these Witnesses been sworn before the Grand Jury at that Time, this Bill could not have been found according to that Law, nor would Sir John Fenwick have pleaded: But he hath been arraigned, and pleaded; so that we submit it to this House, that it does appear upon Record, That this Indictment was found upon the Oaths of two Witnesses. Besides that, two Witnesses are subscribed to the Bill. Now that other Persons have been indicted, and convicted upon the same Evidence, we shall prove, and that likewise by Records.

Mr. Serjeant Gould. I thought when we came to give you an Account of the Absence of Goodman, then to have given you an Account of this, and other Matters.

Mr. Speaker. You will agree upon your Method, Gentlemen: Who do you call in the first Place?

Mr. Serjeant Gould. Captain Porter, Sir. (*Who being present.*)

Mr. Serjeant Gould. I desire, Mr. Speaker, that he will give an Account of what he knows concerning this Matter, as also of what is charged in the Indictment.

Mr. Speaker. Captain Porter, the House requires you to give them an Account of your Knowledge of any Conspiracy, by Sir John Fenwick, against the King and this Government; and likewise of your Proceedings upon the Indictment against him for High-Treason.

Captain Porter. About the middle of May was twelve Months, there was two Consultations, one at the King's-Head in Leadenball-Street, and the other

other in *Pall-mall*; these two Consultations were for the Considering of the best Means to bring the late King *James* into *England* again: For it was said, that King *William* being gone beyond Sea, he had left but few Forces, and therefore they thought they could not have a fitter Opportunity than that Juncture; upon which, they pitched upon *Charnock* to go into *France*, and make some Proposals to the late King *James*, to borrow 10000 Men of the *French King*, whereof there should be 8000 Foot, 1000 Horse, and 1000 Dragoons; and it was proposed, when they came over, to meet them with 2000 Horse.

Mr. Speaker. Where was this?

Captain Porter. Our first Meeting was at the King's Head in *Leadenball-street*; after that, Mr. *Charnock* desired another Meeting, and then we met at *Mountjoy's* in *St. James's*, and we all stood to what we had before resolved, That he should go over to King *James*, and make this Proposal; and that if he could get so many Men of the *French King*, we would meet him with so many Horse.

Mr. Speaker. Sir, you say the first Meeting was at the King's Head in *Leadenball-street*; who was then present?

Captain Porter. There was my Lord *Aylesbury*, my Lord *Montgomery*, Sir *John Fenwick*, Sir *John Friend*, Sir *William Perkins*, *Charnock*, Mr. *Cook*, and my self; we dined there, and after Dinner Mr. *Goodman* came in to us.

Mr. Speaker. Did Sir *John Fenwick* hear this Discourse?

Captain Porter. Yes, Sir.

Mr. Speaker. Did Sir *John Fenwick* consent to it?

Captain Porter. He did absolutely consent to it. Sir *John Friend* did propose it; says he, Do not let us propose more than we can bring.

Mr. Speaker. Then you say you had a second Meeting.

Captain Porter. When we agreed upon this Business in *Leadenball-street*, Captain *Charnock* desired another Meeting, to know if we continued in our Resolution; and the next Meeting was at Mrs. *Mountjoy's*; I think then my Lord *Montgomery* was not there, nor Mr. *Goodman*; but there was my Lord *Aylesbury*, Sir *John Fenwick*, Sir *John Friend*, Sir *William Perkins*, Mr. *Charnock*, and my self.

Mr. Speaker. How long after?

Captain Porter. About eight or ten Days, to the best of my Remembrance.

Mr. Speaker. What was said at that Meeting?

Captain Porter. The second Meeting was to agree to the same Thing: We desired *Charnock* to go as soon as possible to acquaint King *James*, that the sooner he came that Year, the better.

Mr. Speaker. Did Sir *John Fenwick* consent and agree, at the second Meeting, to his going into *France* to procure the Forces?

Captain Porter. Yes, Sir.

Mr. Speaker. Will you give the House an Account of any Thing else you know, relating to this Matter?

Captain Porter. That is all.

Mr. Serjeant Gould. Was you examined by the Grand-Jury, when the Bill was presented against Sir *John Fenwick*?

Captain Porter. Yes, Sir.

Mr. Serj. Gould. What Evidence did you give to them?

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Captain Porter. The very same I give now.
Mr. Speaker. Mr. Serj. Gould, what have you to say further to him?

Mr. Serj. Lovel. We would ask, whether Mr. *Cook* was at the first Meeting?

Capt. Porter. Yes, Sir, he was at both Meetings.

Mr. Serj. Lovel. Was Mr. *Goodman*, at the preferring of the Bill of Indictment at the *Old Bailey*?

Captain Porter. I saw him go in to the Jury, and he told me it was for the same Thing.

Mr. Serj. Lovel. We have some of the Jury here, and we will call them to that.

Mr. Serj. Gould. Now, if it please you, Sir, we will ask him to the Matter concerning *Clancy's* tampering with him.

Mr. Speaker. Will you give the House an Account of that Matter?

Sir *Tho. Powys*. By your Favour, I hope you will give us leave to interpose in this Matter: For I am sure in the Case of Life, and in Case where there is a Law prepared to be made subsequent to the Fact, to condemn any Man to Death, you will not only have good Evidence, but that which is legal Evidence. And I take it, that in Cases of this Nature, of a subsequent Law, the Evidence ought to be much stronger, and much fairer than when a Man is to be tried by a Law in Being. If they should offer that which was said in the great Case of my Lord of *Strafford*, (which Attainder there hath been an Act of Parliament to reverse) by a Gentleman that did then appear against my Lord of *Strafford*, That where the House proceed in a legislative Way, there needs no Evidence at all; but every Man may follow the Dictates of his own Thoughts and Conscience: ('Tis in *Rushworth's Collections*, fol. 377.) Yet, I hope, you will be of another Opinion, and expect stronger Evidence, than if a Man was to be tried by a Law in Being. Now that which is offered now, cannot be allowed in any Court of Justice: They were going about to shew, That my Lady *Fenwick*, the Wife of the Gentleman at the Bar, that she had used some Means to take off *Goodman's* Evidence, and they would make use of that against her Husband. Now, what any Man's Wife says cannot be made use of against him, as nothing that she says or does can be made use of for him; and, by the same Rule of Justice, it cannot be made use of against him: For otherwise the Rule would be unequal, That she might be a Witness against him, but not a Witness for him; that seems so unjust, that it will not be admitted in any Court whatsoever.

Sir *Barth. Shower*. By your Votes the Prisoner is allowed Counsel, and the King's Serjeant is to produce the Evidence against the Prisoner: That Phrase of Evidence makes us believe, or at least to hope, that you will give us leave to object to that which is not so; and in this I appeal to the Knowledge of the Gentleman on the other Side, who hath had a great deal of Experience of this Kind; and I am sure, in all his Observations in the *Old Bailey*, he can't say this was ever admitted in Case of Treason, nay not in Felony, the Actions or Sayings of other Persons; and I must confess I wonder to hear him move it now.

When attempted on behalf of a close Prisoner, that was not visited by any Body, it was not admitted that the Actions of a third Person at large, should be admitted against him: There the Actions of a Wife cannot be Evidence for, nor against her Husband. It was never but in one Case, and

that for Sodomy, allowed, and that was after two or three Witnesses besides had been produced; and by the Opinions ever since, it hath been allowed not to be Law; and that for the Oeconomy, the Danger might follow in Cafes of Matrimony and Families. Now they both do concern the Acts of other Persons, and not Sir *John Fenwick*. Besides, I have one Objection more, and that is, There is no such Thing alledged in the Bill: and, with Submission, you have declared, That they should produce Evidence as to the Allegations in the Bill, and the Treasons in the Indictment; but I can't find any Order that they should produce Evidence concerning the carrying away of any Witness; and 'tis not alledged, that *Goodman* is withdrawn by Sir *John Fenwick's* Privy. As to *Porter's* being tampered with, there is no Colour of Suggestion in the Bill; so that this neither being in the Bill, nor being Evidence at Law, we must be surprized very much by it, if you should admit it.

Mr. Speaker. You hear the Exception, What do you say to it?

Mr. Serj. Gould. I think what these Gentlemen say, will receive a plain Answer. They have made an Objection without answering the subject Matter; it is an Allegation in the Bill, That *Goodman* hath withdrawn himself. Now the Use we make of this, is to let us in to give an Account of what *Goodman* hath sworn, and to entitle us to read his Examination: For, say we, he hath been tampering to stifle this Conspiracy, to take off the King's Evidence. For no Body doubts of the execrable and wicked Conspiracy; and 'tis as plain, here hath been two Witnesses to prove it; and as plain that this Indictment is found according to the late Act of Parliament, upon the Evidence of *Porter* and *Goodman*. Now to shew this Conspiracy is carrying on, we offer to prove the Tampering that hath been to take off the King's Evidence, and to lay that before the Consideration of this House; so the Use we make of it, is only preparatory to let us in to tell you what *Goodman* hath sworn, and in good Time we shall produce to you an Indictment, where, upon his very Oath, and upon the same Evidence as we offer here, another of the Traitors hath been convicted; and therefore we humbly offer it, Whether, as this Case is, we shall not be admitted to prove this Tampering?

Mr. Serj. Lovel. Before we withdraw, I beg two Words as to what is objected on the other Side, for the learned Gentleman appeals to me; and I must appeal to the Knowledge of some Members that are learned in the Law, and to all, That even in criminal Cafes, Courts are not bound up to positive Evidence, but that the Evidence of Circumstances, and some Persons to corroborate them, is admitted: And if it should be so, that nothing but positive Evidence should convict, we should have very few Convictions at the *Old Bailey*; as to Clipping and Coining, where One is convicted by positive Evidence and direct Proof, Forty are convicted and attainted by Circumstances, as Materials found about them, and putting off Counterfeit-money. Sir, I must submit to you, Whether, as the Nature of this Case is, this House will not think fit to hear all Evidence that may concern this Matter, whether Certain or Circumstantial; and the Wisdom of this House will distinguish afterwards, what they think is Material, and what is not. We do take

this to be Part of the same Conspiracy we do charge the Prisoner at the Bar with, that he might not come to condign Punishment; and therefore we pray, that let the Proceedings of other Places be what they will, that you will hear the whole Matter in this Case, whether the Evidence be positive or circumstantial.

Sir Thomas Powys. I think they mistake us when they give us such an Answer. We doubt not but there is positive Evidence and circumstantial; but we suppose this to be no Evidence at all. *Mr. Recorder* tells us true, That circumstantial Evidence is frequently made use of; but we say, That whatever my Lady *Fenwick* hath said or done, is not to be admitted as Evidence against the Prisoner at the Bar; because what she hath said by Way of Endeavour to draw off *Goodman*, is no Evidence at all to be offered against her Husband, and is not so much as circumstantial Evidence.

Sir Barthol. Shower. We do agree, If the Bill had been brought in against my Lady *Fenwick*, or against *Clancy*, this had been proper Evidence; and they did, and may deserve Punishment for it themselves: But this is no Evidence against Sir *John Fenwick*, that is here.

Mr. Serj. Lovel. We think 'tis properly before the House, even by the Order of the House it self: For in the first Place, we are to speak to the Matters contained in the Bill. One Matter is, That Sir *John Fenwick* had been tryed before now but for Reasons mentioned in the Bill; and that he delayed his Trial till such Time as *Goodman* was withdrawn; therefore what lies before us by the Direction of the House, is, That till such Time as *Goodman* was withdrawn, Sir *John Fenwick* did pretend to go on to make a Discovery, and afterwards put it off with what is charged in the Bill: But say they, What is done by my Lady *Fenwick*, is no Evidence against him. When all the Circumstances are laid before the House, what Dealings there was with Captain *Porter*, and what was said at that Time, and the Consequence presently after *Goodman's* going away, I hope it is as much Evidence as the Case will bear.

Sir Richard Temple. Sir, Desire they may withdraw.

Accordingly they withdrew.

Sir Richard Temple. I think it much concerns the Honour of the House, when a Prisoner is at the Bar, that he should be allowed the Right of an *Englishman*; what you do here, may be a Precedent in after Ages: You are told what is offered as Evidence here is admitted in no Court, and the Answer that is made to it, is of no Force at all; they tell you there is no Allegations in your Bill, That Sir *John Fenwick* had any Hand in his withdrawing, nor nothing in the Indictment of it, and for that Reason the Evidence seems improper; and if it was, this would be no Evidence at all; for the Oaths of other Persons is no Evidence against the Prisoner, to make him guilty of any Thing.

Lord Cutts. I think 'tis agreed already, That the Counsel for the Prisoner should not meddle with the Authority and Jurisdiction of this House: For if we are to be ty'd up to all the Forms and Niceties observed in inferior Courts, then to what End is the Prisoner brought here? I think, Evidence ought to be admitted, that may clear every Man's Conscience, that this Bill against Sir *John Fenwick* ought to pass.

Mr.

Mr. J. How. A Gentleman said, We are not ty'd to the Forms of inferior Courts; but tho' we are not ty'd to the Forms of inferior Courts, we are ty'd to that which was the Ground of them, and that is, right Reason and true Sense: They have alledged that he was indicted; no Body doubts it. That Goodman is withdrawn, no Body doubts it. But what is that to Sir John Fenwick? It might be with a Design for Good or Evil to Sir John Fenwick. My Lord Jefferies said, at my Lord Delamere's Trial, (as I am informed) That one Witness, with good Circumstances, was enough to convict a Man of High-Treason. And I am told, it was told him then, that if they ever met him in the House of Lords, he should answer it with his Head. I desire you would ask Captain Porter, when he comes in, Whether this was discoursed before Dinner, at Dinner, or after Dinner? And whether he knows that Goodman heard this or no?

Mr. Chancel. of the Exchequer. There seems a particular Shyness to know the Truth of this Matter, I mean in the Counsel t'other Day: The Gentleman says, That Goodman might be withdrawn to the Prejudice of Sir John Fenwick, as well as for his Good: I desire you will not let the Government be so stigmatized. You have given leave to the Counsel to examine to any Thing that may be added to the Bill; for upon a Commitment, I can move you to put any Thing that shall be thought reasonable.

Sir Thomas Dyke. It may be a reasonable Thing to enquire why Goodman is withdrawn? But the Question is, Whether this be a proper Time? The House is not ty'd to the common Forms, but they are ty'd to the common Rules of Equity: And the Question is, Whether the House will permit any Person to suffer by the Acts of another?

Mr. Sol. Gen.* It is discretionary, whether you will determine that this is Evidence now, or after you have heard it. I can't tell at whose Trial it has, but I won't enter upon the Legality of the Thing; 'tis one Thing when a Man is to be tried by a Jury, and another Thing when he is to be tried before Judges. A Jury may be so sway'd and possessed by it, that it may not be fit for them to hear it: But look into the Court of Chancery; and there Depositions, if one Side say they are Evidence, and the other Side say they are not, are every Day admitted; and the Rule is, That it is sooner dispatched by hearing of it than not. You do not sit here as a Jury, but as Judges; and will consider how far the Actions of a Wife shall concern her Husband; you will do the Prisoner Right, and your selves Right, if you will hear them.

Sir Francis Winnington. The Question is, Whether the King's Counsel —

Mr. Speaker. Let me set you right; they are not here as King's Counsel.

Sir Francis Winnington. Very well: But in this House you are the Judges and Jury too. The Evidence that is opened, is to induce you to believe that he is guilty; and the Gentleman that spake last will not allow it to be a legal Evidence. Then the Question is, Whether you, being Judges of the Fact as well as of the Law, should be afraid to be induced to believe a Fact, by that which is not legal Evidence? Suppose my Lady Fenwick had had the Design, and had told her

Husband what she intended to do, and he should have said, he scorn'd it: This is possible, if you go to supposing; and that he might apprehend it would do him a Mischief. Now it can be to no purpose to hear this Evidence, unless it be to satisfy the House, in order to attain the Prisoner. No, but say they, Let us hear, and we will judge afterwards: Why so? It can't affect the Prisoner: And if any Person hereafter have a Mind to have my Lady Fenwick punished, they may examine it.

Mr. Sloane. The Gentleman that spake last hath made one Supposal; let me make another. He supposes, That it may appear by the Evidence, upon the Examination of Witnesses, that what my Lady Fenwick or Clancy did, was contrary to the Direction of Sir John Fenwick: If the Evidence happen to be so, 'tis nothing. But we may suppose again, Suppose it happens, that it appears by the Evidence, that it was for the Benefit of Sir John Fenwick to the greatest Degree, to get away one of the Witnesses; & *cui bono*, is the strongest Presumption to me. I do allow, in Westminster-Hall, that a Woman should not be a Witness for or against her Husband; but if she be directed by her Husband, *Qui facit per alium, facit per se*; you do not alledge all the Evidence in the Indictment, that runs in general; if the Evidence differs as to Time and Place, ye may find him guilty of the Indictment.

Lord Norryes. Because I would not willingly go upon Suppositions, I desire the Clerk may read the Question that you have passed the last Day, to examining Evidence.

Which was accordingly read.

Now I desire to know, Whether this be Treason within the Indictment, or any of the Allegations of the Bill: Otherwise, I think you have tied your selves up by that Rule.

Mr. Pelbam. I did expect the Gentleman that spake lately would have cleared the Matter. He gave you a Distinction between the Proceedings of Westminster-Hall and the Court of Chancery. I am ignorant of both. I desire to know, Whether we are to go here by the Proceedings of Westminster-Hall, or the Court of Chancery. If we are not tied by these Rules, we may let our selves into any Evidence that will induce us to believe him guilty or not guilty. If we are tied to those Rules that are observed in all Courts of Justice, where Trials of Treason are had, this can be of no Validity: So I desire to know, Whether we are to go according to the Proceedings of those Courts, or whether we may proceed as the Court of Chancery.

Sir Tho. Littleton. The honourable Member that spake last, desires to know, Whether we are bound by the Rules in Westminster-Hall, in their Proceedings, or not. I believe it would have been to very little Purpose to have thought of this Bill, if those Courts could have convicted him. I believe if the Counsel had tied you to the Proceedings of Westminster-Hall, and therefore that you could not have proceeded on this Bill, you would have taken Notice of them, and reprimanded them for saying so. I know not what to say to the Proceedings of Chancery in this Case; but I suppose upon this Trial, you will inform your selves by the best Methods you can; and every Man, according to his Judgment, be for or against the

the Bill. If upon what I hear, I am of Opinion he is notoriously guilty, I shall freely pass the Bill. If I do so much as doubt that he is guilty, according to the old Rule, *Quod dubitas ne feceris*, I shall not be for it; and in order to this I am for hearing every body that comes before us. It is said, that possibly *Goodman* is withdrawn to Sir *John Fenwick's* Prejudice; I would be glad to hear that; if so, I shall have the worse Opinion of the Bill. They say, 'tis not alledged in the Bill, concerning Captain *Porter's* being tamper'd with; but 'tis alledged, That *Goodman* is withdrawn, and that 'tis not alledged, that Sir *John Fenwick* was privy to it; but it may weigh to Gentlemen's Judgments, how he comes to be withdrawn. They that tamper with one Witness may be thought like to tamper with another. They tell you, That the Evidence of a Man's Wife will not weigh against her Husband. It may be so in point of Law; but if you think your selves bound up to the strict Rules of Law, dispose of your Bill presently.

Sir *Will. Coryton*. You have been pleas'd to give Leave to the King's Counsel to prove Matters against Sir *John Fenwick*. You have heard Captain *Porter* upon the Fact. If they had opened the Matters, that Sir *John Fenwick* was instrumental to convey *Goodman* away, I should have been willing to have heard it: But they opened it, That my Lady *Fenwick* was instrumental in Conveying away *Goodman*; and this ought in no sort to be admitted. An honourable Gentleman of the Long Robe, made a Difference in the Proceedings between the Court of *Chancery*, and the Courts of *Westminster-Hall*; but I would fain know, if a Fact was stated, Whether my Lord Keeper could determine the Matter before a Commission went to prove it. 'Tis true, we are not tied to the Forms of Law, but we are tied to the Forms of Justice. I know no Case where a Wife is admitted to be a Witness for or against her Husband. In *Brown's* Case indeed, who took a Woman away, and forced her to marry him; the Question was, Whether she should be admitted? And in that Case she was admitted as a Witness, because the Necessity of the Thing required it; and there was no other Way to prove, whether he had her Consent or not. Another Case there was of my Lord *Castlehaven*, where from the Nature of the Thing it was admitted; for it was impossible there should be any other Proof of it. But if my Lady *Fenwick* be guilty of this Matter, it must only by way of Inference affect Sir *John Fenwick*. They tell you, they insist upon it as an Indictment; then it comes to be a Matter of Consequence; and therefore since the Matter hath been fully stated to the House, as to what they would prove, I think we may now give our Judgment upon it.

Mr. *Boscawen*. You are here in your Legislative Power, and are no more tied to the Rules of Law in Examining of Witnesses, than you are in giving of Judgment; for you can give those Punishments that never are given in *Westminster-Hall*. I am of Opinion, that my Lady *Fenwick* cannot be examined for or against her Husband; but if he send her to solicit for him, it shall have some Weight with me. Those that don't believe it from what he says, may give their Judgment accordingly: I desire to know of this Gentleman, if I don't believe it, whether I can give Judgment against him? I believe a Man's Conscience ought to go with his Judgment.

Mr. *Speaker*. I will read the Question. That Captain *Porter* be examined to the Attempt of taking off his Testimony as to the late Conspiracy.

Which Question being put, it passed in the Affirmative.

Mr. *Harley*. I suppose you will let the Counsel of both Sides have first done with their Questions, and then there will be some Questions proposed to you.

Mr. *J. Howe*. They tell you how that Sir *John Fenwick* was indicted, and that *Goodman* is withdrawn; but there is one Thing the Counsel of both Sides slip over, and that is, Sir *John Fenwick* hath given in false Informations; it looks as if they were agreed on both Sides in that Matter: I desire the King's Counsel may be asked, Whether they have any Evidence of that Matter?

Col. *Crawford*. Since I am mention'd in that Paper—

Adm. *Ruffel*. I believe though that Gentleman was afraid that Matter would have been passed over, yet that the Gentlemen of this House that are therein named will take Care, for their own Vindication, That that Matter should not be slipped over; I suppose the proper Time for that is, when the Evidence is over: I assure you, if no Body else will, I will.

Then Sir John Fenwick, and the Counsel of both Sides, and Captain Porter, were brought in.

Mr. *Speaker*. Sir *Tho. Powys*, the House hath considered of your Exception to the Testimony of Captain *Porter*, as to the Point he was to be examined to, and they are agreed, That 'tis fit that all the Evidence should be laid before them, and they can judge afterwards, whether it be material or fit to be allowed, or not. Therefore, Captain *Porter*, pray do you give the House an Account at large of what Attempts have been made upon you, at any Time, to draw you off from your Testimony, with respect to the late Conspiracy.

Capt. *Porter*. I had a Meeting with one *Clancy*, first in *Mitre-Court*, at

and afterwards at the *King's-Head Tavern* by the Play-house: At those Meetings he propos'd to give me 300 Guineas to bear my Charges to *France*, and to send me a Bill for 300 more; and likewise that I should be allowed 300 l. a Year.—

Mr. *Speaker*. How long had you been acquainted before?

Capt. *Porter*. Several Years.

Mr. *Speaker*. Did he tell you who he came from?

Capt. *Porter*. He said, he had been with — *Fenwick*, who desired him to make this Proposal to me.

Mr. *Speaker*. How often had you Meetings with him.

Capt. *Porter*. About seven or eight Times.

Mr. *Speaker*. What Satisfaction did he give you, that Sir *John Fenwick* would perform the Agreement?

Capt. *Porter*. He told me, my Lady *Fenwick*, and my Lady *Montgomery*, should meet and confirm every Thing that Night. The Day before I was to go, I met with my Lady *Fenwick*, who told me, my Lady *Montgomery* could not come, because one of her Children was fallen sick.

Mr.

Mr. Speaker. What Satisfaction did she give you, that Sir John Fenwick would perform what Clancy had proposed?

Capt. Porter. She said, what Clancy had proposed should certainly be made good.

Mr. Serj. Gould. Did you receive any Thing in part, in pursuance of this Agreement?

Capt. Porter. I received 300 Guineas of Clancy, and he promised to me a Bill of 300 more, which was deposited by ——— Fenwick in his Hands, to be sent after me into France.

Mr. Serj. Gould. Pray what Letter was that he brought you?

Capt. Porter. He brought me a Letter, and said it was writ by Sir John Fenwick to King James on my behalf.

Mr. Speaker. Did he deliver that to you?

Capt. Porter. No; he delivered it to the Gentleman that was to go with me, one Captain Donelagh.

Mr. Speaker. Why did you not take that Letter into your own Hands?

Capt. Porter. I had it, and read it, before it was seal'd up.

Mr. Serj. Gould. Do you remember the Contents of it?

Capt. Porter. As much as I remember was, He desired his Majesty, by reason that my going away was to save my Lord Aylesbury, and my Lord Montgomery, &c. to pardon what I have done.

Mr. Serj. Lovel. Who subscribed it?

Capt. Porter. It was not Sir John Fenwick's Name, but they told me, King James would know who it came from.

Mr. Serj. Lovel. How did you proceed after the Meeting with my Lady Fenwick?

Capt. Porter. The next Night after that he had paid me my Money, and shewed me the Bill, and I was to go away the next Day after; They said, the Boat was provided.

Mr. Serj. Lovel. Can you tell whether the Boat was provided?

Capt. Porter. They were taken up presently after.

Mr. Serj. Gould. We will now produce a Record to confirm the Evidence that he hath given you: This Person hath been convicted for this Tampering.

Accordingly the Record for Clancy's Conviction was produced.

Sir Tho. Powys. I desire to know, Whether they offer this as Evidence against Sir John Fenwick?

Mr. Speaker. They offer to prove, That this very Person hath been tampered with, to take off his Testimony; and they leave it then to the House to judge, who is most likely to be guilty of Goodman's Withdrawing. They begin to shew you, there hath been an Attempt to take off this Person's Testimony; you have heard the Person himself to it already: So now they offer to read the Conviction of Clancy to this Matter.

The Record of Clancy's Conviction was read.

Mr. Serj. Lovel. We will prove the like Solicitation hath been made by Mr. Dighton, who is the Solicitor for the Prisoner at the Bar.

Mr. Speaker. What is your Witness's Name?

Mr. Serj. Lovel. Thomas Roe: If you please, Sir, to ask him what Endeavours have been used

by Mr. Dighton, to make Use of him, that Goodman might withdraw himself.

Mr. Speaker. Mr. Roe, You are required to give this House an Account of what hath passed between Mr. Dighton and you, in order to take off the Testimony of Mr. Goodman.

Mr. Roe. About the middle of September last, I had Occasion to go to Mr. Dighton, to enquire, Whether the Commissioners of the Land-Tax in Surrey sate; for I knew he was concerned in some Affairs for that County: He told me, he did not positively know, but would speedily enquire. At the same Time he took Occasion to tell me, he knew it was in my Power to do Sir John Fenwick Service. I asked him, What he meant by it? Says he, I know you know Goodman well, and it will be the better for you if you will tell me: I asked him, What he meant by that Way of talking? He desired I would meet him some other Time, and I should know further of his Mind. Accordingly I did meet Mr. Dighton: Says he, you know Goodman well, and if you can say any Thing that can discredit Goodman's Testimony, you shall have 100*l.* a Year settled upon you for your Life. Says I, Sir, I do know him well: Says he, Did you never hear him talk of Poisoning the Duke of N. and Robbing on the Highway, and that he is concerned with Clippers. Says I, I have heard him talk of those Matters several Times; but you can't think I will be a Witness, and expose my self, and disparage People, till I know for what. Says he, For that you shall be satisfied; you shall have 100*l.* a Year settled upon you, provided you can discredit Goodman's Testimony, that Sir John Fenwick may come off, and it will be done by a Friend of yours.

We accordingly agreed to meet the next Day at a Coffee-House in the City, and appointed a Friend to be there; but Mr. Dighton did not meet at the Time; and the Reason he told me was, because Sir John Fenwick was that Day to be arraigned. As soon as Mr. Dighton had made this Proposal, I told Mr. Goodman of it, and he advised me to go on with him, and see if I could get any Offer under his Hand: I told him he had appointed to meet me in the City, and a Friend to be there to hear me. I went, and told Mr. Dighton, but Mr. Goodman would not be satisfied with that, but said I must go to the Archbishop, and tell him what passed; so I did go and tell the Archbishop what I have told you now.

Mr. Speaker. Had you any Meeting after that?

Mr. Roe. Yes, on the 19th of September, and then he made great Asseverations, that what he said should be performed; and that I should not only oblige Sir John Fenwick, but my Lord Montgomery; and that Goodman was a lost Man by being become a common Evidence; and that it would not be in his Power to oblige any Man, my Lady Dutchess having discharged him of his Employ, and he would not be in a Condition to do further for me; and says he, whatever you would have gotten by serving my Lady Dutchess in her Concerns shall be made up over and above this 100*l.* a Year that I have promised.

Mr. Serj. Gould. I desire he may be asked, Whether Goodman did not acquaint him, that a Sister of Sir John Fenwick's had been with him, and upon what Occasion?

Mr. Roe. About the Time of the Preferring of the Bill against Sir John Fenwick I saw Goodman at Hick's-Hall; and a little after he told me, that

a Sister of Sir *John Fenwick's* had come to him, and made some Proposals to him, and I acquainted the Duke of *Sbrensbury's* Deputy, Mr. *Vernon*, with it.

Mr. *Speaker*. Did you pursue this Discourse with Mr. *Dighton*, so as to come to any positive Agreement?

Mr. *Roe*. No otherwise than what I told you; my Design was to have Mr. *Dighton* to have given it me in Writing, or else for him to have said it before some other Man; but I don't know any thing whereby I could have discredited Mr. *Goodman*, if he would have done it.

Mr. *Serj. Gould*. You observe, Sir, that one of the Witnesses whose Name is subscribed to the Bill of Indictment, is withdrawn: Now to give you an Account that he is withdrawn, I desire the King's Proclamation may be read.

Members. No, no.

Mr. *Serj. Lovel*. We have Mr. *Goodman's* Examination under the Hand of Mr. *Vernon*; we pray it may be read.

Sir *Tho. Powys*. Mr. *Speaker*, I desire to be spared a Word to this Matter: I take this to be a great Point, not only as it concerns the Life of this Person, but as it may be a Matter of Example in all Times hereafter; that which they would offer is something that Mr. *Goodman* hath sworn when he was examined by Mr. *Vernon*; Sir *John Fenwick* not being present or privy, and no Opportunity given to cross-examine the Person; and I conceive that cannot be offered as Evidence; for if that should be allowed for Evidence, then what is sworn behind a Man's Back, in any Case whatsoever, may as well be produced as Evidence against him; and they know, that in a Case of the Value of Five Shillings, no Depositions or Examinations of any Man can be made use of; and I am sure they will not say, that the Depositions taken between other Persons, where a Man is not a Party, can be made use of as Evidence against him; and if not admitted where Property is concerned in the lowest Degree, I hope you will never admit it in this great Place, from whence inferior Courts (as to Justice) take their Measures.

Sir *Bartholomew Shower*. Mr. *Speaker*, I desire you would spare me a Word of the same Side. I humbly oppose the Reading of this Examination, as not agreeable to the Rules of Practice and Evidence, and that which is wholly new; and this in civil Causes can't possibly be done: No Deposition of a Person can be read, though beyond Sea, unless in Cases where the Party it is to be read against was privy to the Examination, and might have cross-examined him, or examined to his Credit, if he thought fit; it was never pretended, Depositions could be read upon other Circumstances. But in criminal Cases, I appeal to the Gentlemen on the other Side, who know the Proceedings in the *Old Bailey* very well, it was never admitted: Nay, in an Appeal of Murder, if Depositions be taken before the Coroner, and there be an Examination of Witnesses upon the Indictment, though the Appeal be for the same Fact, and in order to bring the Person to the same Punishment; yet, in that Case, those Depositions can't be read, because 'tis another Suit: But it was never attempted in any Court of Justice, that the Examination of Witnesses behind a Man's Back, could be read in any Place whatsoever. Our Law requires Persons to appear, and give their Testimony *viva voce*; and we see that their Testimony

appears credible, or not, by their very Countenances, and the Manner of their Delivery: and their Falsity may sometimes be discovered by Questions that the Party may ask them, and by examining them to particular Circumstances, which may lay open the Falsity of a well-laid Scheme; which otherwise, as he himself had put it together, might have looked well at first; and this we are deprived of, if this Examination should be admitted to be read.

Now, though the Practice of other Courts does not oblige this House, yet we know you will consider the Rules of Justice; 'tis but Justice in criminal Cases, especially as our Constitution is, that the Person shall see his Accuser. A Man may swear a Deposition reduced into Writing, whose Conscience perhaps would not let him publicly accuse the Prisoner Face to Face: Experience hath shewed it often, that several that will calumniate another privately, will not justify the same in open Court of Justice. What *Goodman* is, 'tis not proper for us at present to give an Account of, but we oppose it at present, for that we were not present, nor privy, nor could have cross-examined him; 'tis only an Information before a private Justice; for if not so, we know not what Authority he had to examine him; and then if so, Mr. Recorder knows, that in the *Old Bailey*, if *Goodman* had died it had not been Evidence; in case he had been sick, or withdrawn without our Privy, they could not have read it; nay, if he were withdrawn by our Privy, it could not be read: 'Tis true, the Inciting him to withdraw had been punishable in another Man, but could not have been read to have convicted the Party; and since this Examination could never have been read there; and if it must be unjust, and hath not been practised, I hope you will not do it now.

Mr. *Speaker*. Mr. *Serjeant Gould*, What do you say to it?

Mr. *Serj. Gould*. I observe this Gentleman's Objection, why this Examination should not be read; and, under Favour, we think we are regular, as this Case is, to have his Deposition read. 'Tis true, as long as the Witnesses can be produced in all Courts, and Practice of the Law, you shall not read his Examination, or what is taken before a Justice of Peace: But that is not our Case; it is now fully proved before you, that he is withdrawn: and it is fully before you, that he hath given Evidence for the King, and hath been examined; and this is an extraordinary Case, and that is the Reason we are in Parliament: He hath sworn this Matter, and before a proper Officer; why then shall not his Evidence be read and allowed when he is wilfully withdrawn, and we say, by the Contrivance of the Prisoner at the Bar? And the Thing speaks it self. Now, with Submission, I take it to be every Day's Practice, that where an Evidence is dead, his Deposition shall be read. It appears to you, that there was to have been a Trial, but the Witness is withdrawn; and it appears plainly that he hath been tampering. The Evidence is full in the Case as to *Porter*; and we have produced a Record of Conviction, that does confirm it: Now this is such a Practice, we come into Parliament to have it remedied; for otherwise Men shall commit Treason, and by their Contrivance and Art, the Witnesses shall be drawn away, and the Prisoner shall not be brought to condign Punishment. Here is the Record in which he gave Evidence, and he is withdrawn: and there-

therefore I hope, in this Case, we shall be admitted to read his Deposition: For I deny what the Gentleman says to be Practice; and Mr. Recorder can give you a better Account, who knows more of the Practice of it, That if a Witness is dead, they may read his Depositions. We are here before you in Parliament; and by the same Reasons that others have been tampered with, this Witness may be presumed to be tampered with; and therefore we are in your Judgment, Whether in this Case his Depositions shall not be read.

Mr. S. Lovel. 'Tis objected, on the other Side, That this Evidence ought not to be offered; and for what Reason? Because, say they, a Jury ought to go *secundum allegata & probata*; and what is not strictly Evidence by Law, you are not to take notice of; but in criminal Cases (which is this Case) where Persons do stand upon their Lives, accused for Crimes, if it appears to the Court, that the Prisoner hath, by fraudulent and indirect Means, procured a Person, that hath given Information against him to a proper Magistrate, to withdraw himself, so that he can't give Evidence as regularly as they used to do; in that Case his Information hath been read; which, I suppose, with humble Submission, is this Case; but I suppose we are not here tied up to formal Evidence; but 'tis our Duty, since the House hath commanded, to lay the whole Fact before you, and you are Judges what is material, and what is not material.

Sir Thomas Powys. 'Please, Sir, to spare me a little; for sure this is no small Matter. I did expect that they, if they intended to have supported this Evidence, would have mentioned some Author, some Case, or some Precedent, where this has been before: — But he makes such a Distinction, I am mightily surprized at; for Mr. Recorder cites no one Instance, that ever he saw such a Thing in his Life; nor cites one Book that hath such Authority; but he gives you a Distinction, whether it be of his Side or ours, I must submit to you; for he seems to agree, that in Cases of Property, such Evidence is not allowed; but in Cases of Life, in which we ought to be more tender, he says, 'tis to be allowed. Sure if it be not Evidence where five Shillings only may be at Stake, I submit it to you, whether it ought to be admitted in the Case of Life? For my Part, I know nothing of it, if it be a Rule; but I always thought the Evidence ought to be more clear and full in the Case of Life, than in the Case of Property; but Mr. Recorder turns it upon us, and says, though it is not Evidence in Case where Property is concerned, yet 'tis Evidence in Case of Life: But I desire he will shew any one Lawyer in England, that ever said it, but himself.

Sir Bartholomew Shower. I answer to what Mr. Serjeant Gould says: That this is an extraordinary Case, I will not pretend to say any thing, you are the proper Judges of that; we now oppose it in respect of the Rules of Justice. As to Mr. Recorder's Distinction between civil and criminal Causes; he hath admitted, that in civil Causes it would not be allowed; and I hope you will be of Opinion, that it ought not to be admitted in criminal. The Jury must go *secundum allegata & probata*. I desire to know what other Rules a Jury hath in criminal Cases? But they say, that a Juryman hath not as much upon his Oath in trying

a Prisoner for his Life, as in trying an Action of Trespas. Is not the Oath, *You shall well and truly try, &c. according to the Evidence you have heard?* Now, I would know whether the Form of the Oath, which the Wisdom of our Ancestors hath thought fit to use for 1000 Years past, does not direct what shall be Evidence? Evidence of *Prima Facies* must be Evidence of living Persons: I am speaking for the Life of a Man, and for maintaining the Rules of Law, which I hope shall continue for ever: And that is, that the Examination of a Person that is absent, shall not be red to supply his Testimony. What you shall think fit to do here, we must submit to; but that 'tis allowed below, we must deny.

Mr. Recorder. Sir, I do, with humble Submission, stand to what I said: As to the Definition of *Allegata & Probata*, in Matter of Property, we agree with them; but as to *Allegata & Probata*, in Matters Criminal, we must differ with them: I did say it before, and do say it again, with Submission, That in many Cases criminal, there need no positive Evidence at all; and yet the Jury, according to *Allegata & Probata*, in that Case, may convict a Criminal. And I do say, with Submission, that where there is no positive Proof at all; yet in that Case, many Criminals are, and still will be convicted. I did instance before in the Case of Clipping and Coining, which are Matters so secretly practised, as 'tis very rare, there can be any positive Witness to prove the Fact: What is then the Method? Why, we go by Circumstances, by Information of other Persons, by Tools, and other Instruments that are found; and tho' no Body ever saw them do the Thing, yet they are convicted. We do not offer this Evidence to be as concluding Evidence, as if *Goodman* was here; but a corroborating Evidence of what Captain *Porter* hath said. If it did wholly depend upon this Evidence, it may be it might have no great Weight; but since there is other Evidence *viva voce*, and since you have been pleased to order us to lay before you all the Evidence, we humbly offer it to you, and pray it may be read.

Mr. Manley. I humbly pray they may withdraw.

Mr. Speaker. If you please to withdraw; but first I am required to ask, if on both Sides you insist upon this Point?

And the Counsel for both Sides declared, they insisted on it;

And then withdrew.

Mr. Manley. I should not have presumed to have given you this Trouble of their withdrawing, but that a Thing is insisted on by the Counsel for the Bill, which I think is of the greatest Consequence to all the Freemen of England. 'Tis true, the Rules of *Westminster-Hall* are not binding to the Legislative Power; but I would not have the Legislative Power to be governed by the private Sense of any Man whatsoever, but by those Rules that are the Rules of Justice and common Equity. God forbid that we should, upon Suppositions, suppose our selves out of all the Rights of the Law! I never heard any Gentleman of the Long Robe, before the learned Serjeant at the Bar, assert, that an Examination before a Justice of the Peace could be read against a Man for his Life. 'Tis known to all that have looked into the *A B C* of the Law, that it was never practis'd. 'Tis true, in Equity, Depositions may be read, because

they are taken by the Consent of all Parties ; and 'tis as well a Deposition of one Side, as of the other, and the Witnesses may be cross-examin'd : But that is nothing to this Purpose.

Mr. *Sloane*. I believe I may save you a great deal of Trouble in this Matter ; for those Gentlemen from the Bar that made Objections, spake without Book, but I speak by Book ; (*having my Lord Chief-Justice Hales's Pleas of the Crown in his Hand.*) No less a Man than my Lord Chief-Justice *Hales* (and I think he was past his *A B C* of the Law ; I know not how far this Gentleman is advanced) in his Pleas of the Crown ; in that Part where he shews what is Evidence to the Petit-Jury, he says :

First, By the Statute 1 and 2 *Phil. and Mary*, c. 13. and 2, and 3 *Phil. and Mary*, c. 12. the Justice hath Power to examine the Offender, and Informer ; and so he goes on in several Particulars : And then, 5. He says, these Examinations, if the Party be dead or absent, may be given in Evidence. I must allow, such an Examination not of the same Authority, as if the Witness was present it would be, because he can't be cross-examin'd ; but still it must be of some Weight, and it must be read : But in this Case, 'tis of greater Weight than in that which my Lord Chief-Justice puts ; for he says, it would be Evidence, if the Party was dead ; or if he was withdrawn without the Consent of the Party against whom he is a Witness, and that comes to the Case in Chancery, every Day practised ; That if any Person gets my Deeds and Evidences into his Hands, and he hath imbezzel'd the Deeds, they shall be presumed to say what I alledged, because 'tis his Fault he does not produce them. So this Withdrawing by the Infatigation of Sir *John Fenwick*, is a strong Presumption, that what he swears against Sir *John Fenwick*, is true.

Sir *Richard Temple*. No Man can give Evidence of any Depositions, nor was it ever admitted to be Evidence either upon the Party's Death or Absence ; and I would not have that Doctrine pass, that we are not tied to the Rules of Law. My Lord Chief-Justice *Vaughan*, when he was of this House, told us, we were not bound to the Forms of Law, but we were tied to the Rules of Law ; and if you are not, how will you judge of this Crime ? How will you judge it to be Treason in the worst of Times ? In the Trial of my Lord *Mordaunt*, who was try'd before the High Court of Justice, they would not allow of this Piece of Evidence, though they had thrown aside Juries. We are tied by the Rules of Law, or we are tied by nothing.

Sir *Thomas Littleton*. The worthy Member here tells us, we are tied by the Rules of Law, or we are tied by nothing. I hope he does not intend to put the Pun upon us, that was by a noble Lord, You are tied by Rules or no Rules ; if you are tied by no Rules, what Rules are you tied by ? I think you may act by Rules, and yet admit of this Evidence. I told you before, I should not reckon my self so tied by the Rules of Law, but that I would hear all Evidence that should be offered : And I do not think 'tis for our Honour to stifle any thing that may bring out the Truth. A worthy Lawyer said, Let them produce one Evidence that is of the Recorder's Opinion ; and a Member hath produced the Opinion of my Lord Chief-Justice *Hales* : And I hope

we shall not be debar'd from the Satisfaction of hearing what they might hear in the Courts below. Here are two Witnesses that have been examin'd against him, which the Jury did believe that found the Bill. If we cannot have these two Witnesses, let us have as much as we can. We have heard what one said : We have an Opportunity of hearing what the other said. No, says the Gentlemen, we do not desire to be informed ; but I believe it must come to that at last.

Sir *Richard Temple*. The Gentleman that spake last, insinuated, as if I had dropped something he could not understand. Give me leave to tell you, there was the Courts of the Presidents of *Wales* ; when they urged Rules of Law, then they were a Court of Equity ; and when they argued from Points of Equity, then they were tied up by the Rules of Law ; and so gave Judgment neither according to the one nor the other ; and so it was taken away by Act of Parliament.

Mr. *Boscawen*. I have seen it my self, that a Justice of Peace has been examined himself, as to Depositions he hath taken ; and I take it to be an ordinary Examination.

Mr. *Harcourt*. Sir, I must say, if you were to pick all the Absurdities out of the Trials in the last Reign, you could not pick out more than has been endeavour'd by the King's Counsel to be impos'd upon you this Day : This does in some Measure convince me of what was said by another Gentleman the other Day, that it is much better to be tried by an Assembly of 400 Gentlemen, than at the *Old-Bailey*. There was a Quotation of a learned Author ; and the Gentleman read you what was Evidence, and what was not : And the Conclusion was, That these Depositions, if the Party was dead or absent, is Evidence. Why Sir, if these Depositions be Evidence if the Party be absent, then what are we doing of all this Day ? If that be a certain Rule, there is no manner of need of applying to this extraordinary Way ; but if you please to enter into the Consideration of that Point (I am neither afraid, nor unwilling to be informed,) If Gentlemen will take it *De bene esse*, for better for worse, with all my Heart ; but if you enter into that Matter, I will freely tell you my Opinion of it.

Sir *Edward Seymour*. It hath been made a Question, how far you are bound to pursue the Rules of Law ? I suppose it is no new Thing I am going to say, That Bills of Attainder, and Judgments of Attainder, have been reversed for no other Reason, but because the Parliament have not proceeded according to the Rules of Law : I will not say, you are bound by the Rules of inferior Courts, but you must be bound by the Rules of Parliament, and by the Proceedings and Practice of Parliaments, which is the Law of Parliament. And then I would know, whether this House did admit of an Affidavit for Evidence ? And the Reason is this, because by that you make this, which is the superior Court, lame, without the Assistance of an inferior Court.

Mr. *Geo. Rodney Bridges*. The Matter before you is, whether Sir *John Fenwick* be guilty, in your Judgments, of this Conspiracy ? And if so, I cannot imagine why you should not take all the Information that is offer'd to you ; and why not hear all the Circumstances of it : If you do not read this Affidavit, I do not say but 'tis a Kindness to Sir

John

John Fenwick; but what Kindness will it be to the Country and Government?

Mr. *James Montagu*. I hope you will not spend much more Time about this, because the Law is so plain: If there be any thing in the Objection, 'tis this, That if it be Evidence, the other Courts below may proceed upon it: but that I take to be no Objection neither; for though it be Evidence, there are not two Witnesses; and the Courts below require two Witnesses, though there be other Evidence, and one Witness besides; so that you can't try him without two Witnesses: It would be admitted in the Case of Felony, and there two Witnesses are not required expressly by the Law. And I can tell you, upon my Reputation, I have seen it done several times.

The learned Gentleman tells you, my Lord Chief-Justice *Hale's* Opinion is so, and that is grounded upon an Act of Parliament; and I think that is of greater Authority than any Judge; and therefore I think that Objection will vanish. He says, you have no Authority to receive Affidavits; but sure we must take Notice of Acts of Parliament; and if that requires Depositions to be taken, and to be Evidence against Criminals, we ought to take notice of it; so that what the Law makes to be Evidence will be good in this Place.

Mr. *Harley*. I look upon this Matter under your Debates to be of the greatest Consequence to the Lives of the Subjects of *England*, that possibly can come before you: Gentlemen have given you several Reasons for reading these Depositions; one, that it was my Lord Chief-Justice *Hales's* Opinion; another, that there is an Act of Parliament for it: Now, I think, it would be proper to join Issue in these two Points: If any Act of Parliament can be produced for this, then the Debate will be at an end; but if there be an Act positive in Fact against it, then I hope you will not receive it: And if my Lord Chief-Justice *Hales's* Book have not one Word relating to this, then I hope that will be no Argument. He begins his Chapter of Evidence, and says, that the Evidence to the Jury, in Cases of Treason, must be two Witnesses; and then comes to the Cases of Felony: But is that any Debate before us? And he tells you, that Informations might be taken of the Person himself, but that was not by the Common-Law, but was allowed of by particular Acts of Parliament; and then tells you, that his Information, and that Depositions before the Justice, were to be admitted (but he was to be by:) But is this any thing to lead you? Have they brought any Statute that tells you, there must be two Witnesses in this Case? If you will take notice of a Statute, you must take notice of a Statute that is in Point. If any Man suffers by one Witness, I believe all the World must say, he suffers unjustly: I think 'tis of the greatest Consequence to admit of Affidavits. Here it is, that the Boundaries are established for the Lives and Liberties of Mankind: And this is an Observation that is found in History, that those that have broke their Bounds down, it hath returned upon them to their Prejudice.

Sir *Robert Richard*. I am sure now we are not upon the Point of Reading, whether it be much or little, but upon the Point of Hearing, and that I speak to: And, I think, the Gentleman near the Table did not mistake what the Bar

said; for the Counsel on the other Side insisted positively, that neither by the Practice, nor by the Books, was a Deposition to be read as Evidence: Against that the Gentleman near the Chair produced that Book. As to the Matter of Treason, every Parliament-Man can remember, that you have made an Act, that there shall be two Witnesses in Cases of Treason. Now at the same time, it will be taken notice of, that you have taken Care in that Act, that the Proceedings of this House shall not be tied up. The Gentleman tells you of a Court that wavered between Law and Equity, and so came to nothing; and I am afraid, if we bring the House of Commons down to the Courts of *Westminster-Hall*, they will make nothing of us neither. I do not say, that this Paper shall be as strong Evidence as if *Goodman* was at the Bar; but to say, it shall weigh nothing, I can't agree neither: I agree also, to make a common Practice of reading Affidavits, will be of ill Consequence: And if you take this to be a Matter of small Consequence, I am not for reading this Affidavit. Now I aim not at Sir *John Fenwick's* Blood, but the Safety of the King and Government: And I would not refuse any Evidence in this Case, be it never so small. These Gentlemen speak against a Matter being Evidence before it is read; 'tis offered as Evidence; if it be small, or come to nothing, it is the better for the Prisoner at the Bar.

Mr. *Pelham*. I am indifferent whether I hear that Paper read, or no; but what is said by a learned Gentleman startles me: Says he, in *Westminster-Hall* they are bound to the Evidence of two Witnesses, and there this Evidence would not be proper, but here we are upon another Foot. I hope we are not here upon another Foot; I hope, though here we are not to be tied by the Chicanry of the Law, we are to be tied by the Equity and substantial Reasons of it. I desire to know, if any one can be tried for Treason upon one Witness? And if we are not tied by the Rules of Law, we may hear any Evidence whatsoever; if the King's Counsel thinks it may satisfy your Fancies, it must be received.

Lord *Cutts*. I conceive, Gentlemen, we are out in the Way of arguing; I must put you in Mind that we are, at the Bottom, only arguing against the Jurisdiction of this House; and though that Matter hath been settled before, we are told very often of the Law, and Rules of *Westminster-Hall*. In Answer to that, I must observe there are several Sorts of Laws; there is the Law of Nature, the Law of Nations, the Law of God, and there is the Legislative; and 'tis a Self-evident Maxim, not to be contradicted, That no Superiour is to be circumscribed by an Inferiour: And I would ask, if the Courts below are not inferiour to the Parliament? There is nothing can limit us, but the Law of Nature, the Law of God, and the Law of Parliaments; and though I cannot tell you very well what is the Law of Parliaments, yet no Gentleman hath said any thing upon that Subject, that is against the Question before you: The Matter was in a Course of Law; but upon an extraordinary Accident, and for extraordinary Reasons, 'tis brought before you. The Accident is the withdrawing of a Witness; the Reason is the securing of the King, the Government, your Selves, and Posterity. I don't think any Man that spoke against it, is for favouring Sir *John Fenwick*; for I think

this is the worst Way : I would appeal to every Man, what Prejudice 'tis to you to hear this Paper read? And it may be a Disadvantage to you not to hear it.

Mr. *Hovv*. There have been many Arguments given for and against the Reading of this Paper ; and if I did not take it that the Reading of this Paper could be of no use to the Judgment we are about to make, I should be for the Reading of it : Either it amounts to a Proof of High-Treason against Sir *John Fenwick*, or it signifies nothing to you. If you suppose it to weigh any thing, I can never agree to the Reading of it ; for 'tis only an Hearsay brought to convict a Man that is tried for his Life. But there is a greater Argument which weighs more than the Reason hath been urged ; and that is, your Enemies will have an Advantage, and your Government is at stake : But I don't take that to be so much an Argument of their Strength, as of their Weakness and Neglect ; however, when they prove that, I will see how far I can go. 'Tis said, that in the worst of Times, they would not convict a Man upon one Evidence. As to Sir *John Fenwick*, though he should not be a good *Englishman*, yet his Cause may be a good *Englishman's*. The Question is, whether there be more danger by the withdrawing of a Witness, and the escaping of Sir *John Fenwick*, or the withdrawing of the Witness, and the convicting of Sir *John Fenwick*? Here they let *Goodman* (such a Rake) go about, and he is gone ; and now the Fate of the Government seems to depend upon it. The Precedent on the other Side is not so much to be feared ; for I suppose future Governments will take care not to let a Witness go about the Streets again : But it may happen that certain Men, for asserting the Liberties of their Country, may be run upon by ill Governments, and Attempts made upon their Lives by false Witnesses. But the Bill of Treason provides, that no Person shall be prosecuted without two Witnesses. Now it may happen that they shall have no such Witnesses as can convince a Jury ; (I believe this Man to be as much guilty, in my own Thoughts, as I believe any Thing in the World, and yet I will condemn no Man upon my primate Fancies ;) but here are two Witnesses brought before the Grand Jury, and nothing is so easy as to get a Bill found by them (and that is all that is done by *Goodman*.) Now say they, if this should come before a Petit Jury, one of these Witnesses may not be credited ; so they will carry him away, and urge this for a Precedent, and so this Man may be convicted.

Mr. *Smith*. I think we are come to the Debate of the Bill, instead of reading the Paper. Was the Question, Whether this Paper should be allowed as a second Witness? Then it would be a great Question with me, whether it should be read ; but the Question, as to Col. *Sidney*, was not whether the Paper should be read, but whether it should supply the Place of a second Witness? But your Debate is extraordinary ; your Bill takes notice of *Goodman* being gone away, and now you won't take notice of what he hath left behind him, which I should the rather be satisfied in, because I saw a Gentleman soliciting at the Bar, that did endeavour to get him away. If *Goodman* had been brought a Prisoner to the Bar, I do not know, whether it might

not have been reckoned as great a Fault, as now his having too much Liberty. It hath been cited as a great Lawyer's Opinion, that it might be given in Evidence ; but he does not say what Weight shall be laid upon it.

Mr. *Pelham*. I am sorry that honourable Gentleman mistook me so much ; I thought I had spoke very plain ; I told you, I was not against reading of the Paper, till the learned Gentleman told you, you were not tied up as the Courts of *Westminster-Hall*, to two Witnesses. As to what I said of Mr. *Sidney's* Case, it was not against reading that Paper ; but I said, he did rely upon it as against common Justice, to be attainted upon one Witness : And that Attainder you have thought fit to reverse ; and the Reason he gives for it was, because it was impossible for a Man to make any Defence against one single Witness.

Mr. *Att. Gen.* The Matter you are now debating upon, is, whether these Papers should be now read. And Gentlemen have let themselves into a Debate foreign to the Question. A great many are against it upon this Argument, that they would not be of Opinion to condemn him, unless there were two Witnesses : That is not the Question, for I think no Man is ready to give his Opinion to condemn or acquit him, unless there were two Witnesses : One Gentleman is against the reading of it, and yet believes Sir *John Fenwick* guilty. I must respite my Judgment till I have heard his Defence : I think that the Counsel for Sir *John Fenwick* at the Bar, are very much mistaken, when they said, that such a Thing as an Examination in Writing was never read in any Court of Justice. I think that is a great Mistake, and a good Authority hath been cited for it ; and every one knows the Practice is otherwise ; 'tis often allowed, that the Examinations before a Justice of Peace are read. The Question is now, whether the Examination shall be read? If there do not appear another Witness to prove him guilty, you will debate that Matter then, Whether you will condemn him without two Witnesses? You might as well have debated before, whether *Porter* should be examined, because no Man will condemn him without two Witnesses, and therefore do not examine one. Why, we know not what further Witnesses may be produced, if Sir *John Fenwick* was upon his Trial ; I think this Information might have been admitted for Proof, if *Goodman* was out of the Way ; but if it was admitted, unless there was another Witness produced, I believe the Court will tell the Jury, here are not two Witnesses, and therefore you must acquit him.

Sir *William Coryton*. I must crave leave to differ from that worthy Gentleman : I think this is the proper Time to determine, whether this Evidence is to be admitted afterwards. Indeed you may determine how far it is available. I thought both in Law and Justice, before I came into the House, that this ought not to be admitted for Evidence. A Gentleman grounded his Argument, upon what? My Lord Chief-Justice *Hales's* Opinion ; but the Fate is, that my Lord Chief-Justice *Hales* states the Difference in Cases of Treason, and in Cases of Felony. Now in Felony, they make use of Depositions ; and the Reason is, because 'tis more for the Advantage of the Prisoner than his Disadvantage ; for if the Witnesses

ness differ from his Examination before the Justice of Peace, that turns to the Advantage of the Prisoner. In the Nature of the Thing it seems not to be reasonable, for it is easy to turn the Tables. And suppose *Goodman* in the Place of *Sir John Fenwick*, and *Sir John Fenwick* in the Place of *Goodman*; it would be hard (take the Informations to be as they are) to admit them for Evidence; which in my Opinion, are great Reflections upon Persons of great Honour and Worth.

Sir Charles Musgrave. That which I perceive to be your Debate, is that upon which the Counsel withdrew; you heard it asserted, That there was no Instance in a criminal Case, where an Affidavit was allowed for Evidence: And I think the learned Counsel at the Bar did not much insist upon it; and yet I don't think they were ignorant of the Case quoted out of my Lord Chief-Justice *Hales*, but they thought it was not applicable to this Business before the House; but only related to Felonies, and when Depositions were taken in the Presence of the Party. 'Tis said, we are not tied up to the Rules of *Westminster-Hall*; and that Parliaments may denominate Crimes after they are committed; but I never did hear, that the Parliament did take upon them to determine that to be Evidence which is not Evidence in any Court of the World. If you read this Paper to inform your selves, you admit that to be Evidence which is no where else to be admitted. You are told, you are not tied to the Forms of inferior Courts of Law nor Equity: If you are not bound by them you are bound by your own Constitutions. You are told, you are used to read Affidavits in common Causes; but if my Memory serves me right, you have always had it opposed in this House; therefore I think, according to the Rules of your own House, we shall not read Affidavits. Will you make a new Rule in this Case? Pray consider the Consequence of it hereafter. Suppose there came down Affidavits upon another Person, against a great Man for High-Treason, Whether that may not be thought sufficient for to govern your Judgments: I hope those that hear me will have a Care of the Matter. Why, by the Parity of Reason, may not two Affidavits do by the help of the Legislative Power? I would be glad to know, Whether in the Case of an Impeachment, they ever heard of Affidavits being read? And this is much in that Nature; and therefore, why should you admit of an Affidavit now, when the Party charged was not present when that Affidavit was taken?

Sir Joseph Williamson. I am sorry this Point costs us so much Time; the Gentleman that spake last hath brought us to the Question, How far you will admit this Affidavit (as they call it) to be read: I am of Opinion notwithstanding all that hath been suggested, that it not only may be read, but that it ought to be read. None of the Cases that have been instanced, comes up to the Case in Question; all the Cases that are brought are from inferior Courts, and the last that is brought is from the Example and Usage, in less considerable Cases, and indeed of a different Nature.

This Bill of Attainder is indeed a Thing so extraordinary (as hath been said) as it never ought to be used but upon extraordinary Occasions; and upon that Principle, all that is feared is all answered and avoided. It is to be thought

never to come but upon the like Occasion; and then God forbid, but they should be governed by the like Precedent; and if that was proper to speak now, which will be at the bottom of it, when we come to give Judgment, and we have time to consider of it, I can't think we shall differ in many Voices. Whether it be Evidence, and how far it is so, is not now the Question; but the Question is only, whether it be such an Evidence as ought to be read? And all the Inconveniencies that have been alledged, depend only upon this, that it should not be admitted in the ordinary Proceedings in the Courts of Justice. Now I say, there was a Power lodged in the Parliament of *England* to make a Man guilty of Treason, that was not so before; and that even in a Reign when they came to determine what Treasons were: They did not think it for the Safety of the Community of Mankind, but that there should be a Power lodged in the whole, to declare that to be a Crime, that was no Crime before it was committed, giving them more than is asked here: For here can be no Question, but as to the Forms of Proceedings. The Question is not upon his Crime, that is no Question; and I take it, that if upon any Occasion 'tis to be justified in this, and the Law hath trusted the Parliament with a greater Power than now they are about to execute, and there are only Objections to it raised from another Place, which I think can never conclude in this.

Mr. Chancellor of the Exchequer. I am for reading of this Paper, though I don't think it Evidence equivalent with *viva voce*; nor do I think, that in like Cases it ought to be admitted below; but I think, in your Proceedings in Parliament, it ought to be read, whether it be an Affidavit or not; and I am more of that Opinion, from what happened in a Case to Day. We had a Dispute, whether *Porter* was to be examined, because the Testimony of a Man's Wife was not good below. But when that came to be examined, it was not the Testimony of a Man's Wife, but his own Letter appear'd in Evidence; and *Clancy* told *Porter* he came from *Fenwick* himself, and therefore the Evidence, which at first, for that Reason, was urged not to be heard, did amount to more when it came to the Proof. I would have this Paper read; not because it should supply the Place of a Witness; no, but because you see he hath been indicted by the Evidence of *Goodman* and *Porter*, and the first is withdrawn; and by whose Means you have heard: And I would know, whether *Goodman's* Evidence did amount to accuse him of the same? I do say, in your Power of judging, you are not constrained to the Rules of *Westminster-Hall*: And I would say, that for your Constitution, the Courts of *Westminster-Hall* are to be governed by the Letter of the Law; but there is lodged in the Legislative a Power to judge those Crimes that are sheltered behind the Law; and I believe, if the several Attainders were examined, there was never any Attainder that went upon a more just Proceeding than this. I take the Crime to be a Plot with your Enemies to bring in a foreign Power; and as if that was not sufficient, he hath made a false and scandalous Confession, to bring a Distrust and Jealousy among the King and his People; and he hath dallied and gain'd so much Time, as he hath had Opportunity to corrupt one of the Witnesses; and therefore it would be hard

hard, if no Law should reach him. 'Tis said, Why did not you keep the Witness? It would be hard, after a Person hath made a Confession for the Good of the Kingdom, that he should be always kept in Irons. We are debating of the Bill, while we are now only purely to see what is in this Paper. I should not have offered to have made use of this as a second Witness; but the being an Affidavit or not, is not material in this Point; the Commons proceed upon Impeachments, without Affidavits. 'Tis offered as Evidence: That *Goodman* was a Witness against him (you have had Proof of;) and that he hath been tamper'd with to withdraw, by the Friends of this Gentleman. I do think we have gone more fairly and equally to work, than upon any of the Records of Attainder in your Journals.

Mr. *Brotherton*. The Question is, Whether this Paper shall be read? First, It hath not been proved before whom it was taken, nor nothing at all. It hath been objected, that there ought to be two Witnesses by the late Statute. But I must put you in mind, that it was so by the Statute of *Edward VI.* and so was the Common-Law before; and my Lord *Coke* says, there must be two Witnesses, and they brought Face to Face: And so goes to the Divine Law; and if it should not be so, I will put you in mind of an Inconveniency: Eleven Witnesses were produc'd before the Grand Jury; and when they came to give Evidence Face to Face, before the Petit Jury, the first Witness did not know the Criminal that he had sworn against. It was in the Case of Sir *Rowland Stanley*.

They mention a Paper against *Algernon Sidney*; but that Paper was wrote by himself. 'Tis said, this House is not bound by the Rules of other Courts; for that Reason they ought to give Rules for other Courts. Nothing is more common than to say, Judgment was so in the House of Lords, and that settles the Law in other Courts below.

Sir *Godfrey Copley*. Several Gentlemen have spoke to the Reading this Paper; some have said, That it should be read as Evidence: Some others are for reading of this Paper; but yet at the same time tell us, it is not to be looked upon as Evidence, at least not equivalent to a Witness. If the Paper be to be read at all, I would know for what Reason? If it be to have any sway upon our Judgment? If it hath any Effect upon my Judgment, then in some measure it is equivalent to a Witness, when 'tis in the Nature of a Witness; and if it should be read to supply the Defect of a Witness, then I would know, what the Consequence of this might be? I do very well understand, that the Court of Parliament does take no Precedent from *Westminster-Hall*; nor am I afraid of any Precedent they should give to *Westminster Hall*: But I am afraid of a Precedent to future Parliaments. Suppose the Information of Sir *John Fenwick*, that hath been delivered in here, should be produced as Evidence against any of those honourable Persons that are charged in it, though I believe they are very innocent; and some Knaves or Rascals in future Reigns should come in against them, and this Paper should be brought to supply another Witness, what a Consequence would that be!

Sir *Henry Hobart*. I must differ with the Gentleman that spake last; as to the Gentleman that spake before, I did not expect any thing to be

quoted out of *Lancashire* against the Reading of it. I will tell you why I think this Paper should be read; you have it suggested in the Bill, that *Goodman* was one of the Evidence against Sir *John Fenwick*; they are to make good the Suggestions, and this will shew, that *Goodman* was an Evidence. You are told the Danger of the Precedent, and there may come ill Reigns, and ill Parliaments; as to that, I shall only say, in a good Reign, and a good Parliament, there is no Danger; and in an ill Reign, and ill Parliament, they will make Precedents without your giving of them. Mr. *St. John* tells you in his Arguments, 'Tis true in inferior Courts, by the Statute of *Edward VI.* they are bound by two Evidences *viva voce*; but you are not prescribed by that here, but you are to judge in your own Consciences as the Thing appears. I may say as another did upon another Occasion, let it be read; *Valeat quantum valere potest*.

Sir *Marmaduke Wyvell*. I desire to take notice of one Argument that hath been made use of by one or two honourable Persons; which is, that they tell us, that *Goodman* hath been tampered with by Sir *John Fenwick*: I remember no such thing that hath been proved; but indeed it was said, that Mr. *Dighton* offered Mr. *Roe* 100*l.* a Year, to invalidate Mr. *Goodman's* Testimony.

Lord *Castleton*. Let me ask you this Question, Whether if you read this Affidavit, you read it as Evidence?

Mr. *Sol. Gen.* I desire you would consider what you did, before you ordered Captain *Porter* to go on with his Evidence, and did agree you would consider of it afterwards. Some are for reading this Paper, and others are indifferent whether it be read or no; and those that are against reading of it, are against reading of it, because 'tis no Evidence: But that is no Reason why you should not read it; for it is at most but doing a vain Thing.

I think you have been told already, if it was insisted on below, it must be read; and the other Side must demurr. The Court might say, 'tis not material, but it must be read before they can demurr: So that the Question, Whether it is Evidence? must come afterwards; and if you go according to the Rigour of Law, with Submission, it must be read.

Mr. *Price*. I did not design to trouble you in this Matter; but the Doctrine laid down by some Men of our Gown, surprizes me: 'Tis only an Argument, that the Court below ought to admit this Paper to be read; but there is no Precedent shewed, nor convincing Reason given, why the Courts should admit it. The Question is, Whether an Information taken before a Justice of Peace, ought to be read here? If it be to introduce a new Law, and make a new Crime, then you make a new Sort of Evidence: But if this be a Crime against an Act of Parliament, or Law in being, then you must take the Evidence the Law doth afford you, in the Nature of the Crime. The Charge here is a Charge of Treason against a known Law: But the great Argument is, this is an extraordinary Offence; that Sir *John Fenwick*, or his Lady, had a Hand in sending *Goodman* away: 'Tis a Mistake; and offering one Thing that is not Evidence, brings us to another; the Evidence of *Clancy's* tampering with him: Captain *Porter* does not say, that Sir

John

John Fenwick employed him; only, that *Clancy* said so, which is but a Hearsay, and that is no Evidence, unless *Clancy* was at the Bar, and would say it.

In the next Place, it is said, That there was a tampering by a Solicitor: What is that? Is it not natural for a Solicitor to say, is there any Objections to such a Witness? Is it not natural for him to lessen his Reputation if he can? Now you would have a Copy of an Information to be Evidence. 'Tis said, 'tis tantamount: If so, then the Courts of *Westminster* ought to intermeddle with it, and not this House. A noble Lord mentioned to you the Law of Nature, the Law of Nations, and the Law of God; but he forgot one Law, which, was most material, and that is Martial Law; which if he had said, does justify the taking away a Man's Life upon extraordinary Evidence, he had said right.

Mr. Speaker. The Question is this, That the Information of *Cordel Goodman*, taken upon Oath, 24th of April, 1696. be read.

Which Question being put, the House divided.

Yeas, 218. Noes, 145.

So it passed in the Affirmative; and Sir *John Fenwick*, and the Counsel, and Solicitors on both Sides, were called in again.

Mr. Speaker. Gentlemen, since you withdrew, the House have considered of the Matter, upon which you did withdraw, and they have thought fit, that the Information of *Cordel Goodman*, taken upon Oath, before Mr. *Vernon*, 24th of April, 1696. be read.—Clerk, read it.

Clerk of the House of Commons reads——This is signed, *Cordel Goodman*, and sworn 24th of April, 1696. before *James Vernon*.

ABOUT some two Years since, or better, I understood Col. *Parker* was Resident here, in order to engage several People for the Service of King *James*; and Captain *Porter* told me, he had a Mind to see me, which he accordingly did; where he told me, there would be an Invasion, and King *James* would be restored; and that in order to it he had Commission to levy Men, and to grant out subordinate Commissions for a Regiment of Horse, and did ask if I would accept of one, which I accordingly did. He likewise said, he would see me as often as he could; and that Captain *Porter* and I should receive Directions from him, from Time to Time, upon several Meetings; and having received my Commission, I understood what Captains were to be in the Regiment; which were Captain *Porter*, Sir *William Parkyns*, Mr. *Charnock*, Sir *Hugh Smithson*, Mr. *Higgins*, and myself; and one Mr. *Witberington*, to be Lieutenant-Colonel.

The Commissions were to be Blank when they were to be delivered, and to be filled up by the Captains, &c. I then came acquainted with Mr. *Charnock* and Sir *William Parkyns*; and by them and *Parker*, Captain *Porter* and I were informed, that there was a great Body of Horse to be ready in the North; but though I asked, yet they never named any Persons to me, but said, it was sufficient, I should receive Orders, and a Roll to March, to Rendezvous upon Occasion; and indeed I did not much press it, because I did gather there were a great many concerned; and at this Time Captain *Porter* and I took a House in the *Chase*, with Stables and Barns, fit for hold-

ing Horses, and as a fit Place to meet, upon Orders given us to March, which were then daily expected.

Some Time after this Colonel *Parker* was taken, and being committed to the *Tower*, he made his Escape; and after that I saw him, and then he told me, he would be sure to correspond with me and *Porter*; and I should receive his Letters of Mr. *Charnock* or Mr. *Johnson*, and he accordingly did; and in his Letters he still gave us Hopes, and said, he would certainly send us notice to be in readiness Time enough, to be serviceable to the Design of the Invasion.

The last Letters I received from *Parker*, gave me Advice, That he doubted not, but the Cause would come to a Hearing as this *Easter Term*; and he should write no more, but bring the Orders himself: Upon which I went to *Charnock*, and he told me he did expect him here in a short time: But always, or most commonly, in his Letters, he told me, for a Sign, That when the *Thoulon* Fleet should join the *Brest* Fleet, I might certainly depend, that we should be invaded here.

During these Transactions, Captain *Porter* complained, that something he was sending to *Lancashire*, had miscarried; he desired me to set by two Boxes, which I looked not into, but supposed them to be Arms, and I did set them by for him: I had not bought any Arms, but had bespoke some of one *Perry*, a Gunsmith, who said, I should have them at a Week's Warning.

After *Parker's* having made his Escape, and getting into *France*, Mr. *Charnock* came to me, some Time before the King's going to *Flanders*, and said, he had something to propose to me; and desired me to go along with him, which I did; and he brought me to one Mr. *Waugh*, who said, he expected a Commission from King *James*, to seize King *William*; accordingly we went to the *Chocolate-House* in *St. James's-street*; and after some Discourse about the Commission he said he expected, we appointed another Meeting at that Place, and adjourned from thence to my House in *Brownloe-street*, where was present, Mr. *Charnock*, Mr. *Porter*, Mr. *Waugh*, Major *Matthews*, and Mr. *Donelagh*. The Subject of our Discourse was, about the Surprizing and Seizing the King, as he came from *Richmond*; and after several Ways proposed to that Purpose, I particularly asked; Suppose that the King were in our Power, what then? For we ought to have regard to some End or other in such an Undertaking; for I was not willing to offer any thing to his Person. Mr. *Waugh* said, we might have a Coach and convey him away; and he said, he was assured of a Fort to be delivered to him, and put into his Hands (to the best of my Remembrance it was *Deal*) which might give us Shelter till we might find Opportunity to carry him into *France* by Shipping. I must confess, I did see very little probability in what he said; neither did I believe, that he would receive any such Commission, as he said he expected: (For about two Years since, I remember I saw Sir *George Berkeley*, with Col. *Fountain*, and Mr. *Porter*; Sir *George* was then going over to *France*, and it was the only Time that ever I saw him; and then Captain *Porter* and I did desire, that if King *James* designed any such thing as seizing King *William*, he would send over a Commission, and a Pardon withal

withal in Case of an Accident ; which Message Sir George carried over, and King James refused to send it.) However, we had another Meeting after that at my House, by which Time, he said, he would shew us the Commission, and facilitate the Design ; it was at a House behind the Temple, where the aforesaid Company met, and Mr. Waugh brought with him one Mr. Hays, who, he said, could furnish us with a Ship which would be ready to transport us after we had seized the King ; but upon Discourse with Mr. Hays we found that the Demands were so exorbitant, and not in possibility of being complied withal ; and besides, no Order nor Commission being produced, we did desist then ; for Captain Porter and Major Matthews, and I, did declare we would not meddle without sight of the Commission. After this, Captain Porter and I talked of having a Vessel, and sending Le Rue and Charnock about it. We met at the Fountain by the Temple-Gate, and Sir William Parkyns was there ; and during the Time of our being there, one called Sir William out, and Sir William called out Porter, who came in, and said, there was a Gentleman that could help us in this Affair ; who he was I know not ; I believe Captain Porter may, for I saw him not : But all this proved ineffectual, for the King went away suddenly, and no Commission ever came. And by Letters from France I understood King James was angry, that they used his Name to what he had not promised ; and Porter and I wrote over, by his Order, the Truth of the whole Matter.

Some Time after this, Captain Porter, the Earl of Aylesbury, Sir John Freind, Sir William Parkyns, and Sir John Fenwick, and others, met about sending over some Proposals to King James, to expedite an Invasion ; and likewise Captain Porter said, it was proper I should be there, for he had engaged for me. I told him I would come ; and at the King's Head in Leaden-ball-street, I found the Persons above-named, together with my Lord Montgomery, and one Mr. Cook.

The Effect of their Consultation was, the sending Mr. Charnock with a Message to this Purpose ; That if the King of France could spare such a Number of Foot, and so many Dragoons, amounting to about 12 or 15000, or thereabouts in all, that then upon Notice given, that every particular Man there, was to furnish such a Number of Horse, some more, some less, to be ready to succour the Forces from France when landed. Mr. Charnock went and returned with a Refusal, that Forces could not be spared : Sir John Freind and my Lord Aylesbury were of Opinion, that if King James would venture hither with some small Retinue, he had Friends enough to appear for him, without any foreign Forces ; but that was held in doubt.

I used afterwards to see my Lord Aylesbury ; I always asked, what News he heard ? He said, when he received any Orders, he should know ; for he having been in France (as he did not deny) I supposed him not to be ignorant of what was intended.

And to the better facilitating an Invasion, Sir John Fenwick used to send over a List of the Forces, and how they were quartered, and what were in Garrison, and what otherways disposed of : He having made a Mistake in the Account, Parker did by Letter desire me to try if I could procure such an Account ; which I accordingly

did of one Gibson, a Clerk in the Office, and sent it over frequently.

After the Escape of Parker out of the Tower, Sir John Fenwick, when I asked him how he got away, and how much Money was given ? he said, 200*l.* promised, and 300*l.* given ; for when a Person came in and told him, he had brought him Liberty, and was to have 200*l.* he replied, you shall have 300*l.* and it was made good to him afterwards.

Cordell Goodman.

Much about the same Time, I used now and then, with Captain Porter, to be with Sir John Fenwick, and it was agreed, that if Parker should not bring us timely Orders, that what Forces we could bring in, (*viz.*) Porter and I, we were to take Orders from Sir John Fenwick ; this we offered him, and he kindly accepted : And then he said, That he believed most of my Lord Oxford's Regiment would go to King James ; when I told Mr. Paradise had promised to bring in 7 or 8 to me, and that Mr. Aynsworth was to bring in 20, and Parker had said, if I made it 30, it was sufficient for me.

As to keeping the Horses, Sir John said, it was dangerous, and they would certainly be seized ; but the best Way was to have a List of what Horses were in and about the London Stables.

Captain Porter and I sent accordingly to view the Stables. I sent Mr. Reybough, and Captain Porter sent Cranborn, and they took an Account.

Cordell Goodman.

Jurat. 24 April, 1696.

Coram me, Ja. Vernon.

Mr. Serjeant Gould. Now Mr. Speaker, if you please, we will call some of the Grand Jury that will give you an Account what Evidence they found the Bill upon — Mr. Gracedue, you were one of the Grand Jury that found this Bill ?

Mr. Gracedue. Yes, Sir.

Sir Thomas Powys. This is so far from being Evidence, that I think 'tis the Oath of the Grand Jury, That they shall not disclose or discover the King's Secrets. The Bill of Indictment is but an Accusation. A Bill of Indictment cannot be given in Evidence against a Man for the least Crime forever. It can't be given in Evidence to be credited, because 'tis but an Accusation ; and by Consequence, whatever any Witness says at that time, can go no farther. When a Person comes upon his Trial, they can't so much as resort to any thing that is sworn before the Grand Jury, nor make use of it.

Sir Bartholomew Shower. We humbly oppose this Evidence ; because the Gentlemen can give no Instance in their Reading or Observation, that the Testimony that hath been given before a Grand Jury, hath been given in Evidence to a Petit Jury : And 'tis Part of the Oath of a Grand Jury-Man, that it should not be disclosed. We do not say, it will bind your House ; but I hope it will be Evidence to you, that 'tis not agreeable to the Rules of Law.

Members. Go on, go on.

Mr. Speaker. Mr. Gracedue, will you give the House an Account, who were the Witnesses before you upon finding the Bill ?

Mr.

Mr. Gracedue. The Witnesses before us, were Captain Porter, and Mr. Goodman.

Mr. Speaker. Can you remember so well, as to give an Account to this House of what Evidence Mr. Goodman gave?

Mr. Gracedue. Yes, I think I can. When he came before us, he told us, That he was at a Meeting at the King's Head in Leaden-ball-street, where there was Sir John Fenwick, my Lord Montgomery, Captain Porter, Mr. Charnock and others; and the Business was to send Mr. Charnock over to France, to procure Men to invade this Kingdom; and 8000 Foot, and 2000 Horse was proposed. He told us, the Result of that Consult was, that if France would supply 8000 Foot, and 2000 Horse, it would be a sufficient Power to come over; and that they would supply 2000 Horse among themselves. Upon which Charnock replied, Gentlemen, you send me over upon Uncertainties; you say, you will supply 2000 Horse, but unless you give me some Assurance, I can't, nor will I go. And the Question was proposed to all of them, if they would make good their Proportion; and they promised singly. Says I, Did Sir John Fenwick promise? And he said, Yes. Says I, Did my Lord Montgomery? And he said, Yes. He was asked, Who else? But, says he, 'tis not a Question for you to ask us; and for that he referred himself to me: For, he said, he was not bound to answer further, having proved the Indictment.

Mr. Serjeant Lovel. We desire Mr. Joshua Meade may be asked to the like Purpose. Were you one of the Jury that found the Bill against Sir John Fenwick?

Mr. Meade. Yes.

Mr. Speaker. Pray, who were the Witnesses before you upon finding of the Bill?

Mr. Meade. There was Captain Porter, and Mr. Goodman, Sir.

Mr. Speaker. Can you remember what Mr. Goodman testified then?

Mr. Meade. Mr. Goodman did then testify, That Sir John Fenwick, my Lord Montgomery, &c. were at the King's Head Tavern in Leaden-ball-street; and Charnock, and the rest there did consult how to bring in their old Master; as to Charnock, That they agreed to send him over to King James, to know whether the French King could furnish them with 8000 Foot, and 2000 Horse, and that they would endeavour to meet him with 2000 Horse. Hereupon Charnock (Goodman said) put it to every Man of them, to know if they were all of one Mind? and they all said they were. This he did prove, and this is all I can remember.

Mr. Serjeant Lovel. We have many more to the same Purpose, if the House think fit to hear them.

Members. No, no.

Mr. Serjeant Gould. We will go thus much further; That upon the Trial of Mr. Cook, wherein there was Evidence given by this Gentleman, and in that this Gentleman that is the Prisoner at the Bar was particularly named to be concerned, we will call them that were present there at the giving of the Evidence: But first, we desire to read the Record of Cook's Conviction.

Thereupon a Motion was made for the Counsel to withdraw; and being withdrawn, a Motion was made for Candles, which passed in the Affirmative without a Division, in regard it being dark without Candles, there could be no Motion made for adjourning the Debate, or remanding the Prisoner.

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Afterwards a Motion being made for adjourning the House 'till to Morrow Morning, the House divided.

Ayes, 141.

Noes, 163.

And so it passed in the Negative; and Sir John Fenwick, and the Counsel, and Solicitors, were brought in again to the Bar.

Mr. Speaker. Mr. Serjeant Gould, the last Evidence you were about to offer was, that of the Record of Mr. Cook.

Sir Thomas Powys. Mr. Speaker, we oppose that being offered as Evidence; as I understand it, they are going to give in Evidence against Sir John Fenwick what was sworn against Mr. Cook; that is not admitted in the Courts below; for, according to that Method, the Trial of one in the Company would be the Trial of all the rest. This was never allowed in any other Case, and I hope you will not allow it here.

Sir Bartholomew Shower. The Indictment is, that they did consult together, but their Crimes are several; if they had been mentioned in one Indictment, and one had been tried at one Time, and the other at another, it would not have been allowed that they should give in Evidence against the one, what had been sworn against the other; for though their Charge is by the same Witness, and for a Fact done at the same time, yet the Defence of the Parties may be different; and it cannot be expected, that we, on the behalf of Sir John Fenwick, are prepared to give an Answer, in regard of any thing that was sworn against Mr. Cook.

Mr. Speaker. Mr. Serjeant Gould, you hear the Exception.

Mr. Serjeant Gould. We hope in this Case we shall go on with our Evidence, as offered and proposed to this House. These Gentlemen have made their Objections, as if they were below in the inferior Courts; but we are here now before you in a parliamentary Way; and what is that which brings us here, but because there is a Witness withdrawn by Artifice, so that we cannot produce him? And therefore we come, and humbly apply our selves to this honourable House. Now, Sir, you are Judges of the Method of coming at the Truth, and supplying that Defect: If we could produce him, there would be an End of the Matter; but in this Case we are in the Judgment of this honourable House, Whether we shall not give such Evidence as he hath given upon his Oath, though in other Cases it is not admitted.

Mr. Serjeant Lovel. When we produced the Record of Conviction, we only produced it to shew you there was such a Trial; and by that means to let us in, to shew you what was sworn by Mr. Goodman at that Trial.

Then upon the Motion of Colonel Granville and Sir Richard Temple, Sir John Fenwick, and the Counsel, and Solicitors, withdrew.

Sir Richard Temple. If I did not believe what is now offered, is what was never offered before, and of dangerous Consequence to every one here, I would not have troubled you at this time of Night. There has nothing been offered that this hath ever been done. They say, It hath not been done in inferior Courts: Pray let us see if ever it hath been done in Parliament, That what was given in Evidence at another Trial, should

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be

be given in Evidence against another Person here, when this Person was not by, and had no Opportunity to defend himself against it; I am sure it was never done yet.

Sir *Thomas Mompesson*. This Gentleman complains this was never done. When the Duke of *Monmouth* was impeached, the Bill was read three times in one Day, and that Gentleman moved for the Impeachment.

Sir *Richard Temple*. Here were three Witnesses that did declare they saw him in actual Rebellion, at the Head of an Army; but I hope I am not to answer for all the Proceedings then.

Colonel *Granville*. When I saw them going on to make use of that as Evidence, which was never allowed in any Court, I thought I ought to move for them to withdraw. I shall not give my Consent to have it read, 'till some Body satisfies me 'tis good Evidence against Sir *John Fenwick*: I can't see how you can admit this for Evidence: Are we to read all the Trials that are upon this Plot? Therefore I desire you will bid them produce what is Evidence against Sir *John Fenwick*, and not to trifle with you.

Sir *Thomas Littleton*. If you proceed in this manner I know not when you will have done. They do not tell you, they produce this as Evidence against Sir *John Fenwick*; nor do I take this to be the only Evidence to prove him guilty. If nothing but exact Proof would have satisfied, this Bill would not have been brought in: But this is to make as good Proof as the Nature of the Thing will bear. You have heard several Things before, in relation to *Goodman*, that possibly might strictly be no more Evidence against Sir *John Fenwick* than this; as *Goodman's* being withdrawn. First, they offered to prove that he was gone; that it was suspicious that Sir *John Fenwick* was privy to his going: Why did you admit the Evidence of what he said to the Grand-Jury? What is this, but to give Evidence of what he said to the Petit-Jury, wherein the Grand-Jury and Petit-Jury have both believed him.

Mr. *Harley*. I think if you had come to one Determination before you had entered upon this Matter, you had very much shortened your Business; that is, that you would not expect such Proof as is necessary at Law; and it may be if you would come to it now, it would save you Time: For I find by the Counsel, that what is sworn against another Man, at another time, would not be Evidence at Law against the Prisoner; and I believe if he should except to a Jury-Man, because he was upon *Cook's* Trial, it would not be allowed as a good Exception, and he would be told, he was no way concerned in another's Trial.

Mr. *Howe*. 'Tis a strange sort of Evidence that is offered here, and 'tis a strange Way of bringing it in. The House made nothing lately of Hear-say, and yet now Hear-say must be taken for Evidence. I have heard that the Grand-Jury take an Oath not to discover what was sworn before them; this, since the Grand-Jury have subjected themselves to (yet you have brought them here as Witnesses to give an Account of what was sworn before them, which I am afraid is a Breach of their Oath) it shall make me give less Credit to what they say. We are here to attain a Man, but we must not talk of Proof; that is a strange Thing! I am sure, if you do not find it with

Proof, it would be against Proof. Shall I be plain with you? I question, if this House had heard what *Goodman* swore at that Trial, and what was alledged against it, whether this House would have been of that Jury's Mind: For I have heard that two or three did swear, he was not at the Place at the Time he swore he was, as plain as a Negative could be sworn.

Mr. *Harcourt*. If you please to let the King's Counsel go on upon this, you will save a great deal of Time, and prevent any Exception to any Evidence afterwards: For 'tis not in the Power of Man to offer any thing more absurd. I don't believe that ever any Man heard of such a Thing offered, That a Record should be given in Evidence against a Man, that is no manner of Party to the Record: I am sure never any such Thing was attempted before. As for the other Things, you had something offered that made it seem doubtful how far you should give Credit to them. Upon those Matters, the Counsel at the Bar for the King told you, That there was some Pretence that it was Law, and practised below, and a Book was produced to justify it: But in this Case, if there be Book, Practice, Precedent, or any thing to justify it, I will sit down. The Answer made it ten times worse: The Gentleman said, he would not have the Record read, but upon that Record to prove what was sworn at the Trial: Why, does that concern any Person in the World but *Cook*?

Lord *Cutts*. If the worthy Gentleman that spake last had made out all his Propositions with Clearness, equal to the Assurance with which he asserted them, they would have more Weight: But I will say, that which he hath asserted does not appear to me so. I take this to be the same Thing in some measure debated over again. It hath been told you, That this House are to give their Judgment in a Matter of great Importance; and therefore I think 'tis fit that all the whole Matter should be laid before them; when that is done, they only are the Judges of what Weight it is.

Mr. *Sloane*. I go along with those Gentlemen, That this is no sort of Evidence against Sir *John Fenwick*: But our Question is about a Witness that is withdrawn, and to know what he said, and how he was believed when he was here. How he is gone, we have seen already; and therefore though I think the Verdict against *Cook*, nor nothing of that can be given in Evidence against Sir *John Fenwick*; yet if he hath withdrawn the Witness, and the Credit of him is at Stake, as you have heard Evidence of what he said upon Oath before the Trial came on, by the same Reason you may hear what he said at the Trial.

Mr. *Pelham*. I think it would shorten our Debates, if we were truly satisfied about what we are a doing, that we are trying Sir *John Fenwick*, as we are told at the Bar; he called it a Trial, and 'tis a Trial. I must confess I was in hopes I should never sit in the House of Commons to try any Body; I did not think it the Business of us; if I had, I would not have come hither: But since we are come into it, is any thing more natural, than to examine whether this Evidence be proper, or such Evidence as any Court would allow of?

Sir *William Williams*. I suppose there is no Gentleman of our Profession that hath seen any Record,

cord will say, that this hath been offered in any Court of Law: I believe, if he was upon his Trial upon the Indictment, no Body will say it would be read against him. Let us consider how many Judgments, that have been given hastily in the late Reigns, have been reversed. What is the Reason that is given for it? It is for receiving that for Evidence, which was not Evidence in the Law: Your Bill of Right takes notice of it.

Mr. *Solicitor General*. I did not think this Matter would have held you a quarter of an Hour; but if Gentlemen will debate upon the same Matter that hath been over-ruled twice before, all that is to be proved by this Record is, that one *Peter Cook* was attainted for High-Treason: If the Counsel on the other Side would have owned *Peter Cook* to have been attainted, you had not been troubled to have the Record brought to the Table. But as to what they say, that Sir *John Fenwick* was no Party to the Record, and therefore it can be no Evidence against him; I suppose it would be Evidence for him. Suppose *Goodman* had sworn he never had been at the *King's-Head Tavern*, would not the Prisoner have produced a Witness to prove what he had sworn? Then I would put you in mind of a Case, because there is a Nicety in this Matter without any Reason; it was in the Trial of Alderman *Cornish*; he was indicted and tried, and the great Fact was in the House of one *Shepherd*; there was a Witness against him, one *Rumsey*, who swore, &c. Says Mr. *Cornish*, He was a Witness at my Lord *Russel's* Trial, and he did not name me to be one; and it went so far, that when *Shepherd* said, I was in the Room; he stood up and said, No, it was read before I came in. Mr. *Cornish* would have produced a Witness to have proved what *Rumsey* said: Says the Court, We cannot admit of that; for it does not appear to us, that my Lord *Russel* was ever tried for High-Treason; and there, upon that Slip, was that Gentleman destroyed. I pray it may be read; I have given no Opinion of what Force it is, but I think it depends upon the same Reason; nay, you have more Reason to do it, than any thing you have read to Day.

Mr. *Price*. 'Tis very much pressed, that you should read that, which, when read, they say, is not Evidence, but only to introduce another Matter. If it be not Evidence, upon what Account shall they read it? But if it introduce other Evidence, this is an Ingredient and Part of that Evidence. Now suppose the Record should be produced, and they should bring Witnesses to say what *Goodman* swore at that Trial: would that be Evidence? No sure, for no Body ever pretends that this hath been admitted either at Law, or in Parliament. By what Law? By what Rule? By what Measure of Reason are we to proceed in this House? If you would permit to be produced a Record of Conviction against a third Person, and this to be Evidence against one that is not present, I think you may as well admit to be produced a Record of the Conviction of any other concerned in the Assassination. But I stood up principally upon the Observation made at the Bar, and he put you that which he takes to be a sinister Case; for says he, suppose Sir *John Fenwick* had brought this Record, and made use of it to take off *Goodman's* Testimony, should it not be Evidence? Yes, no doubt of it; and there is the Distinction. 'Tis one

thing, where you are to give in a Record to convict and attain a Person, and another thing, where it is to prove a Man perjured, and to invalidate his Testimony; for when Evidence is brought against a Prisoner, he hath no way to lessen his Evidence but what is collateral; if it be upon a Trial when another is concerned, if the Witnesses gave a contrary Evidence, or the Party was acquitted, then the Record may be made use of against the Witness: But it differs very much, where you bring Evidence to take off the Credit of a Witness, and where you bring it to convict or attain a Person. The Case of *Cornish*, that turns upon the same Reason, and it was only to be used to take off the Testimony of *Rumsey*; but if this Record of the Conviction of *Cook* be brought to any purpose now, 'tis to satisfy your Consciences, that *Goodman* gave a good Testimony at that Trial; and I wonder the Serjeants should offer it, who are sworn to offer nothing in Violation of the Law.

Dr. *Oxenden*. If I did not think this Question had been determined before, I should not trouble you in this Debate; for did not we receive what *Goodman* deposed upon Oath before a Justice of Peace? Was it read because it was taken in Writing, or because it was his Evidence? Now they offer you an Evidence of his, that was not put into Writing, but they will prove by Witnesses; what is the Difference? If it had been taken down in Writing, it must have been admitted as the same was before.

Sir *Marmaduke Wyvell*. That worthy Gentleman desired to know the Difference, &c. That Deposition was against Sir *John Fenwick*, but this Evidence, that they offer now, was given against *Peter Cook*.

Mr. *Att. General*. You are now upon a Debate, Whether you shall read the Conviction of *Peter Cook*: I do agree with those Gentlemen that have spoke of this Matter, that the Conviction of *Cook*, nor any Evidence upon his Conviction, can be Evidence against Sir *John Fenwick*. I don't pretend that this is; nor don't believe that this is offered upon any such Consideration; but 'tis one of the Allegations of the Bill, that several of these Gentlemen were present at this Consult, of which Sir *John Fenwick* is accused; therefore I suppose the Counsel for the Bill did offer this Record to make good that Allegation, and so think it may be properly offered: Unless it be admitted: I don't see how it can be made good further; I do not think it proper to examine to what *Goodman* swore at *Cook's* Trial.

Sir *William Williamson*. I speak only to shew my Concurrence with the Attorney General; Mr. Attorney hath stated it right no doubt, as to the Conviction of this Person; as Mr. Attorney offers it, it may be proper enough.

Members. Call them in, call them in.

Sir *Christopher Musgrave*, I hear Gentlemen say, Call them in: Do you intend when you call them in to read this Record? I think the learned Gentleman hath stated it, that it ought not to be read as Evidence. Now the Counsel for Sir *John Fenwick* said, they hoped you would not suffer it to be read as Evidence against the Prisoner: I never heard the Counsel say, that *Cook* was not attainted, nor ever heard that any Man did doubt it; then if it be no Controversy between the Counsel, to what End is it brought hither? Do you think that the Steps that are urged to be taken in this Case,

will not be a Precedent for Posterity? I take it that there is a great deal of Difference between the Paper you have read and this Record; and therefore if you call in the Counsel, I hope you will not gratify them in reading of it.

Mr. *Edward Harley*. Before you call the Counsel in, I humbly propose it to you to consider to what Purpose this Record should be read; if as Evidence, you overthrow all the Course of Proof that is settled by the Common Law, and Statute Law; for it hath been in all Trials opposed, to give in Evidence that which is improper, because it should not influence the Jury. I would not have it said, that under the Reign of King *William*, any thing was done contrary to the Law and Constitution of the Nation. There hath been an Instance given of the Trial of Mr. *Cornish*, tho' that Case does not come up to it: But we know what was done in those Reigns hath been justly reflected upon; and I hope you will not make a Precedent here, to encourage Judges to do what is against Law.

Mr. *Speaker*. Gentlemen, This is your Question, That the Record of the Conviction of *Peter Cook* shall be read.

Which Question being put, the House divided.

Ayes, 181

Noes, 110.

So it passed in the Affirmative.

Mr. *Speaker*. Gentlemen, You have had another Question that hath been the Subject of your Debate, That the Counsel for the Bill be admitted to give Evidence, as to what *Goodman* swore against *Peter Cook*.

Mr. *Robert Harley*. The learned Gentleman did tell you, That what *Goodman* said at that Trial, ought not to be given in Evidence; and, therefore, I think, Gentlemen won't insist upon that, that is carrying it too far; and, I think, he opened it, that it was only to prove that *Cook* was attainted, and to make use of it no further.

Mr. *Speaker*. Is it then your Pleasure, that Sir *John Fenwick* and his Counsel be called in?

[Which Question being put, it passed in the Affirmative, and accordingly they were called in.]

Mr. *Speaker*. Sir *Thomas Powys*, the House hath determined to have this Record read, not as Evidence against Sir *John Fenwick*, but to prove the Allegations in the Bill, and that *Cook* was attainted.

Read the Record.

[Accordingly that Record was read by the Clerk.]

Sir *Barthol. Shower*. We are sure the Record does not prove that he was convicted upon *Goodman's* Evidence.

Mr. *Serj. Lovel*. Look upon the Indictment.

Sir *Thomas Powys*. It appears by that, that *Goodman* was a Witness upon the Indictment; but it does not prove by that, that he was a Witness upon the Trial.

Mr. *Serj. Gould*. May it please you then, Mr. *Speaker*, thus far 'tis agreed, that here is a Record of the Conviction of *Cook*; and 'tis agreed, and the Record speaks it, that *Goodman* was a Witness, for it is indorsed upon the Indictment.

Now the main Dispute is, Whether *Goodman's* Evidence did prevail to convict *Cook* upon that Indictment? And for that we shall apply our selves. Call our Evidence, some of the Jury, and some that were then Witnesses, and they will give you an Account upon what Evidence that Conviction was.

Sir *Thomas Powys*. In what you were pleased to acquaint us at our last coming in, you were pleased to give such a Reason in relation to the reading of this Record, that if we had heard it before, we would not have troubled you to have withdrawn; for it was proper to make out the Allegations of the Bill, and that *Cook* was convicted; but, we apprehend, they can carry it no further than what they have applied it to. But I perceive from hence, the Gentlemen of the other Side are encouraged to proceed to another Piece of Evidence, such they call it; they are going to call the Witnesses to prove what was sworn at the Trial of *Cook*, where Sir *John Fenwick*, nor no Person on his behalf, was present, either to hear, or observe, or cross examine, or offer any thing to their Credit, which possibly he might be furnished with, tho' *Cook* was not: I hope that will be no more allowed of as Evidence here, than in any other Place.

Sir *Barthol. Shower*. We humbly oppose their calling of Witnesses to give this Account of the Evidence given at *Cook's* Trial. And we submit it to your Consideration, whether you will think it just, that the Evidence that is given with respect to one Man only, shall conclude another Person that stands at the Bar in Defence of his Life, or that it shall be given against him. Every Man's Defence is several; and we opposed the reading of the Record before, and so do now the calling of any Witnesses to this Purpose, for the same Reason.

Mr. *Serj. Lovel*. We call these Witnesses for no other Purpose, but to prove, that *Goodman*, what he did inform by that Paper, he did swear before a Jury.

Mr. *Speaker*. Gentlemen, you must withdraw.

[Accordingly they withdrew.]

Mr. *Manley*. I thank God I have that regard for the Laws of England, and to every Englishman's Life, that when I see any thing attempted against it, I must give my Testimony against it: I did not believe they would have insisted on it, for there was a Gentleman that sat near to you, who in the Close of his Debate, I thought, had satisfied every Body, that this was a Thing that ought not to be read; if they should do it, it would be a Thing of dreadful Consequence; if you should admit of every thing these Gentlemen, that come in for the Bill, offer, I know not where it will end. How will it appear that upon *Goodman's* Evidence the Jury found *Cook* guilty? For they might find *Cook* guilty, and yet give no Credit to *Goodman*; for he was contradicted materially, and there might be other Evidence upon which they might find him guilty, and yet lay aside the Evidence given by *Goodman*; but whether one Way or the other, we can't tell. They tell us, We are not to be guided by the Rules of *Westminster-Hall*; but we are to be governed by the Rules of Justice; and we are not at this Time to seek a Way to the King's Favour, by voting against a Criminal for High-Treason.

Mr.

Mr. *Sloane*. There is no manner of doubt of it, That that Gentleman is in the right, who tells you, If this Indictment and Conviction of *Peter Cook* stood singly, as to Sir *John Fenwick*, 'tis no Evidence; and if they will produce *Goodman* now, it shall be no Evidence against them; but take the Case as it is, here is a Witness, who hath given me Satisfaction, that 'tis one of Sir *John Fenwick*'s Friends or Agents (which is the same Thing as if done by himself) by whose Means this Witness is withdrawn: Now the Question is, What could this Witness say, when he was here? What did he say? 'Tis not Conclusive, but 'tis Material for you to hear what he did say, when he was upon his Oath.

Sir *Christopher Musgrave*. The Gentleman of the Long Robe that spake last, was pleased to tell you, It is very reasonable that you should hear those Persons, as to what *Goodman* swore at *Cook*'s Trial; I confess, I think this is harder than all the rest, because what you have hitherto admitted was in Writing; one was an Examination before a Justice of Peace, the other a Record; but for any Man to say, he can exactly repeat what any Man swore at the Trial, to me is wonderful: Why, in his Evidence, the least Mistake of a Word alters the Nature of the Thing, and therefore this would be a bold Undertaking for any Man; for if he wavers in the least Circumstance, 'tis not true that he swore so: Then this Gentleman was no ways concern'd in that Trial; and to what Purpose is it read, if not to the Prejudice of Sir *John Fenwick*? I do not know but by the same Rule, you may hear Evidence of what any Man hath sworn upon all the Trials this three quarters of a Year.

Mr. *Sloane*. I have been called upon to know in what Cases Testimony hath been given, that Witnesses have sworn so and so at a former Trial. 'Tis every Day's Practice between Party and Party, that where a Witness doth die, between the same Parties (I will state the Case fairly) 'tis given in Evidence, that such a Witness, at such a Trial, did swear so and so; sometimes they take it in Short-Hand, and then they can tell the Words of it; otherwise they repeat it upon their Memories; but I will not strain it: But I put it with a further Reason upon it; for we do not desire to hear it as conclusive Evidence upon the Prisoner, but only in this Sense; here is a Witness supposed to be carry'd away by the Prisoner's Means; and therefore, is it not necessary to hear what he said before he was deluded and carried away? Not that after it is heard, it is any conclusive Evidence; but it is reasonable we would come at the Truth, *omnibus viis & modis, quibus melius sciri poterit*.

Sir *Thomas Littleton*. A Gentleman says, to what Purpose should it be read, if it be not to the Prejudice of Sir *John Fenwick*? On the other Side, we may say, 'tis for his Benefit; that is only supposing one Way or another: I will hear any Body to his Benefit, and any Body to his Prejudice. Says a worthy Gentleman, it is not done in criminal Cases: Why, in this Case you have heard the Grand Jury, what he swore before them already; and what Objection is there more against hearing what he swore in another Case, than against hearing what he swore upon the Indictment? The main Inducement for you to hear it, is because he is gone away, and cannot be heard *viva voce*, and with Suspicion that it was by Contrivance of the Party.

Mr. *Grey*. I would speak but one Word as to what the Gentleman that spake last but one, said, and that is, as to the Courts below, That one Man is allow'd very often to give in Evidence what another swore; it hath been so, and 'tis at the Peril of any Person that swears that he swears Truth; for he may be prosecuted, if he does not swear Truth; but I would ask him, what Remedy there is here, if he do not say the Truth? We have no Remedy against him, if he takes away this Man's Life by what he says here.

Mr. *Smith*. Truly, Sir, if I must give my Opinion, I do think 'tis very reasonable that Bills of Attainder should be only upon extraordinary Occasions; I think that, take it at best, if there was not a Place where the Witnesses are to be sworn, and more particularly examined, I know not whether I should give my Consent for the passing of this Bill through your House; for the Witnesses against the Prisoner are not sworn, nor the Witnesses brought against them; so that we can only give our Opinion upon the Probability of the Matter; for what that Gentleman says, weighs with me, That 'tis a difficult Thing for any Man to charge himself with what was sworn at a former Trial; for the Mistake of a Word may alter the Sense very much. We are told by a worthy Gentleman, That there was two or three Witnesses that did give such Evidence against the Testimony of *Goodman*, that 'tis a Wonder almost how *Cook* could be found guilty: It is our Misfortune that *Goodman* is not here; it would have been worth our while to have heard what *Goodman* could have said in his own Defence; but since there are such Witnesses like to be offer'd against *Goodman*'s Testimony, Is it not reasonable that we should hear what *Goodman* said for himself?

Mr. *How*. Sir, I always thought it very reasonable that you should hear any Evidence that might tend to your Information; but I think 'tis plain, that nothing can tend to your Information that is alledged by any Person that is not to be believed; that is to say, is not to be believed from the Nature of the Evidence, though from the most credible Person in the World. I know not whether these Witnesses are to be brought or no; but I have heard that *Cook*, after he was condemned to die, without any Apprehension of his being saved, did, upon the Sacrament, declare, That *Goodman* was not upon the Place at that Time he swore himself to be there. I have heard since, that the same Divine that gave him the Sacrament, Dr. *Wake*, when he had confessed it, after he had made such a Declaration, had such an Abhorrence of it, that he would go to him no more; but I cannot think we can have Information from these Persons, that I supposed did not think of giving Evidence in this Trial, and therefore did not take Notice so particularly of what he said; and if so, 'tis losing your Time to hear it.

Mr. *Speaker*. Gentlemen, the Question is this, That the Council against Sir *John Fenwick* be allowed to examine Witnesses, as to what *Goodman* swore at the Trial of *Peter Cook*.

Sir *Godfrey Copley*. I must confess it would weigh with me, if it had been made appear, that Sir *John Fenwick* had taken off any Evidence, and I should be ready to apply it as well as I could; but I must needs take Notice of what was said in this Debate, That we had done as much as this comes to already; this makes me a little more apprehensive, and to take Care what we do now, since what this

House

House does, hath so quick an Operation. We are citing Precedents of this very Day already, and make one Thing a Hand to draw on another; and so they may easily be made use of in after Parliaments.

Sir Henry-Dutton Colt. I believe no one Gentleman doubts, that *Cook* was convicted upon the Evidence of *Goodman*; if they do, I would know the Reason of it; for upon the last Act, there are to be two Evidences to the same Treason: There were but two positive Witnesses against him for Treason, and they were *Porter* and *Goodman*: I think, therefore, he was convicted upon the Evidence of *Goodman*; what then needs any Person to remember any Particulars that passed at the Trial, if they remember in the whole, that he was convicted by the Evidence of *Porter* and *Goodman*?

Mr. Speaker. As many as are of Opinion, that the Counsel against *Sir John Fenwick* be allowed to examine Witnesses, as to what *Goodman* swore at the Trial of *Cook*, say, Aye.

Ayes 180.

Noes 102.

[*Afterwards the Question of Adjournment was put, and it passed in the Negative; and several Gentlemen that were against the Bill, to about Forty, went away together in a Body; some of them having declared, that their Health would not give them leave to stay there longer.*]

And Sir John Fenwick, and the Counsel, were brought in again.

Mr. Speaker. Mr. Serjeant Gould, the House do allow you to examine Witnesses as to what *Goodman* swore at the Trial of *Cook*; pray go on with your Evidence.

Mr. Serjeant Lovel. We call Mr. Collins, Sir.

Who was brought to the Bar.

Mr. Speaker. Was he a Jury-Man?

Mr. Serjeant Lovel. He was one of the Petit-Jury, Sir.

Mr. Speaker. Mr. Collins, can you give the House an Account of what was sworn by *Goodman* upon the Trial of *Cook*?

Mr. Collins. To the best of my Memory, I will give the best Account I can. *Goodman* did depose, That he came to the *King's-Head* in *Leadenball-street*, and enquired for Captain *Porter*, according as the Captain had order'd him; and the Captain came down and carry'd him up into the Room where the Gentlemen were. There was *Sir John Friend*, *Sir William Parkyns*, *Mr. Charnock*, *Mr. Cook*, and *Sir John Fenwick*; there was two others, if you please to have me name them.

Members. Yes, yes.

Mr. Collins. My Lord *Aylesbury* and my Lord *Montgomery*: This was what he deposed.

Mr. Speaker. Go on, Sir; you have named those that were at the Meeting.

Mr. Serjeant Lovel. Did he give you an Account of what was agreed on at that Meeting?

Mr. Collins. I think it was about sending *Charnock* to *France*.

Mr. Speaker. Sir, you should repeat all the Particulars, what *Charnock* was to do.

Mr. Collins. I can't remember any Thing further than what I have told you.

Mr. Serjeant Gould. If you please that Mr. Cooper may be asked to this?

Mr. Speaker. Was you of the Petit-Jury that convicted Mr. Cook?

Mr. Cooper. Yes.

Mr. Speaker. Can you give the House an Account what Evidence *Goodman* gave to you for Conviction of *Cook*, and what he said in that Evidence?

Mr. Cooper. Mr. *Goodman* did declare upon his Evidence, That he was at the *Old King's-Head* in *Leadenball-street*, where he did meet with divers Persons that were in Consultation; he named *Charnock*, *Sir John Fenwick*, *Sir John Friend*, and divers others.

Mr. Speaker. What was the Consultation?

Mr. Cooper. It was about sending *Charnock* over into *France*.

Mr. Speaker. To what Purpose?

Mr. Cooper. To bring over Forces, or encourage the Bringing over of Forces: That was the Purport of his Message.

Mr. Speaker. Will you produce any other Evidence to this Point?

Mr. Serjeant Gould. We desire this Gentleman may be asked to the same Purpose.

Mr. Speaker. Was you one of the Petit-Jury.

Another Witness. There was Captain *Porter*, and Mr. *Goodman*, that were the two Evidences; and *Goodman* did say, That he had been at the *Old King's-Head* in *Leadenball-street*, one *Coxe's*, and *Sir John Fenwick* was there, and several other Gentlemen, consulting of an Affair to send over into *France* for some Forces to be brought over into *England*; and that *Charnock* was the Person, and they all agreed he should go over.

Mr. Speaker. But did he give you an Account of what *Cook* and the others did agree to, upon which you found Mr. *Cook* guilty?

The same. We did apprehend that *Cook* did consent that *Charnock* should go over to *France*, and acquaint King *James*, That there had been a Meeting of several Gentlemen, and that they had made several Offers of Soldiers and People that were to be raised here, and to acquaint King *James* with it; and he declared, That *Sir John Fenwick* was there at the same Time.

Mr. Speaker. Pray, can you give this House an Account of what Exception was taken to *Goodman's* Credit, and how it was answered?

The same. There was Exception taken, That he was guilty of a great many Crimes, and that he had his Pardon; and the Fines were levy'd upon him; but it was said then, that he had paid his Fine, and that he was a very good Evidence in the Case.

Mr. Speaker. Mr. Serjeant Gould, have you any other Evidence to produce?

Mr. Serjeant Lovel. If you please, Mr. Speaker, here is Mr. *Tanner*, the Clerk of the Arraignments, that best knows the Nature of these Things; that as to these Objections that were made, it appeared to the Court to be a Contrivance, for he was never bailed, but discharged without any more to do. If you please that he may be asked, What Objections were made to *Goodman's* Reputation, and what Answer was made to it?

Mr. Speaker. I did ask the Jurymen that; and I suppose you need not labour this Point, unless the Credit of *Goodman* comes in question here.

Mr.

Mr. Serjeant Gould. Then may it please you, Mr. Speaker, we have one other Piece of Evidence against Sir John Fenwick, which we are humbly to offer to your Consideration, and I think 'tis very material; and 'tis some of the Evidence which I did open in stating of the Case, wherein Sir John Fenwick hath, in a manner, given a Verdict against himself; for while Sir John Fenwick was working of his Escape to go beyond Sea, at that very Time there was a Letter written by him, directed to his Lady, and delivered into the Hands of one Mr. Fowler, who was to cause it to be delivered to his Lady, by one Webber, who was taken up when Sir John Fenwick was. This Letter imports, That Sir John Fenwick look'd upon himself, as having no Defence, but depended only upon a Contrivance with the Jury; they were to work with some Persons of the Jury, who were to stand it out, and to starve the rest; and so by that Means to save him. Our Evidence of this will be, that it fell out that Webber (we have him not here now, but have endeavour'd it as much as was possible, but he is gone too out of the Way) that he was taken at the same Time that Sir John Fenwick was; but by reason of the protracting of Sir John's Trial, he comes, and is delivered, there being no Charge against him; and he is since his Deliverance, upon his Habeas Corpus, gone out of the Way; but we shall, in the Method of our Evidence, produce you Mr. Fowler, the Person to whom this Letter was handed, who will give you an Account of this Letter; and then will produce this Letter: To which End, we must humbly beg the Favour of a worthy Member of this House, Mr. Vernon, who hath this Letter, that it may be produced, and shew'd to Mr. Fowler.

Mr. Vernon. Sir, I receiv'd your Order to bring the Letter that Sir John Fenwick wrote, while in Custody at Rumney, which was sent up to me by Mr. Mascall, who had it of Mr. Fowler; and, if you please, I am ready to deliver it.

Mr. Speaker. Who sent it to you?

Mr. Vernon. One Mr. Mascall, a Justice of Peace of Rumney.

Sir Thomas Powys. I hope now we shall make an Objection to this Letter with good Authority. Surely for them to produce a Letter, as Sir John Fenwick's, is not to be allow'd as Evidence, unless it was prov'd that he wrote it, because that sort of Evidence was particularly taken Notice of by Parliament: And Judgment given upon that sort of Evidence, by Comparison of Hands, in the Case of Mr. Sidney, and the Act of Reversal of his Attainder, does allow it to be illegal Evidence. This is such an Authority as, I hope, will bear no Dispute: And the Courts of Westminster-Hall have since thought it so; they did so in the Case of Crosby, who was tried the other Day in Westminster-Hall.

Sir Barth. Shower. In this Objection we have the Opinion of inferior Courts, and the Parliament too; for the particular Evidence Mr. Sidney was convicted upon, was upon a Paper which was found, and proved by some who pretended to know his Hand; and I am sure that is more than they can pretend to, and more than they have yet opened. We do therefore humbly oppose this Evidence, it being in the Case of the Life of a Man; and the King, Lords and Commons, having declared, That this sort of Evidence ought not to be allowed: And therefore, I hope, you will not allow it in this Case. And in Crosby's Case, upon

reading the Act of Parliament, this Evidence was not allowed, and Crosby was acquitted.

Sir Thomas Powys. I have a Copy of the Bill for reversing the Attainder in my Hand; and it says, The producing a Paper found in the Closet of Mr. Sidney, which was not proved by any Witness to be his Hand-writing, &c. And, we hope, if in the Judgment of the Parliament that was not thought reasonable Evidence to Attain him, this will not be thought reasonable in Parliament to Attain this Gentleman.

Mr. Serj. Gould. As this Case is, we hope this may be a concurring Evidence: It will be plain; upon the Evidence we shall give, that Webber was with Sir John, and taken with him; and at that Time this Letter was handed by him over to Fowler, to be carried to my Lady. Now, Sir, we humbly offer it to your Consideration, How far it is available, and what Operation it will have? Whether, in a Case of this Nature, these two being taken together, and Webber delivers this Letter to Fowler to deliver it to Sir John Fenwick's Lady, and the Import of the Letter concerns Sir John Fenwick for his Acquittal; you will not suffer it to be read? 'Tis not to charge him with a Treason, for that is the Case of *Algernon Sidney*: 'Tis not to prove a Crime upon him; but we will prove that Sir John Fenwick handed this Letter over, that it might come to his Lady; by which he desired his Lady so far to work the Matter, that some Jury-man might be found to starve the rest, and stand out for him: If we could produce Webber, we would; 'tis plain, Webber corresponded with Sir John, and was with him.

Mr. Serj. Lovel. I humbly beg one Word in this Matter: The Counsel on the other Side do very well know, the constant Practice is, That in the Case of a Deed or Will, let the Value of the Estate be what it will, if the Witnesses cannot be produced, or are gone beyond Sea, they always admit Evidence by Comparison of Hands. But for the Case of *Algernon Sidney*, there is no Doubt but his Attainder ought to be reversed, because that Attainder was upon no other Evidence; for there was no other Proof, but a Paper, that he himself did say, was only for the Exercising of his own Ingenuity and Parts; and it was said to be written for no other Purpose, and proved only by the Comparison of Hands: Had there been any other Witnesses to corroborate, it had alter'd the Case. But in our Case, we do produce the Letter, not for the convicting of the Prisoner at the Bar; but we are humbly to lay before you all the Matter of Fact. It will be worthy of your Consideration, what you will think fit to take, and what to reject; that is a Matter for your own Judgment. We produce this Letter for this Purpose, to shew you, that after Sir John Fenwick was taken, he apprehended his Case to be so desperate, that he us'd these indirect Means.

Mr. Speaker. What mean you by that? This Letter came from Mr. Fowler.

Mr. Serj. Lovel. Here is Mr. Fowler that receiv'd it from Webber, when Sir John Fenwick was by, in the Presence of Sir John Fenwick.

Mr. Speaker. Shew Mr. Fowler the Letter.

Accordingly the Clerk went down to the Bar, and shew'd Mr. Fowler the Letter.

Mr. Speaker. Do you know that Paper?

Mr. Fowler. Yes, Sir.

Mr. *Speaker*. Where have you seen it before?

Mr. *Fowler*. I had it from one *Webber*, that was at *Rumney*, about the Third of *June*, as I remember.

Mr. *Speaker*. Was that the Time that Sir *John Fenwick* was seiz'd?

Mr. *Fowler*. He was then at *Rumney*. Mr. *Webber*, I was told, had some Acquaintance with me, and desired to speak with me. I went to him; and he was rising; and when up, says he, Mr. *Fowler*, I would desire you to put a Letter into the Post; says he, There is no Hurt in it; it is directed to Mrs. *Frances Farrer*, at the Countess of *Carlisle's* in *Soho-Square*; and when I had deliver'd it, he desired me to come to him again.

Mr. *Speaker*. Did you come to him again?

Mr. *Fowler*. Mr. *Masfall* of *Rumney* sent for me to his House, and told me, That he had heard that I had received some Letter from Mr. *Webber*; and when he had open'd it, and saw what it was, he thought fit to send it up to the Secretary of State; and I made my Mark upon it, that I might know it again.

Mr. *Speaker*. Have you made your Mark upon it?

Mr. *Fowler*. Yes, Sir.

Mr. *Serj. Lovel*. I desire he may be asked, Whether Sir *John Fenwick* was not in the same Room when *Webber* delivered it?

Mr. *Fowler*. Yes: But I question whether he saw Mr. *Webber* give it; for he deliver'd it privately, as I thought.

Mr. *Speaker*. Was Sir *John* in the Room then?

Mr. *Fowler*. Yes, Sir.

Mr. *Speaker*. Can you say any thing more of Sir *John Fenwick's* Knowledge of that Paper?

Mr. *Fowler*. No, I know no more.

Mr. *Serj. Gould*. If you please then, Mr. *Speaker*, because perhaps there may be some Objections, that we should give an Account of *Webber*, we will call a Witness, that we have done our utmost to find him out.

Members. No, no.

Sir *Thomas Powys*. That which I was going to offer is, That this Proof is short; if that which in the Act of Reversal of the Attainder of Mr. *Sidney*, is admitted to be no Proof against him; for the Act recites that Letter was found in his Closet, and proved by Comparison of Hands, and yet for all that, this sort of Evidence is condemn'd by this Act of Reversal, as illegal Evidence. This Case before you comes short of that; for here is no Proof by Comparison of Hands, nor that it was in the Possession of Sir *John Fenwick*: But only

that a Person in the Room, without the Privy of Sir *John Fenwick*, delivered it to another; and the Witness says, he did it in a private Manner.

Sir *Bartholomew Shower*. With Submission, this Letter could not be read in any Place whatsoever against Sir *John Fenwick*, in a Civil Cause; for even in that Case, they must prove it to be his Hand-writing by Comparison of Hands.

Mr. *Serjeant Gould*. I think not to insist upon it*: But that we shall desire is this; we have now done with our Evidence, only we shall desire the worthy Member, Mr. *Vernon*, to give an Account what was the Reason why Sir *John* hath not been tried; for indeed, he hath very much trifled with the Government, pretending still to make a free and ingenuous Confession.

Sir *Thomas Powys*. I am of Counsel for this Gentleman at the Bar; for his Life, for his Fortune, for All that he hath in the World. 'Tis not only this Gentleman's Case, but 'tis a Case that may be of great Consequence in all future Times. I have, as 'twas my Duty, attended for at least these twelve Hours, either in opening the Matter, or by producing such Evidence as, we hoped, we did fairly object to. Sir, there are several Things offer'd on their Parts, which I confess we little expected, and which will require something to be said to; and I have a great deal to offer on the Behalf of Sir *John Fenwick*, both as to this Method that is taken, and what is alledged in the Bill, and what is contained in the Indictment, upon which the Bill is founded, wherein I desire to be heard; and since you have been pleased to allow us to be Counsel for him, I am sure we shall have a fair and favourable Hearing. We have a great deal to offer to you, both as to the Matter of the Indictment, and the Manner of it: And I hope to shew you, That the Indictment, as it is laid, does not contain a sufficient Charge of Treason. We have likewise a great deal to say, as to the Evidence they have offer'd, at least what they call so: But I must make it my Request, That we may have Liberty 'till to Morrow Morning to make our Observations, and answer what hath been said by the Counsel on the other Side. I am not in a very good Condition by this long Attendance, and by attending my Duty in the Courts in *Westminster-hall*; and I am afraid I am not now in a Condition to do my Duty, as may be expected from me. I must own it, I am not prepared as I ought to be; and I hope when there is so great a Stake, you will allow us 'till to Morrow Morning.

Sir *Bartholomew Shower*. I beg your Favour in the same Manner, and to the same Effect as Sir

* This Letter was wrote with a Black-Lead Pencil, and was as follows:

“WHAT I fear'd is at last happen'd; had I gone alone I had done it; but the other was betray'd from London. It is God's Will, so we must submit. I know nothing can save my Life, but my Lord *Carlisle's* going over to him [meaning King William] back'd by the rest of the Family of the *Howards*, to beg it, and offering, that I will be Abroad all his Time, where I cannot hurt him; and that I will never draw Sword against him. I must leave it to you what else to say. All Friends must be made. My Lord *Devonshire* may perhaps, by my Lady; my Lord *Gadolphin* and my Lord *Pembroke*, by my Lady *Montgomery*; Mr. *Nelson* by the Bishop of *Canterbury*. My Lord *Arran* might engage his Brother *Selkirk* to use his Interest with *Keppel*. I believe, if my Lord *Carlisle* would go, it were best before my Trial, or else they will cut me short for want of Time; if he can prevail with him for a Pardon, he will procure it as well before my Trial as after, at least he may prevail for a Reprieve, 'till some can come over to him. My Lord also will have an Opportunity to engage *Bentinck* [the Earl of *Portland*] and get my Lord *Essex* to join with him. I cannot think what else to say; but the great Care must be the Jury, if two or three could be got that would starve the rest; that or nothing can save me. Money. I know, would do it; but alas! that is not to be had, nor shall I get enough for Counsel. I beg of you not to think of being shut up with me; I know it will kill you, and besides, I have no such Friend as you to take Care of my Business: Though it would be the Comfort of my Life, the little Time it lasts, to have you with me: And I have this only Comfort now left, that my Death will make you easy. My dearest Life, grieve not for me, but resign me to God's Will. You will hear, as soon as they bring me to Town, where they put me, and then I would have a servant, or somebody with me. I am interrupted, so can say no more now. Engage Sir *John Lowther*, the new Lord, who has more Interest than any body. Let my Lord *Scarsdale* engage *Jermaine* to engage *Overkirk* for me. Speak to my Lady *Arlington*. If my Trial could be put off 'till the King comes back, there would be more Opportunity to solicit him.

Thomas

Thomas Powys hath done. It is to be acknowledged there are several Things offered in Evidence, which is new to us Lawyers. We do not desire to trifle: We do not desire it on behalf of the Prisoner by way of Delay, but on behalf of the Length of the Proceedings, that you will give us a fair Hearing, as you have allowed it to the King's Serjeants; and that we may make that Defence that is incumbent upon us in discharge of our Duty to the Prisoner.

Mr. Speaker. Gentlemen, you must withdraw.

And being withdrawn.

Mr. Smith. I would not give an Opportunity to any Man to practise with Witnesses, to hinder the Truth of the Matter from appearing, after they have heard the Evidence for the Bill. I would know what List of these Witnesses Sir John Fenwick hath given in?

Mr. Speaker. You did make an Order, That Sir John Fenwick should deliver in a List of his Witnesses; but I believe he did not send in a List to any Body upon that Account, for I have made no Order for any.

Lord Coningsby. I am convinc'd that you are obliged to sit so long as to hear the Witnesses on both Sides; and therefore my Motion is, to call in the Counsel, and ask them, if they have any Evidence to produce; but I do not desire the Counsel should go on to make their Observations to Night.

Sir Walter Young. I think you are rightly moved by that noble Lord that spoke last. I think if Sir John Fenwick hath any Evidence to produce, he ought to produce it now; and that you ought not to give him Time till to morrow Morning to produce that.

Mr. Speaker. Is it your Pleasure that Sir John Fenwick and the Counsel be called in, and told, That the House do expect, if they have any Witnesses, that they do examine them to Night; but as to their Observations, the House will give them Time till to morrow Morning?

Which was generally consented to, and they were brought in again.

Mr. Speaker. Sir Thomas Powys, the House have consider'd of what you said, when you went out, and they are inclin'd to allow you Time for making your Observations; but they have commanded me to ask you, Whether you have any Witnesses to produce? And to let you know, That if you have any Witnesses to produce, they expect you would produce and examine them to Night.

Sir Thomas Powys. Sir, I would acquaint you with all the Openness that becomes me on this Occasion. I must confess we have not any Witnesses that we propose to call; but when we come to speak to the Matter, we hope to give you some Satisfaction as to that; but at present we have no Evidence to produce, unless it be a Copy of a Record.

Mr. Speaker. Sir, if you please to withdraw, you shall know the Sense of the House.

Accordingly they withdrew.

Mr. Chancellor of the Exchequer. I suppose, since the Gentlemen have no living Witnesses to produce to Night, you will not think fit to receive

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them at any other Time, for 'tis giving them too much Advantage; and the whole Meaning of the Chicanry of the Counsel, is only to get Time to reply, Mr. Dighton having heard the Evidence. And now I have mentioned him, give me leave to tell you, That I think you can't rise without taking some Notice of him. I think there is as plain a Subornation prov'd in Dighton, as can be, by one Roe; and when you have heard such a Character of a Man, and there is no other Evidence that he can solicit, I think you ought to take care that he be forth-coming; and that he should be taken into Custody. I think you may give the Counsel further Time, as to the Record; that can't well be falsified, tho' I believe, in a Matter of this moment, where the Government is concern'd, there never was such a Proceeding by the Counsel, as this has been, to entertain us six or eight Hours together, by Delays.

Mr. Smith. I suppose before you hear any Thing as to Dighton, you will do something as to the putting this Cause off to another Day; I humbly propose that you will go on this again on Wednesday.

Sir H. Hobart. When 'tis proper to go upon Ways and Means, I shall come into it: But while this is upon your Hands, I believe you will never get heartily into other Business: And therefore I humbly move you, that you will go upon this to morrow Morning.

Thereupon the House came to these Resolutions.

Resolved, That this House will proceed further in relation to this Business of Sir John Fenwick to morrow at Twelve a-clock.

Ordered, That Sir John Fenwick be remanded to Newgate.

Ordered, That the Bill be read a second Time to morrow Morning.

Mr. Ruffel. I am unwilling to trouble Gentlemen at this Time of Night; But I would know, Whether, when Sir John Fenwick is called in, you will ask him any Questions upon that Paper?

Members. No, no.

The Counsel were called in, and withdrawn again.

Resolved, That this House being informed that the Counsel for Sir John Fenwick have no living Witnesses to produce, except to prove a Record, that this House will not hear any Witnesses, except to prove the said Record.

Ordered, That Mr. Dighton do attend to morrow Morning.

Adjourned till to morrow Morning at Twelve a-clock.

[Memorandum, It was half an Hour after Ten, at the Time of Adjournment.]

Martis 17 die Novembris, 1696.

Sir John Fenwick and the Counsel on both Sides were called in.

Mr. Speaker. Sir Thomas Powys, you that are of Counsel for Sir John Fenwick, the House agreed last Night, to give you Time till to Day to make your Defence, your Observations upon the Evidence that hath been given.

Sir Thomas Powys. Mr. Speaker, I am of Counsel for Sir John Fenwick, who now stands before you

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upon

upon the greatest Concern he can have in this World; and as you have been pleased to assign us to be of Counsel for him, and I must own have very favourably heard us hitherto, so I shall think my self very unfortunate, if I should let fall any Expression in his Defence, that should seem indecent, and give Offence to this House; for I am sure I have no Intention to do it, but on the contrary, to behave my self with all the Deference that is possible, in a Case of this Nature.

The Thing I shall insist upon, will be upon three Heads.

First, The Manner of Proceeding, and Method that hath been taken in this Prosecution.

Secondly, I shall take notice of those Things that are alledged against him in the Bill, upon which he is to make his Defence.

In the *Third* Place, I shall beg your Favour, to observe what sort of Proofs they have offered on the other Side, and which they call Evidence.

As to the *first* Matter, I must intreat the Favour of you to be thus understood; That when I say any Thing in relation to the Manner of Proceeding, I do not speak in Opposition to the Power of Parliaments; for I know very well, that our Lives and Estates, and all that we have, are subject to Acts of Parliament; but I hope you will permit me to offer some Reasons, which (I hope) may be of Weight, in Opposition to the exercising of that Power in the Way you are now going. No Body can say, but when an Act of Parliament is passed, though the Party concerned may think it was upon hard Terms; yet when it is become a Law, it is not to be opposed. I can't say but those Persons, who in the last Sessions of Parliament were imprisoned by an Act *ex post facto*, and subsequent to the Fact complained of; yet when it was passed into a Law, they were legally detained: But, I hope, I may so far take notice of their Case, as some kind of Reason against this, to the End that those Laws may not grow familiar, that they may not easily be obtained; because Precedents generally grow; and as that Law *ex post facto*, extended to Liberty, so this extends to Life: One Precedent is apt to beget another; and therefore, sure you will be careful how you give Precedents, especially in Case of Life.

The first Thing I observe, is obvious; that is, the Person who is to be sentenced by this Bill, is forth-coming, in order to be tried in the ordinary Method of Justice. He is not only indicted, and actually under Process; but he hath pleaded, and he is ready, when his Majesty, in the Course of Justice, shall call upon him, to undergo his Trial; and either there is sufficient Evidence, legal Evidence against him, as the King's Serjeant insisted there was; and if there be so, then, under Favour, there is no Reason but he should have the Benefit of an ordinary Trial, which is the Birth-right of all the King's Subjects: Or there is not sufficient Evidence against him; and if there be not, it will be a good Reason against making a particular Law for taking away his Life: For, we think, nothing can be said for this Law, but want of Evidence; and that, to my Understanding, is a very odd Reason.

Sir, I would not spend Time in taking notice, That the meanest Subject in the Kingdom is entitled, by being born in this Kingdom, to be tried by a Jury, where there are those just

Advantages that can't be had in another Case: There is a Liberty of challenging 35, without shewing any Reason, and as many more, as he can any way object to with Reason. The Witnesses are upon Oath, and all the Proceedings are by certain known Rules and Methods, and not only by the Statute of *Magna Charta*, but by the Common Law of *England*, much more ancient than that Statute; and though the Proceedings therein are such as a Criminal may sometimes escape, yet the just Advantages are so much beyond any Thing of that Nature, that I hope we shall never complain of that ancient Course of Proceeding by Jury: I am sure it is the Honour of our Government, the Mark of our Freedom, and Envy of our Neighbours; and I hope, that Method of Trial shall never be laid aside, though sometimes it may not have the Effect that is desired by it.

I would take notice to you, that in a Case of the greatest Crime, and most Notoriety of Fact, yet the Persons concerned in it were brought to their Trial. The Regicides, who did not fly, but were found upon the Restoration of *K. Charles II.* though their Treason had the worst Effect, even in the Murder of the King; yet, notwithstanding, though the Fact was so notorious, those that were found upon the Place were admitted to their Trials in the ordinary Course of Justice; although at the same time there was a Bill of Attainder against some that fled, and some that were dead, and so could not be tried.

I would, with your Favour, likewise observe, That the Parliaments of *England* have been so far from depriving Persons from their ordinary Trials, that whereas the Common Law of *England* says, that Persons Out-law'd for Treason and Felony, if taken, shall be put to Death without Trial; yet the Parliament, in the Reign of *Edward VI.* made a Law, providing, That Criminals that returned within a Year, according to that Law, should be admitted to their ordinary Trials.

Sir, all along the Statutes run in favour of Trials; there are no less than two Acts of Parliament in the Reign of *Edward VI.* in the first and fifth Year of his Reign, that say, there shall not be less than two Witnesses against any Person for Treason: And I hope I shall never see a Law made so much in Opposition to those Acts, as that a Person shall be sentenced to Death without so much as one Witness, as I shall shew by and by.

Perhaps it might be thought extraordinary, That in the same Parliament that passed a Bill for regulating Trials in Cases of High-Treason, requiring two Witnesses with great Strictness, and giving further Advantages to the Criminal than ever were before allowed, an Act should pass, to put a Person to Death, without any Trial at all. And let any one compare the Preamble of that Act with this Bill.

Sir, I take it, with humble Submission, that the present Case is not at all to be likened to most of those Bills of Attainder that may be cited; those, when they come to be looked into, will be found either to have passed against such Persons as fled from Justice; and therein they only pursued the Rules of the Common Law, which allowed them to be Out-lawed, and by Consequence to be attainted: And the Parliament therefore, in attainting them, did but the same Thing; and therein,

in, there was nothing done extraordinary. True it is, that where Persons have been forth coming, there have been some few Bills of Attainder: But I will presume to say, they are never mentioned without heavy Censures, and a great Complaint against them.

This Cause is not like the late Instance of the Bill of Attainder against the Duke of Monmouth; for he was present in the Kingdom: yet he was in direct Opposition to any Method of Trial; he was in Defiance to all Courts of Justice: But here is a Person who submits himself, and hath pleaded, and stands ready to be tried; and I hope, I may take Notice, to take off all Prejudice that may be raised, That this Gentleman, though he was of the Parliament that passed that Bill, yet he was not in Town, 'till at least a Month after the Bill was passed.

I do agree, there are some Cases where Persons have been attainted without being admitted to be tried. In the Beginning of the Reign of *Edward III.* *Roger Mortimer* was attainted and executed, without being tried; but 28 *Ed. III.* it was reversed, because he was not brought to Judgment according to the Law of the Land, 1 *Ed. III.* The like in the Case of *Edmund Earl of Arundel*: But 4 *Ed. III.* *Richard* his Son, petitioned in Parliament, setting forth the Proceedings to be against the *Great Charter*, and insisting, that there ought to have been due Process of Law, and he was then restored in Part; but 28 *Ed. III.* there was an Act of Reversal, declaring, That it clearly appeared, that the said *Edmund* was unduly put to Death; and that the Statute by which he was attainted, was void, erroneous, and null. There is an Instance in 32 *H. VIII. Col. 4. Inst. fol. 37.* of *Thomas Cromwell Earl of Essex*, who, though he was in Custody in the Tower, yet he was attainted without being tried: But the Words of my Lord *Coke*, are as follow, *Auferat oblivio, si potest, si non utrumq; silentium tegat*: For the more high and absolute the Jurisdiction of the Court is, the more just and honourable ought it to be in its Proceedings, and to give Examples of Justice to inferior Courts. And he adds further, to the End, as I apprehend, that the Reversal of this Attainder may be of no ill Use: I am, says he, confidently perswaded, such worthy and honourable Members, shall from Time to Time be of both Houses of Parliament, as never any Attainder, when the Person is forth-coming, shall be had hereafter, without hearing of him; which I understand to be, without trying of him: And 'tis memorable, what my Lord *Coke* recites, That he who thus died, attempted the like against another.

There is another Case, of *Thomas Seymour*, Admiral of *England*, who likewise was attainted by Act of Parliament; and as it appears, without Execution: You have an Account thereof in the second Part of the *History of the Reformation*, Fol. 98, 99, 100, whither I will refer you, only to read the Sentence of the learned Author, there pronounced against him. That latter Case is, that of my Lord *Strafford*, which every Body knows. I shall, as the best Account of that Matter, crave leave to read the Words of the Parliament in the Act of the Reversal. I will not trouble you with reciting the Whole, but only read the Beginning, and some Part thereof in another Place. *Whereas Thomas, late Earl of Strafford, was impeached of High-Treason, upon Pretence of endeavouring to sub-*

vert the fundamental Laws, and called to a publick and solemn Arraignment and Trial, before the Peers in Parliament, where he made a particular Defence to every Article objected against him; insomuch, that the Turbulent Party then seeing no Hopes to effect their unjust Designs, by an ordinary Way and Method of Proceedings, did at last resolve to attempt the Destruction and Attainder of the Earl, by an Act of Parliament, to be therefore purposely made to condemn him upon Accumulative Treason — And then it goes on to shew, it was carry'd by the Tumult of the People, and then follows — *And to the End that Right be done to the Memory of the deceased Earl of Strafford aforesaid: Be it further enacted, That all Records and Proceedings of Parliament relating to the said Attainder, be wholly cancelled and taken off the File, or otherwise defaced and obliterated, to the Intent the same may not be visible in after Ages, or brought into Example to the Prejudice of any Person whatsoever.* So that the Parliament that enacted that Reversal, did consider those Proceedings as very evil and unjust, and was not willing there should be any Remains of such an Example to future Ages.

Sir, having made these Observations as to the Manner of Proceeding, I come now to that which is the subject Matter of the Bill at present before you, and which we take to be the Charge against Sir *John Fenwick*: I must crave leave to observe, that in all Courts of Justice, where any Person is accused, he is to make his Defence *secundum allegata & probata*: 'Tis not enough that a Matter is proved, if it be not alledged; nor that it is alledged, if it be not proved; but if it be both alledged and proved, then it is a full Charge, and requires an Answer. It is not only the Law of *England*, but I believe all Nations, and wherever any Person is to make his Defence, especially in Capital Crimes; that to which he is to answer must be alledged against him; from whence I shall observe what is alledged against Sir *John Fenwick*; for, I hope, we are not concerned to defend him further than as to what at this Time he is charged with. This Bill of Attainder, as it is drawn, and now stands before you, doth not so much as alledge, or say, That Sir *John Fenwick* is guilty of the Treason whereof he was indicted; and that hath prevented us from producing Witnesses to that, and several Matters which the King's Counsel have enter'd upon: For though you have permitted them to examine Witnesses to several Things quite out of the Bill; yet, I hope, you are not come to any Resolution, That these Matters shall be thought fatal to Sir *John Fenwick*, that are not so much as alledged against him. We do not therefore think we are bound, or ought to follow them in those Things that are totally out of the Bill; and therefore his being guilty, is not now the Question, because 'tis not a Charge upon him.

The first Thing that is alledged in the Bill is, That Sir *John Fenwick* was indicted at the Sessions, for that which is laid in the Indictment to be Treason (which by and by I shall crave leave to be heard to) and, I think, no Body will say this alone does require any Answer, further than to own the Fact or to deny it: And we do admit that he was so indicted. I need not labour much to clear him of the Consequence of that alone; for very often innocent Persons have been indicted and accused (for an Indictment is no more than an Accusation;) and this Bill, as I have ob-

served, doth not say he is guilty. When the Bill hath recited that Matter, it proceeds to take Notice, That they, by some unfair Prevarications (for so I agree they were, if the Facts alledged in the Bill are true, which by the way hath not been yet proved, by producing any one Witness) did obtain the King's Clemency to put off his Trial, in Expectation of an ingenuous Confession, which the Bill takes for granted he hath prevaricated in, by charging several Persons of Honour and Fidelity with Matters of a high Nature, only by hearsay; and by using other unfair Artifices to put off his Trial. How far it is made out, that I must submit to you; we think at present there is no Proof of it, and by Consequence we are not concerned to answer it: But had they proved it as fully as it is laid (though far be it from me to excuse such a Behaviour;) yet when a Criminal is to be tried for that which will be of fatal Consequence to him if he be convicted, no Body can say it comes near Treason, by unfair Means, to contrive to put off his Trial.

The next thing the Bill recites is, That one of the Witnesses, who might have been produced against him upon his Trial, if it had proceeded as was intended, is since withdrawn. I cannot say, but *Goodman* is withdrawn: But as the Bill does not so much as alledge, that it was by the Means or Procurement, no nor Privy, of *Sir John Fenwick*; so from thence that Part of the Bill charges no Offence home to *Sir John Fenwick*: For in case the same Witness had happen'd to have died by the Act of God, it would not have been said to have been a good Reason for this Bill of Attainder against *Sir John Fenwick*, unless he had contributed to it.

From these Premises follows the enacting Part, That *Sir John Fenwick* be attainted of High-Treason; and in future Times the Act must be supposed to be grounded upon the Inducement to it. And I humbly submit it to you, Whether this Bill condemning him for High-Treason, upon such Recitals, will be thought to be reasonable?

These being the Allegations of the Bill, I will now, with your Favour, come to that, which they on the other Side do call Proofs; and I must humbly observe to you, and submit it to your Judgment, Whether in the Case where a Man's Life is to be taken away, by a subsequent Law made on Purpose for him, the Proofs in that Case ought not to be much more evident, than if he were to be tried by a Law already in being? In my poor Apprehension (I speak it with all Submission to you, Sir,) it would be too much at once, to make a subsequent Law to condemn a Man to Death, and to do it upon doubtful and uncertain Evidence, or rather upon no Proof at all. Nothing could excuse such a Law, but an undeniable Proof of the Fact. And therefore surely the Position we find of *Mr. St. John's*, in my Lord *Strafford's* Case, is of most dangerous Consequence. I am afraid none are safe, if that be admitted, That a subsequent Law may take away a Man's Life without any Evidence, other than the private Opinion or Conscience of every particular Law-maker. He is pleas'd so to assert, That it may be done, as in *Rushworth's* History of that Trial, fol. 677. I am sure if this be so, no Man knows how long his Life is his own: I hope this Doctrine shall never be followed or approved. Sir, we have the Happiness to live under an Estab-

lishment that every Man does, or may know the Law he is to go by: Every one is bound at his Peril to take Notice of the Laws, and to act accordingly, because they may be known: But at this Rate none but Prophets can live amongst us.

In the next Place, I would observe what Course they have taken in their Evidence who are the King's Counsel.

First, They have betaken themselves to that which is not alledged in the Bill; and we think that this is not agreeable to a Course of Justice.

In the next Place, to make out what they insist on, they have produced but one Person that comes hither *viva voce* to speak to it; and I must take Notice to you, That he is not upon Oath. I know very well it is not your Course in this House to administer an Oath; but I know very well, though it is not your Course in this House to administer an Oath, yet, I hope, that is so far from being a Reason why this Bill should pass here without an Oath, that it is a good Reason why such a Bill should not begin here: There is no Place in the World, where a Person is sentenced to Death without an Oath. In the Case of my Lord *Strafford*, the Proceeding first was by way of Impeachment, and the Witnesses had been first examined upon Oath in the House of Peers; and that Bill of Attainder takes notice of it, reciting that it had been fully proved; and, by Consequence, we may suppose, that they would not otherwise have passed it, that being the Ground of their Proceeding upon that Bill of Attainder: But for the Bill to begin originally in this Place, to form such a Judgment, the heaviest that can be pronounced against a Man, a Judgment of Death, corrupting of his Blood, and forfeiting all he has in the World; and this upon bare Allegations, without so much as the Sanction of an Oath, is extremely hard. *Mr. Porter* is such a Person, that I know not how he hath gained so much Credit, that this Act should pass upon his Parole to take away the Life of a Man. He was lately of that horrid Conspiracy of the Assassination of the King; and shall that Man, who was so lately of that villainous Disposition, to be engaged in a Crime of that black Nature, and not convicted by his own Conscience, but by the Danger he had run himself into, not so much as pardoned his Crime, but at this time, if I may without Offence use that Expression, Drudging for his Pardon; I say, shall this Person's Life be taken away by his Parole?

Sir, The next Thing I would go to, is that (which likewise they call Evidence) which is an Examination, as they term it, of *Goodman*, taken before a Justice of Peace: But he was not examined, and I must insist upon it, that though you permitted it to be read, yet I did observe you did not declare it to be Evidence; but you were, I presume, willing to hear all Things, and then judge what would be the Evidence. And, I think, the King's Counsel did not press it further. Sir, as this is not Evidence that would be allowed in an inferior Court, so, I hope, you will not allow it to be Evidence here; for then it is like to be followed by other Courts, who observe the Proceedings here as their great Rule. 'Tis only what *Mr. Goodman* thought fit to write down without being examined.

Sir, the next Thing they resort to is, What *Goodman* swore upon his Examination in another Cause, where Sir *John Fenwick* was neither Party nor present. Sir, there are, I suppose, such Reasons against that sort of Evidence from natural Justice, that it is not admitted in any Court; because there may be a weak Defence, or the Person that swears it against one, perhaps may not, when Face to Face, have the Confidence to persist in it, in Case it be false against another; or at least that Person, who was not a Party before, when he comes upon his Trial, may think of such Questions as may go a great way to discover the Truth, may produce such Evidence against his Credit as may overthrow it.

But if what is sworn at one Time against one Man must be always taken for Truth against all others, the Trial of one of the Company is the Trial and Condemnation of all the rest: And how contrary is this to a fundamental Rule in our Law, That no Evidence shall be given against a Man, when he is upon Trial for his Life, but in the Presence of the Prisoner; because he may cross-examine him who gives such Evidence; and that is due to every Man in justice.

But I would with Submission inquire, how they are sure that *Goodman* would have sworn this Matter again, if he was now forth-coming? Because he did swear so in *Cook's* Cause, is it necessary that he would swear so again now, if Face to Face, with Sir *John Fenwick*? No Body can say so positively and absolutely; they only can imagine it, because he once swore it, therefore it is possible that he would do so again: Whereas we may as well say, he did then swear to save his own Life; and having done that, and found an Opportunity to get out of the Way, his own Conscience might put him upon flight, to prevent his doing of it again; and that might be the Reason for the withdrawing of himself. However, I insist upon it, That there is no Proof that it was by the Procurement of Sir *John Fenwick*: The Bill does not alledge it, and the Proofs do not come up to it: Nay, there is nothing offered to such Purpose, save only that Mr. *Porter* was pleased to say, That another Man told him, that the 300 Guineas he was offered, and 300 more he was to have received, were to have come from Sir *John Fenwick*: But hearsay Evidence is to be rejected, especially against a Man for his Life; because every Man is at liberty to talk at large: But God forbid that that should be allowed for Evidence!

The next Thing they went upon was what Mr. *Roe* said; That Mr. *Dighton*, who by your Permission is Solicitor for Sir *John Fenwick*, was inquiring of him what he could say to take off *Goodman's* Evidence: The Words I think he used were, What he could say to discredit *Goodman's* Evidence; and, I hope, that does no way affect Sir *John Fenwick*: For it does not appear that he had any Authority from him; but 'tis only suspected, because he is now Solicitor for him, which he was admitted to after the Time spoken of. But I take the Word, to be nothing relating to *Goodman's* withdrawing of himself; but to inquire what he could say to discredit his Testimony, which supposeth he would appear, and imports the quite contrary of withdrawing himself: And if he had gone no further, I think, there had been no fault in that; for any Solicitor may enquire up and down for the Advantage of his Client; and the Word *Solicitor* imports his Employment.

As to the Offer Mr. *Roe* says he made him of a very great Recompence, how far he is guilty of that, I suppose, he can give some Account, if you should please to enter into an Examination of it; and as I find he does not doubt to clear himself: So that Sir *John Fenwick* is in no sort proved to be privy to Mr. *Goodman's* withdrawing himself, much less to be proved to have had a Hand in it.

There is one Thing more I would offer, and that is grounded upon the Bill of Indictment preferred at the *Old-Bailey* against Sir *John Fenwick*; That the Matter in the very Indictment that they have read on the other Side, as it is there laid, and as far as it hath been offered to be here proved, does not amount to Treason; or, at least, it hath been made a very great doubt, and by some within these Walls: But this I offer, with all Submission; I have the Author in my Hand, who is a Person of Note of the King's Counsel; he hath furnished me with such Arguments as, I hope, I may be admitted to put you in mind of without Offence.

The Indictment lays, That there was a Conspiracy and Agreement to call in Foreign Power, and to that Purpose to send *Charnock* to France; but the Indictment does not say, That *Charnock* was sent, only that there was a Meeting, and an Agreement, and a Conspiracy, to send him: So the Indictment does not lay it as a Thing done, nor does the Bill charge it so; but only takes Notice, That he, I mean Sir *John Fenwick*, was indicted for Conspiring, and Agreeing to call in a foreign Force; so that this Bill does not say that *Charnock* was sent. And I appeal to you, Whether it be proved that he was sent: For Mr. *Porter* says no more, but that there was a Meeting at the *King's Head*, and he named Sir *John Fenwick* to be one who was present; and there it was, he says, agreed, That *Charnock* should be sent into France. Now, if there was nothing more than an Agreement and Conspiracy to do it, and no further Act, but such a Meeting to do it, but the Person was not actually sent, or, at least, not proved to be sent; then, from this learned Author's Opinion; I insist upon it, that this is not a sufficient Overt-Act of Treason. In the late Case of my Lord *Ruffel*, whose Innocency is vindicated by this Author, he takes notice, That a Conspiracy or Agreement to levy War is not Treason, without actual levying War; and of that Opinion was my Lord *Coke*, and my Lord Chief-Justice *Hales*. A Conspiracy or Agreement to call in foreign Forces, unless actually done, or a Person, at least, actually sent, or something more than a bare Agreement for that Purpose, is the same as a Conspiracy to levy War. And in the Case of my Lord *Ruffel*, the Proof being only, That he, and others, met together, and agreed to seize upon the Guards, and levy War which he never actually did, it is insisted upon by this Author, that that was not Treason; for that Indictment went no further. And therefore my Author says, 'Show me where such an Accusation was ever agreed to be more than a Conspiracy to levy War; and that such a Conspiracy was ever agreed to be Treason within the Statute of *Edward III.* till within these few Years.

Sir, now I must humbly submit it to you, whether this be any thing more: And for the Purpose you will please to consider, What this present Bill, and what that Bill of Indictment is: For it

is not, for that *Charnock* was sent into *France* to solicit foreign Forces; but only that *Sir John Fenwick* was at a Meeting, where they did agree so to do. Calling in foreign Forces is levying War, but Conspiracy to levy War is not Treason, unless it be actually done: A Conspiracy to call in foreign Forces is nothing more. And therefore I humbly insist upon it, That neither by this Bill, or by the Indictment recited in it, or the Proofs offered before you, any thing is charged, but only an Agreement at that Meeting mentioned by Captain *Porter*, a single Person, and he not upon Oath, to call in foreign Forces. For he only says, That *Charnock* told him he had been in *France*. I shall not trouble you any further; we have not thought fit to produce Witnesses, for the Reasons I have offered: For that we do not find, that *Sir John Fenwick* throughout the Bill is charged with being guilty of Treason; and we are not willing to enter upon the Defence of a Matter not charged upon him. I hope, Sir, you will not make a Precedent, That where a Person is indicted, and ready to abide his Trial, in the ordinary Course of Justice, as *Sir John Fenwick* now is, that he might be taken out of the Hands of the ordinary Judges, and be brought to this Bar, to receive his Trial here.

A Matter of this Nature may be of very great Consequence: We know at present upon what Ground we stand; for by the Statute of *Edward III.* we know what is Treason; by the two Statutes of *Edward VI.* and the late Act of Treason, we know what is Proof; by the Statute of *Magna Charta*, we know how we are to be tried, *per legem terræ & per judicium parium*; That is, a Peer by his Peers, and a Commoner by a Jury: But if Bills of Attainder come into Fashion, we shall neither know what is Treason, what is Evidence, nor how, nor where we are to be tried. Sir, I submit it to you, and hope this Bill shall not pass.

Sir Bartholomew Shower. Mr. Speaker, I am of Counsel for *Sir John Fenwick*, the Prisoner at the Bar; and first, I am humbly for to thank you for your Candour, of which I have had frequent Experience; and humbly beg for my self, That if I offer any Words that are indecent, or unfit for me, that you will interrupt me; for it is furthest from my Intention so to do.

The Bill that is brought into this House against *Sir John Fenwick*, is that whereby every one of you (with Submission) are to declare and pronounce, *That he shall be drawn, hanged, and quartered, as a Traitor.* And the Question before you is, Whether you will do this in this Case?

Sir, I shall not pretend to question, nor enter into any Debate or Argument in this Thing concerning the Power of Parliaments: No question, but in all Governments, there is some supreme Power; and by our Constitution, it is lodged in the King, Lords and Commons.

There are Precedents of Attainders, and that many; but can they shew me, where there hath been any Attainder by Parliament, for High-Treason, upon one single Act, which if Treason, was determinable at Common Law; there have been Bills of Attainder for flagrant Treasons, and for great Ministers of State; some topping Sinners, who have been above Judges and Jury, and whom inferior Courts could not tell what to say to: But I believe I may say this, That for a single Consult or Agreement between four or five pri-

vate Gentlemen, in a private Room, in which there was no Danger, but by the Consequence of the Resolution, if it was put in Practice, no Man can shew any Precedent for attainting any Person in Parliament.

If you please to observe, the 25 *Edw. III.* reserves the Power to Parliament, to proceed in Treason nor expressed within the Statute; but as to the Compassing the King's Death, Adhering to the King's Enemies, and those Things that are there particularly specified, it seems the Sense of the Parliament to leave them to the Rules of the Common Law. So 1 *Hen. IV. No. 144.* upon the Roll it is at large complained of Accusations in Parliament for Treasons and Felonies, and declares for the future, they should be determined in the inferior Courts.

1. This was occasioned by *Sir Raw. Harrey*; *Cotton's Abridgment*, 189.

There is a melancholy Precedent or two of single Acts of Attainder; but they are most of them reversed. *Sir Thomas Haxey* in *Richard the II's* Time, was Attainted for bringing in a Bill into the Commons House against the Prerogative; but 1 *Hen. IV.* it was reversed with great Censure, *Cott. Abridg.* 362, 363. There are others in *Hen. VIII.* Time, but they were for Acts in that Reign, which were questionable, whether or no within the Statute of *Edw. III.* and were for such Actions, as perhaps were not for the Honour of the Prince, or Good of the Government, to disclose by publick Trial, as the Attainder of the Queen, and others concerned.

I beg leave to repeat the Words of a great Author, the Bishop of *Salisbury*, in the *History of the Reformation*, which I crave leave rather to do, because it hath been approved of by this House, for he had Thanks of the Parliament for it; *Fol.* 359, 360. where speaking of these sort of Attainders, he says, *After these Executions, followed the Parliament in 1439. in which these Attainders were not only confirmed, but divers others were made of Persons in Custody, without bringing them to Trial; (and he says) which can't be enough condemned as a Breach of the most sacred and unalterable Rules of Justice.*

That of the Marchioness of *Exeter*, &c. I shall make no Paraphrase upon it: There is no question but you will agree, and I must admit, *Salus Populi* to be *Suprema Lex*; but for an Act, not the last of *May*, but last *May* was twelve Months, the Danger passed, the Persons executed that were concerned in the great Treason, and all Danger that might have been from that Act gone, and no Fear now concerning it; I hope you will not use the extraordinary Power of the Legislative to punish for that Fact which may be punished by the ordinary Rules of Law.

The Reason suggested in the Bill is, That 'tis impossible to have this Gentleman tried by the Rules of the Common Law; for otherwise there is none: For you will not waste your Time; and if the Doctrine that was broached here Yesterday be true, there is no Occasion to trouble you now; for according to their Doctrine, there is legal Evidence, and there is no need of a Bill of Attainder; but taking that for granted, that we must do; otherwise there is no Reason for this Bill. Then the Bill says, That *Goodman* was an Evidence, and that he is withdrawn; which I must observe, is neither laid, nor proved to be by the Privy, Consent, or Procurement of *Sir John Fenwick*. There

is no Pretence of it in the Bill; no Insinuation of it, nor any Evidence to that Purpose. Then suppose *Goodman* is withdrawn, we may presume you will not pass a Bill to put Sir *John Fenwick* in a worse Condition than if *Goodman* was present, if he had been ready to have sworn the same Thing.

In case you do pass this Bill, you do put Sir *John Fenwick* in a worse Condition than he would have been if *Goodman* were here: Perhaps it might have been reasonable to have an Act passed, that *Goodman's* Depositions should be read at the Trial, if *Goodman* was withdrawn; but we hope it can't be a Reason to condemn Sir *John Fenwick* of High-Treason without Trial; for the Consequence of this is (if it were by his Means) that he is punished greater than the Thing requires. For if *Goodman* was here, Sir *John Fenwick* would have had his Trial by a Jury, the Benefit of challenges, Exceptions to the Array, might have challenged upon Account of Favour, if any of the Grand-Jury had been impanelled, had his legal Exceptions to the Testimony of the Witnesses, might have these Witnesses examined upon Oath, might give Evidence upon Oath to it; and all this he is deprived of: So that now he is in a worse Condition, by *Goodman's* Absence, than if he was present. We insist upon it therefore, and submit it to you, whether any Punishment can be imposed by the Legislative Power, but only to supply that Defect, and put the Case in the same Circumstances it would have been, if such a Miscarriage had not been committed. But this Bill is to condemn him to Death upon the Oath of one Witness, though there was your Act of Parliament last Year requires two. With submission to their Judgment, it was the Law of the Land before that; and in all Cases, where Trials are *per Testes*; and 'tis the Law of God, and the Law of the whole World; and no Law allows a Man to be condemned but by two Witnesses; and the Reason that here one Witness is admitted, is, because he hath the Benefit of a Jury, and Challenges to them, who the Law supposes are privy to the Fact, and therefore are to come from the *Vicinage*, from the Neighbourhood of the Place where the Party dwells; and for that Reason, in Cases of Felony, where no Statute interposes, the Law allows but one Witness. Natural Reason requires two Witnesses in case of so great Crimes, because that one Witness can be no Rule to guide your Judgments; one affirms, the other denies, this is equal; and Presumption ought to be on the Side of Innocency, rather than otherwise; but we hope, in this Case, it will not be thought reasonable to pass the Bill to condemn Sir *John Fenwick* for Treason, and to condemn him to the basest of Executions, upon the Testimony, nay, upon the Parole of one Witness. And 'tis no more than if *Goodman* had been dead, then you would not have done it. If *Goodman* and *Porter* had both come to this Bar, you would not have done it, but have referred him to his Trial at the Common Law. Now what is there pretended by them to induce you to judge the contrary, or at least without so much as an Allegation in the Bill, that Sir *John Fenwick* procured his withdrawing. I propose it to your Consideration, Whether there be any Proof that *Goodman* is withdrawn? He was once in Custody, let out upon Bail, the Prosecutors approved the Bail, he never yet called upon his Recognizance; nay, there is not one tittle of Evidence, but that *Good-*

man may be in the same Lodging where he was: And then, suppose when you have passed this Bill, *Goodman* should appear again, and contradict his Testimony he has given before; then it may be too late for you to do Right to Sir *John Fenwick*. 'Tis not so much as offered that *Goodman* could not be found; they offered a printed Proclamation, which I am sure the King's Serjeant will not allow to be any Evidence. Whether it passed the Great-Seal before it was printed, or whether it passed it at all, *non constat*; for it was not read; they waved it. It does not appear Sir *John Fenwick* consented, or procured *Goodman's* withdrawing; he could not procure it, for he was a Prisoner, and so not likely to affect it, being a Prisoner, especially for his Life.

As for my Lady *Fenwick*, whether she did so or not, I am sure you'll be of Opinion, it ought not to affect Sir *John Fenwick*: Suppose *Clancy* a Stranger to Sir *John Fenwick*, and in Truth he never saw him: Or suppose him a Friend, and he officiously did what he did; he ought to answer for it, and I think he hath undergone the Punishment the Law thought fit to inflict in that Case; 'tis his own Crime, and by the Rules of Justice, no Man's Crime ought to tend to the Punishment or Misfortune of another Man: The Act of one Criminal, thought to be a Party, or Acquaintance, or a Friend of Sir *John Fenwick's*, ought not to affect him, nor no Body but the Actor; 'tis he that hath suffered for it.

And what hath been said in that Matter ought not to influence your Judgments; for 'tis not improbable, but what *Clancy* told *Porter* is false; you will never allow Hearsay, not permit your Judgment to be governed by any Thing but what is certain, and hath all the moral Rules of Persuasion: Hearsay was never, by any Law in any Court of the World, allowed, nor indeed believed in private Conversation.

As to my Lady *Fenwick*, there is this further, That Husband and Wife, in respect of Crimes, are distinct Persons; and what one does cannot affect the other, no more than she deserves to be executed for what Sir *John Fenwick* did: And as to what *Porter* says concerning it, it only relates to himself; it proves no Suggestion of the Bill, which is, That *Goodman* is withdrawn, because a Stranger to Sir *John Fenwick*, (and it must be so in Construction of Law) made an Attempt upon Captain *Porter*; therefore *Goodman* being withdrawn, there was an Attempt upon him, and by the same Person, and by the same Means: This is no Evidence; it carries no Logick in it, and won't prevail upon your Judgment.

We offer another Thing to your Consideration: 'Tis said, that one *Roe* was spoke to by a Solicitor of Sir *John Fenwick's*, Whether or no he could say any Thing to the Discredit of *Goodman*, as to his Robbing or Clipping. The asking of that Question was lawful; and to desire him to testify it was lawful: I must agree, to offer too great a Sum of Money, may subject him to an Information in the King's Bench; (but Mr. Attorney knows that best) but God forbid it should affect Sir *John Fenwick*! Mr. *Dighton* was not his Solicitor at that Time, not appointed, nor had any Liberty to come to him; besides, it can't be an Evidence, nor can't induce you to believe, That the same Person was instrumental to get away *Goodman*, because he asked *Roe* if he knew *Goodman* to be guilty of those Crimes; for there is no Evidence, that

that he asked him to persuade him to withdraw himself.

There's another Thing we could offer to you : There's no Proof of that, which, upon the first Reading of this Bill, was aimed at, to be punished with greater Pains than the Common Law inflicts, and that is, the giving of false Papers and Accusations against great Persons ; they have not attempted any Thing like it ; so that That is to be taken as if there was no such Thing. Neither is there any Proof of protracting his Trial, by any Promises of Confession or Discovery ; they opened it, but did not attempt the Proof of it, but waved it.

But take it to be so ; I hope you will not pass an Act to attain a Man for making a false Accusation, which only incurs an Action of *Scandalum Magnatum*, or Fine and Imprisonment upon an Indictment ; and, I hope, you'll not condemn him to a greater Punishment, when, at the Time he did it, he had no Notice of that Punishment. The Design of the Law, is to influence Men by Fear of Penalty ; and how can that be, when Penalties are not known at the Time the Fact was committed ? I speak with Submission still ; it seems not just, that I should forbear with so much Caution, from an Action that exposes me to the Penalty of 20*l.* as from an Action for which the Law says, I shall forfeit my Life : Now, Sir, in this Case it might be expected that he should incur the Penalty of Fine, Pillory, and Imprisonment ; but not that he could incur the Penalty of Death.

Then, Sir, as to the protracting of his Trial by such Promises of Confession. Certainly the putting off his Trial, in it self, is so far from being a Crime, that it can't be thought but lawful : 'tis every Man's Duty, upon the Principle of Self-preservation ; and it was at the Liberty of the Government and Ministers, to do as they thought fit in it.

In the next place we do insist, That there is no Treason alledged nor proved in this Case : There is no Pretence of Truth nor Charge, in respect of the Assassination ; nor of buying of Arms or Horses, though mentioned in the Indictment : And if Sir *John Fenwick* had been to have been tried upon this Indictment, and they had had both these Witnesses there, all that could have been proved, must be of the Consult ; as to the rest, he must have been found not guilty : And I believe 'tis most notorious, that the whole Company there, could not have raised what was talked of. Now as to this single Act, it hath been said, that a Conspiracy to levy War is not Treason : My Lord *Russel* was attainted for it, and that Attainder was reversed upon this very Account, and the Act declares the Reason of it, he being deny'd his lawful Challenges, and by strained Construction of Treasons he was unlawfully convicted of Treason. Now the Overt-Act in the Indictment was this, That my Lord *Russel*, and others, did consult and conspire to seize the King's Guards : The Proof of it went further, That they sent Sir *Thomas Armstrong* to view them and seize them : But then the Question is, Whether the Consulting to send a Man to invite foreign Forces, is any more than a Consult to seize the King's Guards ? We say each are levying of War, and 'tis not within the Clause of adhering to the King's Enemies ; for they must be either present aiding and abetting of them, or sending them Money, Arms, and Ammunition, and the like ; and I think, for that, I may appeal to

your Act made against corresponding with the King's Enemies ; which, I suppose, if the Law before was otherwise, it needed not to have been made. Now here is only a Consult and Agreement to do this Act.

It hath been questioned, Whether *Scribere est agere*. But here it is only *mittere* ; nay, it is not so much, 'tis only *agere mittere* ; six Men had between them a little private Discourse, and at last one of them did agree to send *Charnock* to France : The Question is, Whether the Law of the Land will warrant this to be Treason ? And if not, then you must not pass this Act upon such a single Point. Dr. *Story's* Case is deny'd to be Law ; this Case is no more than that in my Lord *Dyer*, for writing a Letter to invite the *Spanish* King to invade England ; and it was a Time of great Fear of them, as it is of the *French* King now ; and he was attainted upon that, but that Judgment hath been questioned and deny'd to be Law. My Lord *Hales* expressly, in his Pleas of the Crown, says, That a Conspiracy to levy War, is not an Overt-Act of the King's Death ; and that attempting to levy War, is not Treason. Now the Sorts of Treasons are these Three ; Compassing the King's Death ; Levying War ; or, Adhering to the King's Enemies. Now for compassing or agreeing to levy War, to apply that to be an Overt-Act of compassing the King's Death, hath been always complained of as a Strain of the Law.

Upon these Reasons, we think this would not have been an Act of compassing the King's Death, as laid in the Indictment ; and then if it be but a Question, Whether it be or no ? We hope you will not proceed in your Legislative, especially when he is deprived of the Advantage of insisting on this at his Trial at Common Law : Witnesses are there upon their Oaths ; he might have had a Challenge to the Jury ; he might move in Arrest of Judgment. Now the Question is, Whether you will pronounce Sentence of Death upon him for High-Treason, upon one single Act, a Year and a half ago, just after the Act of Parliament for regulating Trials in Cases of High-Treason ; and if we had had a Trial at Law, we should have canvassed these Things, if we had Witnesses upon their Oaths ; for the Pardon reached the 29th of April, they could swear no new Discourse but just in May ; and now they say it was in the Middle of May ; if it had been before, the King's Grace would have exempted Sir *John Fenwick* from Punishment ; and these Things we should have had the Advantage of, if we had had the Liberty of a Trial.

There's another Consideration ; Sir *John Fenwick* hath pleaded, and hath so pleaded to Issue, and Issue is joined, and a *Venire Facias* is awarded. Now we submit it to you, whether you will think fit to take it out of the Hands of the Common Law, when there is no extraordinary Necessity ? And the Consideration we have to offer to you, if you do not cast out this Bill, if we should have the good Fortune, as we hope for in another Place, Sir *John Fenwick* stands still liable, and must submit to his Trial, if the King's Counsel think fit to prosecute him, and we think it hard to undergo your Censure, to be condemned in this Place ; and if (perhaps) he be acquitted here, to undergo the like Danger in another, and then to be tried in a Third : And for these Reasons, we hope, you will reject this Bill.

Mr.

Mr. Serj. Gould. May it please you, Mr. Speaker, I have hearkened to what these Gentlemen have objected, and could not be aware of all they have said: They have enlarged upon several Topicks; I shall recollect them as well as I can, and answer them in the Method they have taken. I never did think, that the Parliament would take Things out of the ordinary Course of Justice, nor attain any of Treason, unless in Cases extraordinary; and these Gentlemen have agreed, That in Cases extraordinary they have done it. They likewise have agreed, and Sir Bartholomew Shower has told you, That there are some Treasons, by the Statute of 25 Edw. III. reserved by that Act, to be declared by Parliament. Sir Thomas Powys says, This is taken out of the ordinary Course of Justice: So says Sir Bartholomew Shower; says he, Here is an Indictment before you, the Party hath pleaded not Guilty; and they say he may be tried in the ordinary Course of the Law; and therefore they look upon it as improper to bring it here.

The Gentlemen are mistaken very much, to think that I did say, That the Examination that I said was Evidence here, would be allowed below. If I had thought so, I should have thought at the same Time, this House would not have meddled with it: But I do disagree with them in this; and take it, That where a Case is extraordinary, you will come and meddle with the Matter. Here is an abominable Treason, that is agreed on all Hands. Here is Plot upon Plot; here hath been a Plot now to take away the King's Evidence; there was two Witnesses in the beginning, and 'tis very plain that one of them is not here; for that here was a Proclamation produced, and I did look upon that Matter as taken for granted, That Goodman was withdrawn, and for that Matter they may be easily satisfied. They say, we have not proved the Suggestions of the Bill; but we think we have: For first of all, Captain Porter hath here sworn it expressly; it is not a Thing of loose, bare talking, but he hath proved a deliberate and formed Conspiracy; he hath proved, that it was actually agreed upon, a first, and at a second Time; and that Charnock was sent in order to the Execution of it: And what was it for? It was plainly to depose the King. He tells you, for that Purpose, they had desired 8000 Foot, 1000 Horse, and 1000 Dragoons from the French King; and these Gentlemen agreed to join them. Now, can there be a greater Evidence of deposing the King, and consequently of imagining his Death? 'Tis an Evidence of the Imagination of the Death of the King, as well as of the Rebellion; it being so in the necessary Consequence of it. Now, I think, he hath fully proved that. Then we offer to you, how far you will allow of this Examination: Why? Because upon a second Contrivance here is a Witness withdrawn; and can we give you greater Evidence of that than we have given? We have proved that there was tampering, let the Thing run as far as it will. Captain Porter was dealt with, had 300 Guineas in Hand, and 300 more he was to have remitted to him; and was to have 300*l.* a Year, whereof Sir John Fenwick was to pay one. It does follow after, that he is withdrawn: We must leave it to this honourable House, what Construction you will make of that; Whether here is not a second Plot?

Now this Matter is brought before this honourable House, we have gone so far in it, as to produce Goodman's Examination that was taken before

a Justice of Peace: We have shewed you the Evidence that he hath given upon a former Trial; and now he is gone, sure no Body but must justly infer, 'tis by Sir John Fenwick's Means: So that here they have taken away the Evidence that is necessary in the ordinary Course of Proceedings. In such an extraordinary Case I think it hath been usual for the Parliament to interpose: Therefore, what they pretended, under Favour, that this should not be Evidence, is all taken off. For now we are in Parliament, you will make use of such Informations as can give you any Light into the Matter, and may obviate and cure the Distemper that is upon us; and you are Judges of your own Methods, and how far Sir John Fenwick hath been concerned upon the Instances we have given you, that is in your Judgments. As for what Sir Thomas Powys tells you; says he, This Power hath not been executed by Parliaments very frequently, but it hath generally been done where Persons are withdrawn from Justice, and can't be come at in the ordinary Course. Why, we are in the like Case; if so be we can't come at Justice in the ordinary Course, and that by our Evidence having been tampered with, and drawn away; then, Sir, under Favour, by their own Arguments, 'tis proper to come before this honourable House; so that notwithstanding what hath been said, we do think we have given you Evidence.

And as for what they said, That we have not given any Account that Sir John Fenwick, by giving Assurance of his Confession, had protracted his Trial; for that I did apply my self, That Mr. Vernon might give you an Account of it: So that upon the whole Matter, we must leave it to your Consideration, and hope we have given you good Satisfaction, that there hath been a great Plot against the Government; and there was no Evidence of any other Matter before the Judges, and they allowed it to be High-Treason. Here is the same Evidence, only we have not one of them *viva voce*.

Mr. Serj. Lovel. Mr. Speaker, I shall not trouble you nor the House very long; but I humbly hope, with a little Pains, to satisfy the House, that most that hath been said on the other Side is, not much to the Purpose. Sir, I will consider, with the Leave of this House, what the Common Law was before 25 Edw. III. and how the Law does now stand; and draw some Consequences from thence, and the Necessity of this Case.

The Statute of 25 Edw. III. I must observe it, is not an enacting Law, it is only a Law declaratory; for all those particular Instances of Treasons that are mentioned there, were Treasons before that Law was made; and so, by the Preamble of it, plainly appears: But the Judges had a greater Liberty upon constructive Treason, and upon accumulative Treasons; and that was left too much at the Discretion and Liberty of the Judges below, and the executive Power of the Law. Then that Statute comes and restrains the Judges in that Point; and says, That they shall not give Judgment in any Cases of Treason, but only in these Cases particularly mentioned there: And that Statute says, That if any other Matter which shall be thought Treason, should come before them, they shall not proceed to Judgment, but acquaint the King in Parliament with it. I only make use of it, to prove how Treasons stood before that Act, and how it comes to be altered from the Common Law: And I am sure it is not to be denied, but that one Witness was sufficient at the

Common Law: But then comes 1 *Edw. VI. c. 12.* and that, for the Security of the Subject, does ordain, That in Cases of High-Treason there shall be two Witnesses of the Fact: But that Statute does not alter, but was made for the more Security of the Subject in Point of Proof. But in that Statute of 1 *Edw. VI. c. 12.* that does provide there shall be two Witnesses in Cases of High-Treason, there is an Exception of Treason for counterfeiting and forging of the Coin; and that is the Reason that the Law is taken now, that though there must be two Witnesses in the Cases of other Treasons, yet in the Case of Coining, there needs but one. The Offence or Crime is never the greater, because there are to be two Witnesses to prove it. In this Case that is here before you, we come to desire your Help, because one of the Witnesses is by Art and fraudulent Means withdrawn: Does that purge the Crime at all, or lessen it? No Man will say the Crime is less, but it does prevent a regular Trial before the Courts below; and that is the Reason why we did come here; and we hope this Defect shall be supplied by a special Law. But, say they, 'tis very hard a Law should be made *ex post facto* to take away a Man's Life. It would be very hard, if the Case was as they have stated it, to make a Crime *ex post facto*, that was not so before: But I do not take it to be hard for a Law to be made to repeal another, to make a Matter triable that was not triable before.

Suppose a Law should be made, That all Treasons from and after such a Time, suppose from a Time before the Fact is here supposed to be committed, as May was twelve Months, should be triable as at the Common Law; no doubt the Parliament may repeal a Law in part, or in all. No Man can say but Sir *John Fenwick* might be tried at the Common Law by one Witness, before the Statute of 1 *Edw. VI.* so that I do observe, and humbly submit it to you, That this Law, by the Act, is not changed as to the Crime; the Crime is as it was before, it is only changed as to the Number of Witnesses. The Instances that have been observed on the other Side, with humble Submission, I think, do not reach our Case. We do not insist that there are two legal Witnesses; we do confess the Information that hath been read is not a legal Proof; but this House, in their legislative Capacity, is not to be confined to the Evidence that a Jury must have below. This House may take what Ways and Methods they please to satisfy themselves. Say they, Here is the Life of a Gentleman that is concerned. I know all good Men will be tender of the Life of a Man; but here is the Life of the King, and the Safety of the Kingdom, the Peace and Safety of us all, that is concerned in the same Case; and let them put these Things into the Balance, and consider which ought to weigh most.

You have a Record before you of the Conviction of *Peter Cook*, who was indicted by the same Witnesses.

A learned Gentleman, that is of Counsel for the Prisoner at the Bar, did make the same Objections, as are made now, at the *Old Bailey*; (it may be there are some other Particulars now) and after all the Debates and Arguments that could be used at that Time, it was unanimously resolved, That the Crime was High-Treason: And if it was High-Treason in *Peter Cook*, 'tis no less in Sir *John Fenwick*, who was present at the same Time, and engaged in the same Business:

For what was a Crime in one, was the same in both.

I think 'tis too diminutive an Expression, to say, This was nothing but a little Twittle-Twattle. They did there meet upon a solemn Consultation; and not only once, but they did meet a second time; and what was it to do? It was to invite a foreign Power to invade this Land, and to make War with the King and Kingdom; and they did promise, and solemnly engage to assist them with armed Forces; and it was proved, That they did agree with *Charnock* to go into *France*; and *Charnock* was not willing to go the first Time he was desired, 'till he found they were stanch and steady in their Resolutions; and upon a second Meeting, they were all found so, and then he would go: I think that is an Overt-Act of Treason, if there be any. And when he came back, he said, he had been in *France*, and brought an Answer to the Message he went about: This is all now laid before you. But, say they, this is an extraordinary Case: I do agree it; but because it is an extraordinary Case, and for the Safety of the King and Kingdom, it is fit there should be an extraordinary Remedy.

They ask, What Mischief it would be if this Gentleman should be left to the ordinary Course of Law? It hath been the Wisdom of all Ages to make a Law, to punish such as by their Artifice would evade the Law. Here is this Gentleman, as we say, guilty of High-Treason; but that we submit to you.

This Gentleman was in the Prosecution of the Law, and might have been tried in the regular Way, and had the Witnesses upon their Oaths; (the Grand Jury have found *Billa Vera* upon their Oaths;) but we must appeal to a worthy Member of the House (who because he was a Member we did not call upon him) to give you an Account how he did delay and protract his Trial; and now they know he can't be tried at all, they pretend he is willing to be tried: And because he can't be tried, they would have it as an Argument that he should not be punished by any other Means.

Sir, If so notorious a Crime as this is, should be committed against the Body of a Nation, and go unpunished, either in the common Course, or by some extraordinary Methods, the Nation would be in a doubtful and dangerous Case.

When this House hath passed their Judgments in this Matter, it will go to another Place, where it will have another Examination; and it will have that regular Consideration that all other Acts have. We are in an extraordinary Case, and do think, That this extraordinary Case does deserve an extraordinary Punishment.

Sir *Barth. Shower*. I beg Pardon but for one Word: No Man does abhor such Consults more than my self; but I do not think, that Discourses are such an Overt-Act of High-Treason, as deserves the Punishment of Death.

Sir John Fenwick and the Counsel withdrew. And being withdrawn.

Admiral *Ruffel*. I think this may be a proper Time to ask Questions: If so, I think my self enough concerned to trouble you with one or two. I think in the Paper that hath been read, I am mentioned twice. These are the

Meaning Fenwick's Informations.

Que-

Questions I desire to have asked, What Proof he hath of this? Whether ever he saw —. And, what Proof he has that I sent Captain *Lloyd* over, and that I gave him a List of the Ships? And that I said, we could not fit out thirty Ships in May? And whether or no, since this Revolution, he hath had any Conversation with me?

Colonel *Crawford*. What that honourable Person says, calls me up; my Name is mentioned in Sir *John Fenwick's* Paper; I desire you would ask him, Why he mentioned me in his Paper, as he hath done? And that you would require him to make Proof of what he says in relation to me.

Colonel *Godfrey*. I desire some Questions may be asked him in relation to a noble Lord, my Lord *Marlborough*: If he be guilty, I would have it known, and I would as willingly have it known if he be innocent, as I believe it will so appear. I would have him asked, Whether, since the Beginning of this War, or from the Time of this King's Landing, Sir *John Fenwick* did ever speak to him, in publick or private? Or ever did write to him, or receive any Message by Word of Mouth, or Letter, from my Lord *Marlborough*? He says, That some Service he had promised King *James*, inclined him to promise him his Pardon: I would know what that Service was? And in relation to his sending *Lloyd* into France, Whether he can, by any Body else, make that appear?

Colonel *Crawford*. That Gentleman hath put me in mind of one short Question; Whether ever he conversed or spake with me in his Life?

Mr. *Bridges*. Whether Sir *John Fenwick* hath any Body but himself, to support the Hearsay he hath given an Account of? And I desire a Question may be asked him on behalf of the Duke of *Shrewsbury*; What Proof he has that the Duke of *Shrewsbury* came into the Office of Secretary of State again, by the Operation and Consent of King *James*?

Mr. *Vernon*. I desire a Question may be asked previous to that, because 'tis so in Time; How he knows that noble Lord was in Treaty with King *James*, before he went out of the Secretary's Office, when he first came there?

Colonel *Grawil*. I desire he may be asked, What Proof he can give, that my Lord *Bath* was to betray *Plymouth* into the Hands of King *James*, or the King of France; and whatever else my Father is accused of in that Paper?

Mr. *Harley*. I humbly propose it to you for the Method of your Proceedings, since you take this Method, Whether it will save you Time for you to look upon that Paper, and ask him as to the several Parts of it, what Proof he can make of it.

Mr. *How*. I do not oppose Sir *John Fenwick's* being examined to this Paper; but it might have been more to your Credit, if you had examined him before your Vote: But here are a great many Gentlemen rise, to ask a Man to that which he does not pretend to any Proof of. The best Way for saving your Time is, I conceive, to have the several Parts of the Paper that does concern these Gentlemen read to him: and to ask him upon what Grounds he gave the King that Information. This will lead him into all that he knows of the Matter.

Mr. *Boscawen*. I am not against the Question that is proposed last; but you may ask him that at last. But there is a noble Lord that is reflect-

ed on in that Paper, and that is my Lord *Godolphin*; I desire you would please to ask the same Questions as to him.

Lord *Cuninghby*. I did intend to take care of my Lord *Godolphin*; there is a hard Reflection upon that noble Person; but under favour, you must, I think, let him know you have such a Paper; and then ask him in general, What Proof he has to the Particulars of that Paper? And then you will do Injustice to no body.

Mr. *Norris*. There have been several Questions moved by several worthy Members; and, I think, the Questions ought to be asked: But, I think, there is one previous Question to all these; and that is, when you tell him that you have such a Paper, I think the first Question should be, Whether ever he delivered those Papers to the King?

Sir *R. Delaval*. I find I am named in that Paper that Sir *John Fenwick* hath given; I desire that Part that relates to me may be read to him; and that he may give a Reason why he hath said so of me and Mr. *Killigrew*.

Lord *Walden*. There is another mentioned, and that is Commissary *Crawford*; I desire he may be asked, What Proof he hath, that he gave Mr. — a List of the Army?

Mr. *Chanc. of the Exchequer*. I can't blame Gentlemen for asking Questions that concern them or their Friends: Some are for reading of it to him, I am against that; But yet I would have you to enquire into this Paper. And being you intended to do it, it might have been as well enquired into before Mr. *Dighton* came last to him. I think you may put your self into an easy Method, and avoid all leading Questions; and ask him upon every Name in that Paper, as you come to it, What he knows of that Gentleman? And ask him no other Question.

Mr. *Smith*. I was standing up to the same Purpose: I would not have you to put Words into his Mouth, nor let him know by any Question what Answer he is to make.

Mr. *Speaker*. Gentlemen, I am willing to do you any Service I can: but here are long Informations, and I never read them, nor know the Contents of them, but as they were read at the Table.

Mr. *Att. Gen.* I think the Method lately proposed will save you a great deal of Time, and is proper for the Discovery of the Truth; that you will name the Persons to him in order as they are in the Paper, and ask him in general, What he knows of those Persons? But when you call him in, I am not for asking him to the particular Things he hath said against them in that Paper; because that Paper, though it is under his own Hand, is not his own; and if he knew it then, he knows it still.

Colonel *Mordaunt*. I won't pretend to propose any Thing, only for the shortning of your Time: If after you have informed him there is such a Paper, that you should ask him, Whether he will own it? And then, What Sort of Proof he will bring to prove it? You will find he will either tell you, he will advise with Counsel, or whether he will give any Answer at all.

Lord *Cutts*. I have only one Question to be ask'd Sir *John Fenwick*; 'tis not a Question that relates to any Person named in that Paper. I think there is no one Person that he hath named, but is eminently known or believed to be in the Interest of this Government; and none but what are in some Post of Trust, and Employment in it. Then, I think

think it highly necessary to know, How it comes to pass that he hath had so much Conversation with Persons of that Character, and none with those People that he hath been seen daily to converse with? And if he hath, Why he hath not discovered them, as he hath done the rest?

Mr. *Speaker*. Is it your Pleasure I inform him we have the Informations?

Mr. *Palmer*. If I am not mistaken, when you first called Sir *John Fenwick* before you, he referred himself to what he had informed the King; and referred himself to that Paper, as often as you asked him any Questions. And if you ask him general Questions, I presume he will give you the same Answer: Therefore, I think, it may be proper to ask him, Whether this is the Paper that he delivered in, or not? Or otherwise, I doubt, he will tell you, He knows nothing but what is in that Paper. Now, if he refers to that Paper, you may ask him, if he knows it again, if it be shewed to him?

Mr. *Sloane*. What this Gentleman has said, has partly interrupted what I was going to offer; but as to what he says, That when he was here before, he referred to his Confession delivered in to the King; we did not tell him we knew of that: But he put it further, That he was not bound to accuse himself, and that what he said might be given in Evidence against him; and so far he was in the Right: For if he knew of any Body that was concerned in a Conspiracy against the Government, that was Misprision of Treason at least in him. I don't question but it was a very mischievous Contrivance; but if he should confess it, without some Assurance of being indemnified, he proves himself to be guilty of it.

Mr. *Vice-Chamberlain*. You are now upon the Method of your Proceedings. There is great Suspicion whether this Paper be Sir *John Fenwick's* own or no. If you will tell Sir *John Fenwick*, that in the Paper in your Hand he hath laid Things to the Charge of Persons of Trust, whom this House hath a good Opinion of; and that this House desires to know, What Ground he hath for it? If he does not think fit to give you an Account of it, there is an End of your Enquiry.

Mr. *James Montagu*. The House seems to agree, that they will have Sir *John Fenwick* sent for in: I suppose you will not have the Counsel, nor Solicitor by; and when he withdraws, I desire he may be kept private, from his Counsel and Solicitor.

Lord *Cutts*. By Sir *John Fenwick's* Behaviour, when he first appeared at the Bar, and by what he said then, I believe Sir *John Fenwick* did tell you to this Sense, That he had Assurance from a noble Person, that what he then said, should not rise against him in Judgment; and I think he was told, If he dealt ingenuously, he might expect Favour, or to that Effect. I do, for the saving of Time, mention it to you, to consider how far the House may give him Security, that what he here says shall not rise up in Judgment against him; and that if he dealt ingenuously he might expect some Favour from this House.

Mr. *Harley*. You are upon the nicest Thing, in its Nature, that possibly can come before you. I think before you call him in, it ought to be understood that the Questions be very plain.

Mr. *Manley*. I think you have been well moved from the other Side, That we should not read this Paper to Sir *John Fenwick*: And I am of that Op-

nion from this Consideration, besides what hath been mentioned: We are here in a Judicial Capacity as well as a Legislative; and this Paper I take to be an Examination made upon Sir *John Fenwick*; and as my Memory serves me, some Things he speaks of as Matters of Fact, which he does positively assert; which being contained in the same Paper with other Matters of Hearsay, if you should read that Paper to him, and ask him a Question, Whether that be his Paper? That, I doubt will be contrary to the Rules of Law: For it will be asking, Whether this Information against himself be true or false? And I think it does not become the Dignity and Honour of this great Assembly, to ask him any Questions that may make him accuse himself.

Mr. *Vernon*. I would observe to you, that he has not considered these two Papers: The first of these Papers I think the Bill refers to, and that is under Sir *John Fenwick's* Hand: and there he does charge nothing at all upon himself, but it is an Accusation upon the Persons named. In the first Paper he does say, There was a select Number to manage the Affairs of King *James*, and — was sent over, but they are not named; and afterwards he went about to explain it in the second; and the Bill referring only to the first, I suppose you will confine your selves only to the first Paper.

Mr. *Chancellor of the Exchequer*. I would think of some Way to reconcile these Things you are going upon: For though Gentlemen are in the Right to press for these Questions; yet I do not think it the Business before you. Therefore I think you should acquaint Sir *John Fenwick*, that this Paper hath been presented to you, which this House hath thought false and scandalous: But before he goes away, this House has a Mind to hear what he would say to it; and let him say what he would upon that, then you would not lead him by any Question. The first Person that is named I have a great Respect for, and am as willing he should be vindicated as any. The first Question that you ask him is, What he knows of my Lord *Godolphin*? But that you should literally ask him Questions, as the Paper states it, I don't think it proper for this Assembly to ask; for there are Facts beyond the Act of Indemnity, many of them. After you have done with the Paper, I have some Questions to ask him: I take these Matters to be false; but I shall have some Questions to ask him which I believe will prove true.

Mr. *Bridges*. Before you call in Sir *John Fenwick*, I would offer one Thing to your Consideration: I think that Paper you are upon is written with Sir *John Fenwick's* own Hand. Why may it not be fit for you to ask Sir *John Fenwick*, if that be his Hand?

Members. No, no.

Mr. *Speaker*. Is it your Pleasure that Sir *John Fenwick* be called in?

Which Question being put, it passed in the Affirmative. And he was brought in without his Counsel.

Mr. *Speaker*. Sir *John Fenwick*, this House does understand that you have given in Informations against several Persons of great Quality, that have been in the Government; and they do expect from you, that you should deal clearly and candidly with them, and give them an Account of what

what you know in relation to those Persons. I am commanded in the first Place, to ask you, What you know of my Lord Godolphin, in relation to this Matter?

Sir *John Fenwick*. I am under a double Prosecution for my Life: I know not but what I say may turn to my own Prejudice: I hope the House will not think it Obstinacy in me; and since this House have done me the Favour to hear me by my Counsel, I hope they will please to consider what they have said.

Mr. *Speaker*. No doubt the House will consider what you have said by your Counsel, that is, in reference to your own Defence; but they do expect from you, as I told you before, That you do deal candidly with them in what you know of this Matter.

Sir *John Fenwick*. Sir, I am under Prosecution for my Life: and, I hope, the House will please to consider, That I know not what Inconveniency may come upon me by it; and, I hope, the House will excuse me, for I do it not out of Obstinacy, but for my own Preservation.

Mr. *Speaker*. You would do well to advise yourself well in this Matter; 'tis of great Concernment; the Favour of this House, if you deserve it, may be of great kindness to you. I have only in Command to tell you, what the House expect, and you are to consider how to answer it.

Sir *John Fenwick*. I hope the House will not put me upon any thing that will hurt my self: I should be sorry to incur the Displeasure of this House, but I hope they will consider my Condition; and I am sure the Justice and Honour of the House is such, That they will not press any Man to do any Thing that may hurt himself.

Mr. *Speaker*. Sir, if you please to withdraw.

Accordingly Sir John Fenwick withdrew.

Lord *Cutts*. I would humbly propose something to you to save your Time, and remove this Inconveniency. The House have heard what Sir *John Fenwick* says; I can't but say, that in Matters of Blood we can't be too tender; but that I would propose to you, if this House approve of it, is this; Suppose you wave the whole Matter to the last Moment of passing your Bill, and then I shall have something more to say to you in the Matter.

Mr. *Clerk*. Now I think it very proper for you to proceed in your legislative Capacity. I am glad the House have taken so much Pains in the Examination of the Matter; and it is no small Satisfaction to me, That the Gentleman was brought to the Bar upon this Enquiry; very probable, another Time may induce him more to comply than he does at present; though, if I may speak my Opinion, there is little hope of the Gentleman's answering your Expectation here: And I think the first thing you are to do now, is to Read your Bill.

Mr. *Pultney*. One of the Allegations of the Bill is, That his Trial was put off upon several repeated Pretences of making a Confession. The Counsel for the Prisoner took notice, That that Allegation was not proved: The Counsel for the Bill told you, They must refer to a worthy Member of this House, who could prove it; the worthy Member is Mr. *Vernon*. I suppose, before you enter into a Debate, as there will be after the second Reading of the Bill, Gentlemen will desire to have

all the Evidence. And I find your Orders is, That Mr. *Vernon* do give in his Evidence while Sir *John Fenwick* is at the Bar; and therefore I humbly move, That Sir *John Fenwick* may be called in while Mr. *Vernon* gives his Evidence.

Mr. *Speaker*. I suppose if Mr. *Vernon* gives Evidence, you will call in the Counsel.

Members. Yes, yes.

Mr. *Speaker*. Pray then hear the Motion that hath been made. Shall I put the Question, That Sir *John Fenwick* and the Counsel be called in, while Mr. *Vernon* does give his Evidence?

Which Question passed in the Affirmative; and Sir John Fenwick, and the Counsel on both Sides, were brought in.

Mr. *Speaker*. Gentlemen, you that are of Counsel of both Sides, the House, before they proceed any further, was willing to hear the Testimony of a worthy Member of this House, which has not yet been given; and they are willing that Sir *John Fenwick*, and you, should be present while it is given. Mr. *Vernon*, will you please to acquaint the House, &c.

Mr. *Vernon*. If I understand the Counsel for the Bill aright, that which they did appeal to me for, was about the protracting of Sir *John Fenwick's* Trial, and upon what Pretence it was. The Account, Sir, that I can give of it, is this: That Sir *John Fenwick's* Trial was put off, will appear best from the frequent Adjournments of the Sessions at the *Old-Bailey* for six or seven Weeks together. For when Sir *John Fenwick* was committed to the *Tower* (which was, as I take it) on the 19th of *June*, there was, I believe, a Sessions to be held soon after; for, as I remember it, the first Application that Lady *Mary Fenwick* made for putting off Sir *John Fenwick's* Trial was upon the 30th of *June*; and the Petition was, That he might have some Friends come to him to advise him how to make his Application to the King: On the 30th of *June*, or about that time, my Lady *Mary Fenwick* did first propose, That somebody should be sent over from Sir *John Fenwick* to the King upon some Matters of Importance, but did not declare what they were; but only that she was told there was such Matters, and she had a proper Person to send, and would acquaint the Lords Justices with the Man, if he might have leave to go to: But afterwards my Lady *Mary Fenwick* said she could not provide a Person so soon; and, I think, the 2d of *July*, she came and offered to go her self, and said, if it was not as much for the King's Service, as Sir *John Fenwick's* Benefit, she would not undertake the Journey. She had leave to go, and would have capitulated, that the Trial should be put off till she returned; but the Lords said, when she should return, would depend upon her Pleasure; but they would write to the King at the same time, and give notice of her Intention, and that the Trial should not go on till they had an Answer of their own Letter.

There was a Passage in the Transport-Ship going to *Holland*, and my Lady *Mary Fenwick* desired to speak with Sir *John* in private, in Order to her Journey; the same Night she came back again, and said, she had considered of it, and said, she would not go; and several Reasons she gave. Upon the 7th of *July* there was a noble Lord that was in the Commission for the Administration of the Government, said, he had had an Application made

made to him from another noble Peer, my Lord *Carlisle*, who desired that he would go to Sir *John Fenwick*, for he had been very earnest to speak with him. That noble Lord did acquaint the Lords Justices with it, who acquiesced in what he thought fit to do in the Matter.

He went the same Day to Sir *John Fenwick*, and the next Day the Lords Justices met again; he then told he had been with Sir *John Fenwick*, and that Sir *John Fenwick* had told him, he had sent to the King; for he did not allow it should be otherwise communicated. My Lords then thought it was fit to stay for the King's Answer. This was the 7th of *July*; and by what Accident I know not, but no manner of Account came till the 7th of *August*, that the Letter was received; but the 7th of *August*, the Letter was acknowledged to be received; and the Answer that then came to it, was, That the King had not received any great Satisfaction by the Message; (I know not what it was) but that Sir *John Fenwick* should be tried; but withal, that noble Lord acquainted my Lords Justices, That the King was pleased to write to him, That what Sir *John Fenwick* had to say should be sent him in Writing. It happened at that time, that the Judges were upon their Circuit: and there being the King's Directions to receive what Sir *John Fenwick* had to say in Writing; that noble Lord did undertake to go again to Sir *John Fenwick*; and, I suppose, he did receive something from Sir *John Fenwick*, which he sent to the King: When the Answer to that came it was in *September*, and that noble Lord was at the *Bath*; and so it required a little time—Why then it appeared, That the King's Direction was, That what Sir *John Fenwick* had sent to the King, he should prove it; and he should likewise shew his Ingenuity in Confessing what he knew of any other Designs against the Government: And the 10th of *September*, as I take it, I was directed to go to Sir *John Fenwick*, who was then in the *Tower*, and to acquaint him with this Message from my Lords Justices. Sir *John Fenwick's* Answer was, That he had no more to say, or some words to that effect; and then he must prepare for his Defence as well as he could; but if he could speak with that noble Lord, he should be glad to do it; but he was not come from the *Bath*, and Direction was then given for his Trial. Again in the mean time that noble Lord did come, and he did go to Sir *John Fenwick*, and he brought an Account from him, That Sir *John Fenwick* would prove to the King, and make out what he had said; and was ready to give the Lords Justices Satisfaction: And upon that, I was sent to Sir *John Fenwick*; I carry'd the Message in Writing, which you may see when you please; and it was to ask him, Whether he was willing to make out by Proof, what he had already said to the King; and whether he was ready, in Compliance with the King's Directions, to give the Lords an Account of what he knew of any Design against the Government? I carry'd Sir *John Fenwick* this Message, and he returned an Answer in Writing, That he was ready to make out to the King what he said, and would acquaint the Lords with all the Matter, that he had not observed to the King; (his Arraignment was then to have come on the 17th) but he did dictate a Paper which was brought to the Lords, which they thought fit to be sent to the King; and the Trial was put off as to that time; And before an Answer from the King came, it was (I believe) the beginning of

October: And this is the Account I have to give you.

Mr. *Speaker*. Gentlemen, you consider that this Evidence is given, with Relation to that part of the Bill, that sets forth, how Sir *John Fenwick* had delay'd his Trial by Offers of Confession. You have heard what the Evidence is; if you have any thing to observe as to that Point, you may speak before you withdraw.

Sir *Tho. Powys*. As to this Matter, I can only say, That in it self at least, according to our Rules of Law, it is not, in any degree, Treason: What you will construe it to be, I can't tell. We think it is only what is very usual when Persons are under an Accusation; they will put off their Trial as long as they can: Perhaps their Witnesses may be out of the way, or something else may be the Reason of it, and it does not carry any Crime in it self; at least, not of the Nature that this Bill is of.

Sir *Barth. Shower*. We do think, with Submission, that, considering the Nature of the Bill, and the particular Case of Sir *John Fenwick*, will (in some measure) answer this Fact: I take this singly in it self, as it hath been observed, not to consist with Honour; but it does not import a Crime, for any Man to use little Insinuations to put off his Trial. But, suppose it was unlawful, or that which they call prevaricating; I hope it is far from making him guilty of High-Treason, which is the greatest Crime this Bill designs to pass Sentence for; and, I hope, you will consider, if it be an Offence, 'tis so at Common Law; and the same Evidence will prevail to bring Sir *John Fenwick* to condign Punishment by the common Methods. And if it be no Offence, I hope you will not by a Law make it an Offence, so as to inflict the greatest Punishment for this Artifice.

Mr. *Speaker*. Mr. Serjeant Gould, Have you any thing to say?

Mr. Serj. Gould. No, Mr. Speaker.

Mr. *Speaker*. Then withdraw.

And being withdrawn,

Mr. *Sloane*. I propose it to you, Whether, if the Paper be Evidence, it should not be read in the Presence of the Prisoner?

Members. No, no.

Then the Question was put for Candles, which passed in the Affirmative, and they were brought in.

Ordered, That the Counsel be discharged any further Attendance at this time.

Mr. *Metbuen*. There can be no Debate previous to the reading of your Bill. I desire the Order of the Day may be read.

Accordingly the Order of the Day for reading of the Bill a second Time, was read by the Clerk.

Then the Bill was read a second Time by the Clerk.

And being afterwards opened by Mr. Speaker, and Mr. Speaker having expected for some Time, and no Member rising up to speak:

Mr. *Speaker*. Shall I put you the Question of Commitment?

Sir

Sir *Tbo. Dyke*. Sir, I hope you will not put the Question of Commitment 'till some Exception is made to the Bill; I am sure it is as liable to Exceptions as any Bill that hath been brought in a great while: 'Tis a tender Subject to speak of, the Pretence of the Bill being for the Preservation of the King and Government: And if I thought it was really so, I should be heartily for it; for I think there is no Comparison between the Value of the King's Life, and that of private Persons: But that hath been often said, but not proved; therefore, I think, I may tell you my Reasons why I am against the Bill. That the Parliament hath a Power to make such a Law, is agreed; but I think it ought not to be used but upon extraordinary Occasions, when Great Persons are concerned, that can't be otherwise brought to Justice, and when Crimes do not fall under the Denomination of the Law, which is not the present Case. This Case is, That a Gentleman is charged with Treason; and 'tis proved but by one Witness; though the Counsel did say, That a Consult to levy War was not Treason. Now either it will not be the Crime that is alledged, or it is not proved. Here you are Judges, Prosecutors, Witnesses and Jury: I would know in what Country it is so? Besides, the Witnesses are produced here, and not sworn; and upon the whole, there is but one Witness. Sir, I am against the Bill, and against it, as being of dangerous Consequence.

Mr. *Pultney*. This Matter before you is of such a Nature, that as a Debate is rising upon it, I hope all Gentlemen will hear one another with the greatest Attention that may be.

The worthy Member admits you have a Power to pass the Bill, and I do not find that contested by any Body; though (with Submission) the latter Part of what he said, contradicted what he admitted at first; but since that is so much agreed, I shall say but little to it, and that is this, That without such a Power as this, any Government would be imperfect, and would want a sufficient Power for its own Preservation, upon extraordinary Occasions. You have been told, this hath been an untrodden Path; but, I believe, Gentlemen are pretty well satisfied it hath not been so untrodden, and many Precedents of that kind have been quoted; and the Counsel against the Bill have admitted, That there have been frequent Precedents. An Objection hath been made to some of them, That they were made in ill Reigns; but I take it to be no Objection, That the Precedent was made at one Time or another, since 'tis agreed, that we have such a Power, and that that Power hath been executed.

The chief Matter before you is, Whether in the present Case, there is sufficient Ground for you to exert that Power? And upon that, give me leave to observe the Nature of the Crime of this Gentleman, and the Evidence that hath been brought to prove him guilty of that Crime. His Crime is High-Treason, the highest Crime in the Law: 'Tis for conspiring the Destruction of the King, and the Overthrowing of the Government. The Overt-Act which the Bill tells you (and which is mentioned in the Indictment) is his inviting in a *French* Force, in order to accomplish his Design. If this Crime would admit of Aggravation, some other Parts of the Bill would aggravate it; but I think it will admit of none. The Counsel at the Bar made a Doubt,

Whether or no, that which was laid in the Indictment, did amount to a sufficient Overt-Act of High-Treason; and his Argument he drew from a Book that hath been put out by a learned Gentleman of the House; but the Gentleman could easily have answered himself; and, I presume, did not speak his own Opinion. For that Gentleman did write a Book, called, *His Majesty and Government vindicated*: By which he endeavoured to overthrow the Arguments in the other Book of the other Gentleman.

As to the Proof before you, you have had the Testimony of Mr. *Porter*, whose Evidence hath been justified by the several Convictions grounded upon it; and by the Confession of several Gentlemen, that have owned the Fact at the very Time when they have been going out of the World: And there hath been no Evidence brought by the Prisoner at the Bar, that should invalidate the Testimony of this Gentleman. And so (with Submission) you have one undoubted Evidence, that does charge the Prisoner with the Fact mentioned in the Bill: You have other Proof that does not come up within the Letter of the Law; but you have strong circumstantial Proof, that every Gentleman will apply to his Conscience in the Judgment he shall give in this Matter. One of the Allegations in the Bill is, That he did, by repeated Promises of making a Confession, from Time to Time, gain a Delay of his Trial. It is a great Presumption, that That was in order to a Design that he had of seducing Mr. *Goodman*, that was one of the Witnesses; for it was observed to you, what Practice there was in the Case, with the other Evidence, Mr. *Porter*.

Sir, Gentlemen have objected the Consequences of making a Precedent: You were very well told by a worthy Gentleman that spoke the other Day, near the Place where I am, That in the Case of a good Parliament, 'tis not to be imagined that they will make use of this Precedent, but upon as good a Ground as you have now; and an ill Parliament, they will have the same Reason, for they will copy after the same Precedents that have been made before, and will not stick at doing of it.

Besides, let Gentlemen consider the Way of Arguing: I have a Power to do such a Thing, and yet if I have such a Ground as is sufficient, I shall not make use of it: To say you have a Power, but shall not exert it, is as good as to say, you have no Power at all.

There were some Precedents cited by a learned Gentleman that spoke against the Bill, and he particularly quoted that of my Lord *Strafford*; and the Act of Parliament that repeals that Attainder, was in Part read to you: But, Sir, the Reasons given in that Bill of Repeal of my Lord *Strafford's* Attainder, are, That it was obtained in a tumultuous Manner, which influenced the Parliament in doing of it; and that it passed in the House of Lords, when most of the Lords were absent: And at last, the King, when he gave his Consent, by Commission, to the Passing of the Bill, it was with great Reluctancy. 'Tis certain, all these are Reasons that are given; but there is not One that questions the Parliament's Power of doing it; though upon the Trial, Gentlemen may remember, there was a Doubt in the Law, Whether the Evidence was sufficient.

Sir, It hath been urged to you, of what ill Consequence it would be, and how much Injustice, to make a Law to punish a Man *ex post facto*; but that

that the Parliament may declare That to be a Crime, which was not so before, no Body doubts; and without that, the Clause in the 25th of *Edw. III.* signifies nothing; and I don't imagine it is a greater Injustice to supply in Point of Form, as to Matter of Evidence, when the Fact committed by the Prisoner, was against a known Law, at the Time when it was committed: And the rather, if I think that Defect of Form in the Courts below, was occasioned by the Prisoner. 'Tis a Matter of Blood, 'tis true; but I do not aim at this Gentleman's Life in it; but any Man must believe he must be concerned in great Matters, to bring to pass this great Design; therefore, all I propose by it, is to get his Confession, which in all Probability we might have had, if the other Witness had remained here.

Sir, upon the whole Matter, I do think we have Power to do this: I do think here is good Evidence (I speak with respect to my self) to think him guilty of this Crime. I do think, if this Bill does miscarry, there is the greatest Blow that can be given to your Constitution. And give me leave to use this Expression; I think, if this Bill miscarry, it not only turns this Plot upon you, but makes it impossible ever to come to the Depth of any other; and for these Reasons, I am for committing of this Bill.

Mr. *Newport*. Sir, I am unwilling to trouble you at any Time, but more especially at this Time, when I am afraid I am like to speak against the Opinion of the Majority of the House; for I see Gentlemen are in great haste for the Commitment of this Bill.

Sir, in this Matter I look upon my self, as every Gentleman here, to be a Judge; and therefore, I will in this Case, as in all others, go according to the Dictates of my own Conscience: I must be saved by my own Faith, and never will pin my Faith upon another Man's Sleeve: Perhaps it may be a Weakness in my Nature, that I am very tender in the Matter of Blood; but I hope Gentlemen will not be in so much haste to commit the Bill; for *De morte hominis, nulla est cunctatio longa*. A Gentleman below said, the other Day, it was possible in his own private Opinion, he might believe the Prisoner guilty; and some notice was taken of those Words: But, Sir, I would put a Case for Argument's sake, and would have it taken no otherwise; and I would go a little farther than that honourable Gentleman, and suppose that I knew, of my own private Knowledge, that Sir *John Fenwick* was guilty; yet, Sir, with humble Submission, as a Judge, I do not think it ought to weigh one Way or another with me; and will give you my Reason for it; for as a Judge, I am to go according to my judicial Knowledge, and not according to my private Knowledge. 'Tis a Maxim, *Nil refert quid notat Juxta, si non nota forma judicii*; and it puts me in mind of a Case in *Hen. IV's* Reign: Two Men travelled together, and one killed the other, and the Judge saw it: Afterwards that Judge went the same Circuit, and an innocent Man came to be tried before him for it; and yet the Judge, in that Case, was obliged to go according to his judicial Knowledge; all the Judge could do (the Man being found guilty) in that Case, says the Book, was, to respite the Judgment and Execution, and to make Application to the King for the poor Man's Pardon.

The Evidence that is produced, is first a living

Witness; the next Evidence, was the Confession of *Goodman*, taken before a Justice of Peace; for that, truly I did not think Yesterday, it was a legal Evidence: I am sure in a Court of Law, it would not be admitted; but the House was pleased to read it, and Gentlemen, when they pressed it, told us, Read it, *valeat quantum valere potest*. Then if you strike this Paper out of the Case, with humble Submission, there is nothing left but the Testimony of Captain *Porter*; and so then in that Case, you have but one Witness. It would seem a little strange, that the Commons of *England*, that lately were so very careful of the Lives of the Subject, and were so desirous of passing a Bill, that did provide, That where there were two Species of Treason in one Indictment, and one Witness to one Species, and another Witness to another Species, that That should not be good Evidence to convict a Person of High-Treason; that they should be attainting a Man for Treason upon one single Evidence! Surely they will say, we have mightily changed our Opinions since last Sessions. I speak not this upon the Account of Sir *John Fenwick*; I know him not, though I am not a Stranger to his Character, and I hear that is none of the best: I speak it as it may be my Case, or any Man's whatsoever. God knows, we live in an unsettled Time, and how soon a Precedent of this Nature may turn upon any Man whatsoever.

Amongst the great Irregularities committed in the late Reign, I thought that of Mr. *Algernon Sidney*, one of the greatest Strains I saw in *Westminster-Hall*; for there was my Lord *Howard* a Witness against him, and the next Evidence was a Book that he had wrote against Sir *Robert Filmore*, which, I think, is printed since this Revolution, and I have it in my Study; and I hope, I shall not be hanged for it. That was construed to be calculated for a Treason that hath not been committed above two Months, and was the second Witness to convict him; but that Attainder was reversed, and it was fit it should be so; for I thought it a hard Strain to convict him upon that Evidence.

I am very sorry this Bill is brought into this House; nor can I imagine, after all that hath been said by the learned Gentleman, why this Man was not tried when there were two positive Witnesses against him. All the Reason this Gentleman has told you, is, That he promised to make an ingenuous Confession: But any Man might have easily seen through this Confession, That it was only an Artifice to abuse the King's best Friends; nay, the rather, when this Gentleman's Brother had served this very Government, but two or three Years ago, the same Trick. We know my Lord *Preston* was attainted of High-Treason, and then he must do something for his Pardon; and he made an ingenuous Confession, as he called it, whereby he accused most of the Great Men; and when he had a Pardon, though his Confession was under his own Hand, and delivered to the King, he denied every Word of it; and what he told, was to save his own Life. My Neighbour cited you several Precedents; I have looked into a great many of them, they are mentioned in *Rushworth's Collections*, in the great Argument that Mr. *St. John* made for passing the Bill against my Lord *Straford*; and as to those Precedents, all I can say, is, I could not have come up to them, if I had lived in those Times. The last Precedent was of a

Cook that put Poison into the Pot of the Bishop of Rochester: And what did they do? They did enact, that he should be boiled alive. I have a great Honour for the present Bishop; but if it had happened in his Family, I should hardly have consented to the like. *Judicandum est legibus non Exemplis.* I should be glad this Gentleman might suffer his due Punishment; but I am not, by any means, satisfied in the passing of this Bill: And as to what Gentlemen say is the Reason why this Man was not tried, because it was thought he would have made an ingenuous Confession; Sir, if they have made any Mistake, I will not help it by the passing this Bill of Attainder. I ask your Pardon for troubling you so long: I am a Judge in this Matter, and ought to deliver my Opinion. I hope no Man doubts but I am as zealous for this Government as any Man whatsoever; but let what will come of it, I can't give my Vote for passing of this Bill.

Mr. Sol Gen. This is a Bill for Attainting Sir John Fenwick of High-Treason: 'Tis the greatest Crime we know in the Law; and, I think, the greatest Crime known in a Government. It is much greater than Murder, or any thing else; because it subverts the Government, and the Law whereby these Crimes are punished; and Persons should be deterred from committing these Crimes.

It hath been made a Question by the Gentlemen at the Bar (I think Two of them) Whether this Matter that Sir John Fenwick is indicted and accused of, is High-Treason or not? I must confess I heard something of it without Doors; and that they would make it out, That if he was guilty of the Matter charged, it was not High-Treason. I thought it somewhat a bold Matter, but did not think they would have undertaken it in this Place, though they might have pretended some Flaw in the Indictment: But it seems they have the Authority of a good Lawyer in it; and they have quoted one learned Author, as they please to call him, though I take that for a great Compliment: I believe they may mean my self; and they have done me some Honour; for they say, my Lord Chief-Justice Hales was of the same Opinion; and then said something of Dyer. Now he hath read something at large out of that Author he speaks of, and challenges any one to shew any Opinion, That ever a Conspiracy to levy War was High-Treason within the Statute of 25 Edw. III. Now, I would give a Challenge on the other Side, That he would shew me any Opinion before that Time, or since, That a Design to depose the King is not High-Treason within that Statute. The Author that he speaks of, says that expressly in the Matter of my Lord Russell, and tells you particularly; and in *The Government vindicated*, which was only an Answer as to the Prosecution of my Lord Russell, there are several Cases cited, That a Design to depose the King was High-Treason, and agreed to by that very Person; and it always was agreed to be High-Treason. Then take the State of this Case, and that of my Lord Russell: The great Matter was, That he sent some Persons to view the Guards (it was said, in order to seize the King); this was Evidence against my Lord Russell, for a Conspiracy to levy War: But it was said, That this was not so much a Conspiracy to levy War against the King, as against the Guards. But this is of a quite different Nature: Captain Porter hath given you an Account of it, (and I think Goodman's Examina-

tion is to the same Purpose); That they met in Leadenball-street, and consulted how to bring King James back again; and the only Method they could think of, was to send Charnock over to King James, that he might prevail with the French King to send them 10000 Men, and they would meet him here with 2000 Horse: And for what Purpose was this? It was to bring back King James again. I would be glad to hear if those Gentlemen that were at the Bar, or any Body else, could say this was any thing else but a Design to depose King William: And they can't shew me one Lawyer's Opinion, but that designing to depose the King, was ever called imagining the Death of the King, within the Statute of 25 Edw. III. The first Resolution of this Matter was pretty early; I think it was Hen. IVth's Time, and that was pretending Richard II. was alive, and that he was the lawful King: So that the Matter is Treason, as it is charged in the Indictment.

Then, as to the Precedent, That 'tis an ill Precedent; I must confess I am not afraid of a Precedent of this Kind: I should be glad if these Gentlemen should turn back, and see how many Attainders have been by Act of Parliament. But I dare say, there have been more Men destroy'd by the irregular Judgment of a Commission of Oyer and Terminer, than by all the Acts of Parliament, whether legal or illegal.

As to what they say of my Lord Coke, who mentions the Attainder of my Lord Cromwell and Sir J. Mortimer; the Gentleman pretends to repeat my Lord Coke's Words at large; but he did not deal so well as he ought to do by you; for he should have told you all my Lord Coke tells you; That Cromwell was never brought to answer, never permitted to say any thing for himself; neither in Parliament, nor where he was. Now, pray Sir, is this the present Case? Hath not Sir John Fenwick been heard by you? I would be glad that Gentleman, or any Body could shew me, that any Person hath so fair an Hearing before Commissioners of Oyer and Terminer, as Sir John Fenwick hath had before you. As to Sir John Mortimer, 'tis much of the same Nature: My Lord Coke says, there was a Jealousy of Sir John Mortimer's pretending to the Crown; and because they suspected him, they did give out, that he said, That the Earl of March was Heir to the Crown; and if he did not, he would pretend to it himself, &c. Now, says my Lord Coke, this was but a bare Pretence, and nothing else: He speaks as if he did not ever think him guilty of those Words, and says, having indicted him, they not being able to proceed that Way, they made it good by Act of Parliament, and he was condemned: So that what my Lord Coke complains of, is, That these Persons so condemned were never heard; and if this be the Truth of the Matter, these Precedents (with Submission) have no Affinity with yours. But I believe this may be said in this Case, Sir John Fenwick hath been heard, and that more than ever any one in Parliament was before, in a capital Matter.

As to the Case of my Lord Stafford, he had Counsel assigned him to stand by and hear, but not to prompt him. If there arose any Point of Law, he was to propose the Matter to the Lords, and the Counsel was to assist him by their Direction. And in the Case here before you, you have allowed Sir John Fenwick Counsel, not only to assist him in Point of Law, but to assist him in

Point of Fact too. They have made Answer for him; so that I say, he hath been tried fairer than any Man ever was in Parliament, be it upon Bill or upon Impeachment, that is, as to the Matter of Precedent. Then it hath been said, This would not be good before the Judges. I must confess it; but the Evidence Captain Porter gave of his own Knowledge of Sir *John Fenwick*, every body will agree is what the Law will allow. But he is but a single Witness, and you ought not to proceed upon the Evidence of a single Witness. Let us see how the Law stands upon the whole Matter: You have made an Act of Parliament last Sessions, and I own the Law was before that, That there should be two Witnesses in Case of Treason; but all that goes no farther than to Trials in the *King's Bench*, and Commissions of Oyer and Terminer, and Goal-Delivery. And if you look upon those Acts, 'tis very plain; for they refer mostly unto the Judges, what they shall do in such and such Cases: But then you will see what is the Reason of making those Rules; I think there was good Reason that you should not put that Power in Persons below, that you have in your selves: You give them Rules to proceed by, and they are to keep up strictly to them; you may act by other Rules. 'Tis one Thing when I command my Servant to do such a thing, and another thing when I act my self. And there is a Difference when a Judicature is by few, and when 'tis by many; the Law puts a greater Confidence in many than in a few. The ordinary Trial is by twelve Jurors; but if it be a Matter of an high Nature, as an Attaint, then it shall be by Twenty-four; and you do prefer a greater Number in every thing to a few. 'Tis said, Though a Judge do think in his Conscience a Person guilty, yet he ought not to make use of that private Knowledge; and a Case was quoted out of *Hen. IV.* but I think that Judge might have behaved himself something better than he did; and sure I am, now he would be blamed. I do not say, that a Judge upon his private Knowledge ought to judge; he ought not; but if a Judge upon the Bench knows any thing, whereby the Prisoner might be acquitted or convicted (not generally known) then I do say, he ought to be called from the Place where he sate, and go to the Bar and give Evidence of his Knowledge; and so the Judge in *Hen. IV.*'s Time ought to have done, and not to have suffered the Prisoner to have been convicted, and then get a Pardon for him; for a Pardon will not always do the Business; for there may be a Forfeiture that the King's Pardon doth not restore. But though we act as Judges here, do we act only as Judges? I thought we were as well Triers of the Fact as Judges. There is this Difference between the Judicature of *Westminster-Hall* and this Court; they are to judge upon a Fact found by a Jury; but we act both the Part of a Jury in trying, and also of Judges in judging what the Fact amounts to: So that if a Jury-Man may make use of his private Knowledge to acquit a Prisoner, as (I think) no body doubts but 'tis his Duty to do; then every Gentleman in this House may make use of his private Knowledge to acquit the Prisoner, or convict him.

I confess, for my part, I am satisfied, that Sir *John Fenwick* is guilty of this Crime for which he stands accused. I do think this Crime is High-Treason; I think there is no danger of a Precedent in this Case, if you convict him, being convinced upon the Evidence you have heard, that he is

guilty: I do own, if any Gentleman think he is not guilty of Meeting at the *King's Head* in *Leadenball-street*, or at Mrs. *Mounjoy's*, for the Purpose given in Evidence, he ought to be against the Bill; but I think, every Man that is of that Opinion ought to be for the Bill. I am one of those that think he is guilty, and therefore am for Committing the Bill.

Mr. *Harcourt*. I can readily agree with the Gentleman that spoke last, that High-Treason is the highest Crime in the Law; and further, That the Matter of the Indictment that is mentioned in the Recital of the Act is undoubtedly High-Treason; and I am sure he will agree with me in one Thing also, That the greater the Crime is that any Person is accused of, the clearer the Proof ought to be by which he is convicted.

Some Gentlemen have begun their Discourse in relation to the Power; but sure 'tis no Argument, because I can do a Thing, therefore I will do it; because we have Power to repeal *Magna Charta*, and all other subsequent Laws, which have been made in favour of Life and Liberty, and Property, by the same Consequence we ought to do it: A better Reason must be given me before I consent to this Bill.

Then for the Precedents, 'tis said, There have been many, and many have been mentioned; and if I thought it worth while, I would mention many more you have not heard of. As for Precedents in general, they are so far imitable as they are grounded upon true Reason, and agreeable to Justice; but I don't remember any one Precedent of this Nature, for a Person in Custody, forth coming, to be tried, yet to be Attainted without a Trial at Law, but what has been universally branded; and they all seem to be Reproaches even to those ill Reigns in which they were usually made; and rather to be marked out as Rocks for us to avoid, than Patterns for our Imitation.

Before I particularly mention the Facts how they stand before you, I would beg leave to observe upon the general Method of your Proceedings, and tell you what staggers me in it.

I have often heard this called a Trial, and that we are the Judges; the Gentleman that spoke last gave us another Title, and told us we were the Jury also. I know no Trial for Treason but what is confirmed by *Magna Charta*, per *Judicium Parium*, by a Jury, which is every *Englisbman's* Birth-right, and is always esteemed one of our darling Privileges; or per *Legem Terræ*, which includes Impeachments in Parliament; but if it be a Trial, 'tis a pretty strange one, where the Person that stands upon his Trial hath a Chance to be hanged, but none to be saved. I can't tell under what Character to consider our selves, whether we are Judges or Jury-Men: I never heard of a Judge, I am sure not of a Jury-Man, before, but he was always upon his Oath: I never heard yet of a Judge, but had Power to examine Witnesses upon Oath, to come to a clear Sight and Knowledge of the Fact: I never heard of a Judge, but if a Prisoner came before him, the Prisoner was always told, he stood upon his Deliverance, and had not only a Power to condemn the Guilty, but to save the Innocent. Have we this Power? Suppose upon such a Trial as this (if it must be called so) it may so happen, that a Person that comes before us, should be the innocentest Man in the World; what Judgment is it that we can give, for

for so much as such a Person hath made his Innocency fully appear? Is the Speaker, by his Warrant, to send him back again to *Newgate*? You can't dispose of him otherwise, though you were satisfied of his Innocency: But in such a Case, the Party must undergo a double Trial, which is contrary to all the Rules I have heard of. If I am a Judge in the Case, I beg leave to tell you, for my own Justification only, what a Definition I have met with of a Judge's Discretion: My Lord Chief-Justice *Coke* says, 'tis *discernere per Legem*; and by that Discretion I beg leave to consider this Case: If Judges make the Law their Rule, they can never err; but if the uncertain arbitrary Dictates of their own Fancies, which my Lord *Coke* calls the crooked Cord of Discretion, be the Rules they go by, endless Errors must be the Effect of such Judgments.

As to this particular Case, I did expect from the Gentleman that spoke last, that he would have told you there was a plain Evidence, why you should go on to the Passing of this Bill; but instead of that, I am surprized to hear a Thing mentioned, That in Parliamentary Proceedings a Man may be hanged by one Witness; certainly that is not to be taken for granted.

As to this particular Case, I would take Captain *Porter* as upon his Oath, for Supposition: You have one Witness against Sir *John Fenwick* of High-Treason; and, with your leave, I desire to examine what you have more in this Case.

Yesterday you voted a Paper to be read, *Goodman's* Narrative or Examination; 'tis a different Case now you have it before you to determine upon. Yesterday the Question was only for hearing; but Gentlemen now consider how far they ought to believe it, and the other Evidence we heard. And first, there is some Evidence that *Clancy* tampered with *Porter*, and gave him a Sum of 300*l.* and so they would infer, because *Porter* was tampered with to be gone, therefore *Goodman* was. It was told us further (and I desire I may be informed if I am mistaken) That *Clancy* said, he came from Sir *John Fenwick*, and afterwards my Lady *Mary Fenwick* said she would make good what *Clancy* had said; and from these Arguments they presume, that Sir *John Fenwick* knew of it. Give me leave to tell you a Rule I never heard contradicted, That Presumption is to be made in favour of Life; but to presume a Man guilty because *Porter* was tampered with by another, because he said it was by Sir *John Fenwick's* Order; shall we presume Sir *John Fenwick* did it? Is Hearsay to be Evidence? Or is a Man to be had to the Gallows upon Presumption? How often, and with how much Reason have we heard Exclamations against Judgments upon Presumptions, Innuendoes, constructive and accumulative Treason? &c.

Gentlemen, there is some further Evidence; and that is, of what was sworn at *Cook's* Trial, and some Gentlemen thought fit to have the Record read, and an Examination of what was sworn there. I can never go so far as to think it reasonable, That what Evidence hath been given in one Case should affect another Man; but all this is to be answer'd, by calling it Parliamentary Proceedings. We doubt 'tis no Evidence in the Courts below, but they are mentioned with some kind of Disdain, as very inconsiderable. In this Case, I beg leave to say this in their Vindication, That whatever the Rules in *Westminster Hall* are, 'tis not therefore Reason because 'tis a Rule; but

because 'tis Reason, and Reason approved of by long Experience, therefore 'tis a Rule; and if they make their Rules for that Cause, I hope that is a Cause why we should imitate them: But I would not have those Rules thought Matters of Form, but Substance, or more properly Part of the Law it self.

Upon the whole Matter; if no Gentleman will give us a Reason why this is Evidence, but one Witness, and that not upon Oath; and if we are to come to our Parliamentary Discretion to supply that Defect, the Want of the other, 'tis a Discretion I will disclaim all the Days of my Life. And I hope you will reject the Bill.

Lord *Cutts*. If, Sir, the Gentleman that spake last had been speaking to *Westminster-Hall*, I should think that he had shewed a great deal of Reason, and spoke with a great deal of Judgment; but since I think you are here upon a quite different Foot; I shall not follow him (because I will not unnecessarily detain you) to answer every Particular.

I remember, when the Counsel for the Prisoner first spake, they took notice to you, That Precedents were procreative, and one begat another, and they are apt to multiply; therefore I do think, 'tis of the highest Moment to you, what Precedent you make to Night: And if any Gentleman can be satisfied, That the Precedent of passing this Bill, will be of worse Consequence than the Precedent of not passing it, I shall humbly submit. I do think, Sir, the Matter before you is of the highest Importance; and I must confess, 'tis with a great deal of Satisfaction to my self, that I do see Gentlemen seem to apply themselves with a great deal of Seriousness to this Debate. Sir, I shall not pretend to make a particular Answer to what the Counsel for the Prisoner did say; as to the Precedents of Acts of Parliament, I think this Answer is sufficient at present for that, That if we have no Precedent we are under a Necessity of making one. It is told us, That of all the Precedents none will justify us in this Proceeding; but at the same Time it must be considered, That we are in a Case, the like to which never yet happened in *England*.

The first Thing I shall apply my self to, is the Jurisdiction of Parliaments; and truly, I think, it will be very necessary to say a little upon that. I have heard none call this Power in question, the Thing speaks it self; 'tis the Legislative Power, and the Etymology of the Word tells you what it is: 'Tis a Power that can make Laws, and abolish them; a Power that is superiour to all other Powers whatsoever, and we are part of that Legislative Power; and therefore I shall say no more to that, it being a Matter agreed, That we have a Power to proceed in this Matter. Now I will take leave to observe something as to the particular Case before you.

Though a Gentleman that spoke some Time since, did speak to you of the Nature of the Crime; yet, with Submission, I think there remains something to be added to what he said. The Conspiracy of which Sir *John Fenwick* to me appears guilty, is not only against the Life of the King, not only to depose the King, not only a Conspiracy to raise a Rebellion, but at the same Time to contrive an Invasion from *France*, and bring in a foreign Power. I know not what better Expression to tell my Thoughts in, than by using a Term which Physicians use in some desperate

rate Cases; they tell you, there is a Complication of Distempers; and I think this is a Complication of Treasons: This is the highest Crime, and it is attended with all the aggravating Circumstances this Crime can admit of. Now, in giving our Opinion, and passing our Judgment upon this Matter, I think there are two Considerations ought to guide us: There is a Consideration we owe to the Prisoner that is brought before us; and another Consideration which we owe to the common Security. As to the First of these, it being a Matter of Blood, wherein the Life of an *Englishman*, the Life of a Man of his Quality and Figure is at stake, we ought to proceed with all the Calmness that is possible; and I do agree, if there was nothing but Presumption, that ought to be in favour of Life. But pray let us consider how this Matter stands: Let me desire those Gentlemen that are of Opinion we ought to have so much Tenderness for the Prisoner, to lay before them another Scene, and Sort of Consideration, at the same Time. I do consider the Hardship (if I may use that Expression) of passing this Sentence; I do consider what a Condition we had been in, if the Contrivance that was laid had taken Effect; that is the weightiest Part of the Matter before you: And tho' it was disappointed then, I know not how far off 'tis at present; this ought really to weigh with you. And I hope I may take leave, upon this Occasion, to observe to you, what one of the wisest and best of the *Romans* said upon an Occasion of this Nature; he tells you, That a Man that would consider his Duty aright, must consider the Matter in all its Parts and Circumstances; and when that is done, must act adequate, as well to the Community, as to himself and his Neighbour. I would apply that to the present Case; and would desire those Gentlemen that express so much Tenderness in this Case, to have some for the Government, and themselves.

It was told you, That the Prisoner before you does not stand convicted of any Crime: It was told you at the Bar, That the most we ought to pretend to, is no further than to leave him in the Condition we found him: I think, with Submission, the Prisoner stands convicted of High-Treason, with the highest Conviction upon Earth, and that is, the general Consent of all Mankind; for I will be bold to say, I do verily believe, that there is not one Gentleman within these Walls, nor that walks the Streets, not a living Soul, that doubts of his Crime. But, Sir, I would put this Matter yet further; I am not only satisfied in my own Conscience and Reason, of the Justice of your Proceedings, which ought indeed to be the Foundation of every Man's Opinion; but I am satisfied, that in this Way, there is no Hardship imposed upon Sir *John Fenwick*, if he will be his own Friend: For I doubt not, upon what hath passed in this Proceeding, that before Things are brought to the last Extremity, if Sir *John Fenwick* be his own Friend, if he be so much a Penitent and Friend to the Government, and to Posterity, to tell Truth, and leave off his Dissembling, and be plain; I doubt not but he will find Favour. Now, Sir, I would beg leave only to answer one or two Objections; for some Things that have been said against the Passing of this Bill, I do not think material.

One Objection that seems to me to carry the greatest Appearance of Weight, was made by one of the Counsel for the Prisoner: He said, It would

look strange in after Ages, that the same Parliament should pass the Bill for regulating of Trials in Treason, and this Bill of Attainder. Sir, I desire you will please to observe how this Matter stands; and in the first Place, as previous to that, I take leave to observe a few Things: 'Tis a Proposition generally agreed to, and not to be denied, that That which is designed for the Preservation of any Creature, ought not to be made use of to their Destruction. Now this Treason-Bill was designed for your Preservation, to screen you against the Danger of arbitrary Power, and the Malice of false Witnesses; and this Bill of Attainder is brought to screen both you and the Government from your Enemies, both abroad and at home. And I think the Treason-Bill is no Objection upon these Considerations: Besides, the Treason-Bill was only made to be a Rule to inferior Courts. The learned Gentleman that spake last, told you, The Rules of *Westminster-Hall* were not Rules, because they were observed there, but because they were grounded upon Reason. Why, Sir, in answer to that, I will only take leave to tell him, that That which is Reason in *Westminster-Hall*, does not carry the same Weight here. I think that Matter was so well explained by the learned Gentleman at the Bar, that there need nothing be added to it. He told you very well, 'Tis one Thing what I trust to do by my Servant, and another Thing what I do by my self. It is very obvious to any Man's Understanding, if this Power were lodged in the Judges, what Use they might make of this unlimited Power; but no Gentleman can mistrust any Thing that shall be done by this House.

Another Objection that was made by the Counsel for the Prisoner, was; says he, This is Evidence, or it is no Evidence; if it be Evidence, then, says he, Why do you not try him at Law? If it be no Evidence, Why do you admit it here? Now, Sir, with Submission, this carries the Face and Form of an Argument, but if you take it to pieces, I think there is no convincing Weight in it: For, Sir, the Reason why this Matter comes before you, is, because by the Absence of one of the Witnesses, according to the formal Part of the Law, Sir *John Fenwick* will be acquitted; but it is generally agreed, that the Consequence of so great a Crime going unpunished, may be dangerous to your Posterity. This Bill of Attainder is brought into the House, that you may supply that Want of Form, you being convinced of the Reality of his Crime.

Another Objection made by the Counsel at the Bar, was as to Capt. *Porter*, whom he reflected upon; says he, Shall a Man that hath owned himself guilty of such a Villany as the Murder of the King, of a sudden have such Credit as to sway with you? I would take leave upon this Occasion, to repeat to you what my Lord Chief-Justice upon the Bench did observe at *Charnock's* Trial: This same Thing was urged and pressed home by *Charnock*; and my Lord Chief-Justice was pleased to take notice, That it consisted with the Wisdom and Justice of all States and Governments to allow of such Evidence, because without it they could never come to the Knowledge of any Treason or Conspiracy: For he added, Whom will you have an Account of these Things from, but the Actors of them?

And therefore when they are penitent, and willing to atone for their Crime, by doing all the

the Service they can to the State, and Justice to Mankind, we ought not only to receive, but encourage them.

When the Danger the Government would be in, if you did not pass this Bill, was urged; it was answered, But what Danger will you and your Posterity run in not passing of it? I think the Matter appears so plain and clear before you, that when all the other Parts of the Question are passed over, I should think it a Reflection upon the House, to enter upon a particular Answer to it. I had not said what I have said, that I think any Part decisive, but to clear my self to the World for the Opinion I am going to give; and perhaps what I have said, may give occasion to some others to say something that may be much more to the purpose; but for the Reasons I have given, I am for the Bill.

Mr. Sloane. Sir, I as little care for meddling in Matters of Blood, as any Man, and should be glad to avoid giving my Opinion in this Case; but I think 'tis incumbent upon every Gentleman that hath the Honour to sit here, in Point of Trust; I think 'tis his Duty to them whom he represents, to the King and Kingdom in general, to give his Opinion when he is clear and satisfied in it; and if I was in the least dissatisfied, I should venture the Displeasure of the House to absent; but upon the whole Case, and the Proof that hath been given, I am very clear that Sir John Fenwick is guilty of this Treason that he is accused of; and that it is Treason without any strain, and well warranted by Precedents.

I would first take notice of what is said to your Jurisdiction in general; I remember it was said this was an Incroachment upon *Magna Charta*; for by that, no Person is to be tried for his Life, but by the Judgment of his Peers. Those Gentlemen that have made that Objection, have intirely forgot the other part, which is the next Sentence; *Nec super ibimus, nec super eum mittimus, nisi per regulare Judicium parium suorum vel per Legem Terræ*. What do they make that to be? 'Tis true, in the ordinary Course of Justice, Persons must be tried, a Commoner by a Commoner, and a Peer by a Peer; but there are several sorts of Trials and Laws in the Land: And when you come to consider what is meant by *per Legem Terræ*, you have the Commons *Lex Terræ*; you have the Statute Law, and *Lex Loci*, the Laws of particular Manors: And there are several sorts of Trials besides that by Jury; there are Trials by Battle: The Defendant in Case of Appeal may try it by Battle, and he that is killed loses the Cause. Then there is a Law above all these Laws, and that is the Law of Parliament, which my Lord Coke calls *Lex Parliamenti*, and *Lex Parliamentaria* in another Place, which he says is, *ab omnibus inquirenda*, but *a paucis nota*; and 'tis not fit it should be known how far they can go (and so 'tis in *Chancery*) and that is a Law that is unlimited, and that is one of the Laws saved by *Magna Charta*. I say, therefore, that without any Incroachment upon *Magna Charta*, or any Law whatsoever, you enter regularly upon his Trial.

I would answer another Thing that was said against a Trial in Parliament; and I must confess, I did wonder to hear it from that Honourable ancient Member, That if he was to be tried, he should rather chuse to be tried in *Westminster-Hall*. Why, Sir, before I should have gi-

ven so sudden a Judgment as that, I would have considered what my Case was: If I had had such a Case as Count *Conningmark*, a bad Cause and a great deal of Money, I would rather be tried there; or if I could be tried as Sir *George Wakeman* was; but if I had a good Cause, and would use no Corruption, instead of twelve Men that might be corrupted, I had rather be tried by four or five hundred Gentlemen that are beyond it. You see how Trials went below, the Trial of my Lady *Lisle*, that could neither see nor hear; and there came a Person to her House that was proved to be in *Monmouth's* Rebellion, and she was burned for it.

Then as to the Case before you, I would offer my Reasons why I believe this Gentleman to be guilty; here is Capt. *Porter*, he hath positively sworn, that he had another Meeting at Mrs. *Mountjoy's*, and there they did consult, and agree to send *Charnock* over to *France*; and *Charnock* was directed to go with a Message to invite a foreign Power over here. Now the Question is, Whether he is to be believed? And I would go upon the same Reasons for believing a Witness, as they do in *Westminster-Hall*; and will go as far along with those Gentlemen, as to the Credibility of a Witness: But if he be to be credited in *Westminster-Hall*, why is he not so here? And therefore, if they had brought any Testimony against his Credit, as made him guilty of Perjury, or Forgery, it had been an Objection against his Testimony; but it was so far from that, That they did not offer to prove one Word of that; but what was said was said from the Counsel, and that is to go for no Evidence. The Counsel did indeed alledge against his Credit several Things, but did not prove any; and if they had, they would not have taken away his Testimony in *Westminster-Hall*; That is, that he was concerned in the late intended Assassination, and Treason: This was the same Objection that was made below; and they brought Witnesses to prove that and some other Things, but they did not weigh any Thing; for if it should be an Objection that he was in the Conspiracy, then you can have no Evidence of any Villany, for they will never trust honest Men with it. Therefore I do take it, That *Porter* stands before you as a very credible good Witness, without any Imputation whatsoever. Then, Sir, say they, he is not upon his Oath; that is an Objection to your Jurisdiction; and though they say they own your Jurisdiction, yet when they say so, they speak against your Jurisdiction; and by the same Reason you can go upon no Impeachment whatsoever; for you can in no Case give an Oath. Then, Sir, they tell you, he is but one Witness, and that 'tis in the Case of Treason, and there ought to be two Witnesses; and therefore tho' you have Jurisdiction to do any Thing whatsoever, yet you have no Jurisdiction to go upon this Cause. Now, Sir, because this seems to be the most formidable Objection that is insisted on against the Proceedings in this Case, I beg your leave that I may fully answer it.

And taking it to be true, that the Fact is proved but by one Witness, I conceive we may proceed in this Cause though they can't in *Westminster-Hall*; and I do take it, that there is a great deal of difference between one and the other; and I do not take your Proceedings upon this Bill, being there is but one Witness, to be any Strain,

but

but what you may extend the Legislative to, without going beyond what hath been done. I therefore beg you to consider what the Law originally was as to Treason, and how it came to be altered. Before the Statute of 25 Ed. III. it was certain what was Treason, and what was not; then the Statute came and reduced it, that as to all inferior Courts, these are your Treasons, and no other shall be adjudged so; but the Parliament reserved to themselves a Power, that if any Case should happen like them, they were to determine it themselves. So, Sir, that at that Time, and after that Time, one Witness was good in Case of Treason; as now 'tis at this Day for Robbery, Felony, or any other Fact but Treason. And till 1 Edw. VI. one Witness was good in all Treasons: Then comes two Statutes in Ed. VI's Time, and the first takes notice, That since the 25 Ed. III. by several Statutes Treasons had been made which were unreasonable, and therefore repeals them, and makes several new Treasons: Then comes a *Proviso* at the end of it; *Provided* always, that no Person whatsoever, after the First of February then next coming, shall be indicted, arraigned, condemned or convicted for any Offence of Treason, &c. unless the Offender be accused by two sufficient and lawful Witnesses, or shall willingly, without Violence, confess the same. Now that *Proviso* relates only to the Treasons particularly mentioned in that Statute. Then comes the next Statute 5 Ed. VI. and pursues the same Words: But now this did not mean any Facts whatsoever that were left to the Judgment of the Parliament, because these Facts were not within their Cognizance. They are not parliamentary Words; indicted, arraigned, convicted, but only used by the Courts below. Why, Sir, if it be so that one Witness is sufficient, here you have not only one credible Witness, but he is propt up extremely well by collateral Circumstances; and though I do not allow that below they can proceed upon one Witness with pregnant Circumstances; yet for the Reasons given, considering how this Evidence is propt up, I think it is sufficient before you: For there was another Witness against him, and it hath been proved what that Witness could have said if he was here; and 'tis plain that Men have died upon the same Testimony. I must confess, when I was for reading of Goodman's Examination, &c. I was not for reading them as conclusive Evidence, nor do I think them so in any sort, either the Conviction of Cook, or Goodman's Examination before a Justice of Peace; but it is a stronger Evidence in this Case than any other, because the Witness is not dead, nor is he withdrawn by the means of any Body but the Prisoner, or his Friends; which, as I take it, appears upon the Evidence: and if so, I think it comes to the Case, That if any one gets my Deeds, if he will not produce them, they shall be presumed to be what I say they are. I must confess, the Acting of his Wife or any Agent might not be Evidence, if it appeared they did it officiously without his Knowledge; but being Clancy said he came from Sir John Fenwick, and it was for Sir John Fenwick's Advantage, I will believe it was by his Privy: And for my self, I think it no Strain, if in this Case we take him to be a good Second to Captain Porter, though it ought not to be admitted in *Westminster-Hall*.

Then 'tis said, That you have no Jurisdiction

to proceed by Attainder in this Case, where the Person does appear, and he is in the Hands of the Law, and ready to take his Trial: I quoted you an Instance the other Day, 12 Car. II. where they attainted Persons that were dead, without examining one Witness; and I have viewed all the Books since, and there's nothing appears, but the Bill ordered to be brought in, one Reading, and another, and some Petitions for making of Savings: There is one Rank of People that were dead; a second Rank, which, as you were told from the Bar, were the King's Judges: some of which, it is true, were tried by the Law; but how? Not by the Direction of the Parliament: It was before they came into the Hands of the Parliament; and the Parliament takes notice they had been tried. There was another Sort that was never tried, but absented; and though they might have come into the Hands of the Law and been Out-law'd, the Parliament took cognizance of them, and attainted them of Treason. Sir, I do take notice, that there was a forth Sort of People convicted at that Time (for if we were confined to the Rules of *Westminster-Hall*, no doubt we could not give a lesser Judgment than that for Treason;) there were the Lord Mounson, Sir John D'anvers, and others; and the Statute recites, That they were concerned in the Murder of the King; yet in regard so many had actually suffered, they did not give them the Judgment of Treason, but to forfeit their Estates, &c.

This is to shew you the Jurisdiction the Parliament have over Offences, and how they can alleviate the Punishment according to the Circumstances as they appear before them; therefore I think this is a plain Proof that we have a Jurisdiction to go on with the Bill; and at the same Time, I say this, I would put it out of the Case, whether the Prisoner be a little Man or a great Man, that is now in Judgment before us; and I would put it out of the Case, what a good Thing his Discovery would be; I do not think that a good Argument; neither do I think it any Argument if this Man escape, what Danger we shall be in: But I do give my Judgment from the Argument of his Guilt, and our Jurisdiction.

Mr. Pelham Sir, the learned Gentleman that speak last, seemed so very clear in his Opinion, when he began to speak, that I was in hopes he would have given me and every Body Satisfaction in this great Point, especially when he began with *Magna Charta*, which says, That every Man shall be tried by his Peers, or by the Law of the Land: I do take it to be Part of the Law of the Land, that no Man should be condemned for Treason without two Witnesses; but after that he did lay his Finger upon the Sore, he told you, the great Objection was, That the Courts of *Westminster-Hall* are so govern'd and ty'd down, that they can't pass any Sentence for Treason, but upon two Witnesses; and he told you, they ought to be ty'd so: Indeed he did say we were not ty'd so: But I own to you, he did not give me any satisfactory Reason why he should not be ty'd so. 'Tis said, we are not ty'd, and 'tis impossible we should, for no Act can tie the Legislative Power; and several Gentlemen have said, That though there are several Statutes that declare there shall be two Witnesses in Cases of Treason, yet they do say, that in Case of Attainder by Parliament, one Witness may be sufficient. Why may it not be thought, that these Acts extend to the Legislative,

as well as the Statute of *Edw. III.* by which it is presumed, That the Parliament may proceed upon one Witness? And I take it, That there being no such Hint, 'tis a Presumption that the *Lex Terræ* does crave an Observation of it by the legislative Power.

I did presume Yesterday to tell you, That *Mr. Algernon Sidney* did stand upon it as his natural Right, that they could not proceed against him, there being but one Witness: I did not bring his Case as parallel to this, or think that his Authority should influence you; but he was a Man that had that Love to Liberty, and the Good of his Country, that he would not have said so, even to save his Life, if he had thought it inconsistent with either of them: But I have looked upon his Trial since, and there he does declare, That the being condemned by two Witnesses, is the Law of God, and the Law of Man; the just Law that is observed by all Men, and in all Places; 'tis certain he reached even by these Words, the Power of Parliament: When I do say Power, I do not mean, but that when such a Law is passed, all are bound by it; but in some Sense we may say, you cannot do what is not just for you to do: You can do but what is just and agreeable to the Trust reposed in you.

The Gentleman says, he thinks it a strange Opinion of him that said, He had rather be try'd by a Jury than the House of Commons: Indeed, if he could be sure of such a House of Commons as this, he might retract what he had said: But I have seen that done in the House of Commons, which hath not made me extremely fond of that Trial. I have sat here when six or seven Noblemen have been declared Enemies to the Kingdom without any Evidence at all, and the Reason was somewhat like what it is now. The Power of Parliaments was brought in as an Argument then; and it was said, it was only in order to an Impeachment, but no Impeachment followed; yet these Noblemen went with that Brand in their Foreheads; and if any Disturbance had been, they had been exposed to the Fury of the People: And though we are sure of this House of Commons, and may be of all in this Reign, yet I know not how Facts may arise, and what Parliaments we may have, and upon that Account I am very unwilling a Precedent should be made, at least contrary to the Usage in all manner of Courts whatsoever.

Sir Thomas Littleton. Sir, I shall not trouble you long in this Debate, that hath taken up so much of your Time already, in the Consideration of some Matters we have been upon; though I did think your Time not very regularly spent, till this Occasion offered it self: I hope therefore, now it will take up less of your Time. I see the great Matter that was insisted on before, is insisted upon still; and I do think we may say it among our selves, though we would not let the Counsel, That we are ty'd up in this Case by the Rules of *Westminster-Hall*; but I believe if that was the Case, and the Question was no otherwise, than, Whether or no we are ty'd up by the Rules of *Westminster-Hall*? I believe it would receive a Determination, that we are not bound up to those Rules.

But I will take leave to tell you what I think is proper for us to ground our Judgment on: I think the great Reason, even of those who are against the Precedent, why they did admit *Sir John Fenwick* to have Counsel, and to examine Witnesses, if

he had any, and to cross-examine the Witnesses, and why they were willing to hear Evidence on both Sides in the Nature of a Trial; the great Reason was, because that in a Case of so great Consequence as this is, they would have the best Information they could obtain. Why did they desire to be informed, but that afterwards they could lay their Hands upon their Hearts, and give their Judgment upon their private Opinion, Whether he was guilty or no? They say, we are not to give our Judgment upon our private Opinion; I always will. (It was not long ago we were not to have our Religion upon our private Opinion neither): And when I am justified in that, I will rely upon it. Whether this be strictly legal Evidence, I do not lay so much Weight upon it, as whether it hath satisfied my Conscience; and I believe there is not a Man in the House but is so (upon what he hath heard) and doth believe that *Sir John Fenwick* is guilty; and if we believe he is guilty, I would be glad to know by what Rules in the World any Man can give his Vote against this Bill, being of that Belief. And I tell you why I think every Man believes so; because every Man in the Kingdom that hath not heard so much as we have heard, does believe him to be so; and I can't think that their Representatives only should be of another Opinion.

What Evidence have you had? You have had *Captain Porter's* Evidence, and that would be good even in inferior Courts; and besides that, you have the Evidence of what *Goodman* did swear before the Grand-Jury; you have heard what he did swear, and the Grand-Jury did believe him; you have heard likewise what he did swear in another Cause to the Petit-Jury, and they believed him, and convicted the Prisoner upon it: And though this be not legal Proof, strictly speaking, will any Body say that I have Reason to disbelieve this Man, and think he hath sworn false?

Ay, but here is but one Witness, Gentlemen tell you. I will put you a Case where I believe this House would attain a Man without any Witnesses. Suppose two Persons had seen *Sir John Fenwick* kill the King; (I believe we should not have pulled him in Pieces in a barbarous Manner, but he would have had a Trial); and suppose before his Trial they had been conveyed away, if before they had sworn this to a Grand-Jury, and they had found the Bill, I believe this House would have attainted him for it.

Sir, I do not think that we should stand upon these little Niceties, nor be bound by the little formal Proceedings of other Courts, when the Government is at Stake. We are sent hither to take care that the publick Safety do not suffer any Mischief from the Enemies of it: We have had Plot upon Plot; and I have heard so much said on behalf of the *Lancashire* Plot without Doors, that I wish we do not get an ill Name upon our selves before we have done. We have this Power to exert upon extraordinary Occasions; and here is a Man that hath endeavoured to subvert the Government, and Well-being of them that sent you hither. I hope you will use it now; and if they knew who were not of that Opinion, I believe those that sent them would hardly send them any more.

Mr. How. Sir, as to the Argument, that if it was known how we gave our Opinion, those that are against this Bill, the People would not chuse them again: I am not afraid of that; I have been told so often, and yet I find the People I live

live amongst, use me better and better every Day ; and I believe, Sir, they will desire to use me, when they will lay other Men aside. I must in some measure support what seemed to be reflected on an honourable Gentleman, in that he said, he had rather be tried by 12 than 400. I am of his Opinion, and this is my Reason for it ; I have my lawful Challenge in case of the 12 ; and if there be any on the Pannel I have offended, I can desire they may be withdrawn, and that can't be done in any Case here.

But Gentlemen put the Strefs of their Argument upon that which no Body denies, and prove it handsomely ; and well they may ; for it is self-evident, the Power of Parliament they insist on, when no Body pretends but we have a Power to do what we please : But I must say of their Power what *Brañton* says of the King's Power, *Hoc tamen non potest facere, quod non potest jussu facere*. It is said, We are not ty'd up to the Rules of *Westminster-Hall* ; we are not so ; but I beg leave to tell them, That what is Reason and Justice in *Westminster-Hall*, is so every where. And I do take these particular Points we speak of, to be grounded upon Reason and Justice, and so far we are to pursue them.

Two Evidences was not given as a Restraint upon *Westminster-Hall*, for fear they should do something that is ill, for they are answerable for every thing they do ill ; but they were allowed to the People of *England*, that they might have a fair Trial ; and it was thought conformable to the Laws of God, the Law of Reason, and the Law of all Countries, That no Man's Life shall be taken away upon any particular Occasion. And for to say, That a Man's Life may be taken away by two Witnesses in one Place, and by one in another, is to say, That there is no certain Rule to prove a Man guilty of a Crime that may forfeit his Life, which is not admitted in any Country whatever.

But truly, Sir, we are going a little further ; for the Gentleman before told you, there was no need of two Witnesses, one would serve ; but now they go a little further, for they tell you, there needs never a one at all : For I do say, if every Gentleman here is to be guided by his private Opinion, there is no Man but before he heard this Cause did conceive in their Opinion some Judgment of his Guilt. And, Sir, I think no Man but would have told you, that would have been an unjust Judgment.

But they do say, That the Bill of Treason that was made last Sessions of Parliament was to limit *Westminster-Hall* ; and that I will trust that with my self, which I will not trust with my Servant. Why truly, if I, or my Servant, was to commit an Error, or a great Crime, I had rather my Servant did it, than my self : But I do not think that my Servant should be bound up from doing an unjust Thing, and my self should have the Liberty to do it. Another Thing that Law provided against was, that People should not be hanged without sufficient Evidence, and these Things have been long complained of : But I never thought that the Evidence of one Witness, and no Witness would be supported in these Days.

But, Sir, what have you done ? We have prevented People being executed by an arbitrary Power, and in an unlawful Way in *Westminster-Hall* ; but if you give this Example, you have brought the same Proceedings into this House, and

that they may be perpetually executed here, and so the Subject will be never the safer for the Bill of Treason.

And I do believe likewise, That it is better that a very heinous Fault, or a Mistake, should be committed in *Westminster-Hall* for ten Years together, than once perpetrated in this House : And my Reason is this, Because *Westminster-Hall* have a Law to be tried by, if they transgress that Law ; and there is a Way by turning out of Judges, and other Things ; and this House hath no superior Power ; and when they do a Thing, they make it a Law : So that this House (as it hath often been observed) can make this Nation unhappy, because this House can only establish arbitrary Power and Misery upon this Nation by a Law.

Sir, as to the Evidence, to say something to it, since every Body hath spoke to it ; for my Part, I do confess to you, the longer I sit here, and the more I have heard of this Trial, the less I have been convinced within my self, that these Witnesses can know any thing of Sir *John Fenwick's* Guilt. I have heard Captain *Porter* give his Evidence ; but that is no sufficient Proof to me : I have heard what Evidence *Goodman* did give to the Grand-Jury ; but whether they did ask such Questions as I should, if I had been of the Grand-Jury ; or whether they did confront him with Evidence, I can't tell. Therefore tho' the Grand-Jury was convinced by it, it is no Reason to convince us ; because we might not be convinced by the same Evidence.

But to go further : There is very great Reason to believe that *Goodman* was not then at this Place, and that not one Word that *Goodman* says is true. I have such Reason for what I say, that if *Cook's* Trial had been before this House, (not to arraign *Westminster-Hall*, though I think we are a superior Power, and I may say what I please of that Trial) ; I say, if *Cook's* Trial had been before this House, and what I have heard be true, I do think they would hardly have found *Cook* guilty upon *Goodman's* Evidence : For there were three as positive Evidence as could be, that he was not at the Place when he swore he was. And I observe a little Failure in Captain *Porter's* Evidence in that Point ; for I don't think it proved by Captain *Porter*, that *Goodman* was by when this Discourse was : For he says, he spoke of this Thing at Mrs. *Mountjoy's*, and dined there.

Members. No, no ; It was at the King's Head.

Mr. *Howe*. Well, there was but one Place where it was. Now whether Captain *Porter* heard them talk of it before *Goodman* came in, or whether *Goodman* be a good Witness, he having been there but the latter Part of the Time, which seemed to me to be the Time they should have given over their Talk of the Business, they having been so long together before : But it does not appear to me that *Goodman* can be a good Witness.

But I take it, That it is not just nor reasonable to find a Man guilty upon one Witness, and circumstantial Evidence. I did mention a Case where there was a positive Witness, and a circumstantial Witness, it was in my Lord *Delamere's* Trial ; and yet that was not thought a convincing Argument by the Lords to find him guilty ; and I hope no Consideration will oblige us to do that, which I am sure we should blame them for doing.

The Consequence of this, Gentlemen say they do not fear. I believe, if Sir *John Fenwick* had been

been told, when he was Major-General of King *James's* Army, that I should come here to sit upon his Life, he would have laughed at it, and thought it impossible; but the contrary has happened: And I have seen Parties hang one another with such Violence, I pray God we may keep from it: I do not know; we are all concerned in some Measure, it having been the Unhappiness of this Nation, that at one Time or another every Body hath been concerned, that they may have a Proceeding of this Sort against them; and this surmounts all that at present Gentlemen can do; for it extends beyond all Pardons, and will reach beyond the Act of Indemnity. God knows who may be served so, notwithstanding all the Act of Indemnity.

Sir, there is one Thing that is said further, which the Gentlemen at the Bar conclude with as a substantial Argument, That we do not aim at Sir *John Fenwick's* Blood, (God forbid we should) but at his Confession: You will here read the Bill once, and twice, will commit and pass the Bill, (Sir *John Fenwick* not confessing) and still this is not to aim at his Blood: But it happens perhaps that this Man knows no more of this Matter; and this Man is racked in a manner to Death, from Reading to Reading, because he does not confess; and at last he comes to be hanged, drawn and quartered (instead of High-Treason) for not confessing it.

This I take to be the dangeroufist Part of all the Arguments that have been urged: For this I must tell you, That according to my private Opinion, I do believe that Sir *John Fenwick* does know of no more Persons concerned (nor do I believe that he knows all that he says) than he tells you. He hath not been a Man that hath kept Company with Great Men: He hath generally relieved the poor *Jacobite* Officers: There are Five People, as I take it, he hath told you he did converse with: I would fain know in what Plot any Man converses with above Five of the Plotters? There may be a Plot that may be most dangerous, and yet a Person that knows of this Plot, may not know above two or three others that are concerned in it.

But the great Argument is, Take care of your Government. In the first Place, they must suppose the Safety of the Government depends upon his Execution, or why do they use it as an Argument? But I wish they would shew me the Government would be one Penny the worse, if this Bill does not pass. Do you want Examples of Punishment to deter Men? No; you have had lawful Proof against four or five Persons, and they have been executed: Here are Examples made, that no Body for the future may presume to plot together, and not to be executed.

What is the Reason of this Bill then? Why, there is a Plot going on; Sir *John Fenwick* hath been imprisoned this six Months or more; and will you hang him because there is a Plot now going on? What Consequence is that? Do you think that he knows any thing of it, or that he can discover it? It hath been started since his Confinement, it may be, and he knows nothing of it: So that as to what is pressed of his Confession, I know no one Thing would be gained by it, that could be useful to the Government; for I believe all hath been discovered already that he knows, and that Plot hath been utterly disappointed, and they have been fain to make a new one. Will

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you proceed in a Bill of Attainder, unless the Matter be of the greatest Consequence? The Preamble of the Bill for Attainting the Duke of *Monmouth*, gave a substantial Reason for it: That he was in Arms, and could not be brought to Justice. That implied, That if he could have been brought to Justice, they would not have Attainted him.

I think I need not give you more Arguments in this Matter; I wish I could hear those that have been given, well answered. I shall say no more; but I know this, that my private Opinion shall never guide me in this Case. 'Tis not the same Thing with the Case my worthy Countryman put: In the Case of Religion, my private Opinion does not affect other Persons; indeed it does the Papists, where they will murder others that are not of that Religion.

Mr. *Norris*. This is a very solemn Debate, and 'tis upon a very solemn Occasion. 'Tis a Case of Blood; 'tis a Case that in my Life-time, I thank God, I never had to do with yet; and in this Matter wherein I am now to be a Judge, I will use as much Caution as any Gentleman within these Walls.

I am so conscious to my own Inability in what I have to say, that I can't expect to convince any Body; but what I say, is to discharge my own Duty, and satisfy my Conscience in that.

I doubt not, but every Gentleman considers the Station that he is in, and the Trust reposed in him by those that sent him hither: We are intrusted with the Lives, Liberties, and Properties of every Man in *England*; and we are answerable for them to those that sent us hither, to our Posterity, and to our selves.

In this Matter, many Things of great Weight and Importance are before you; here is the Life of a Man, the Preservation of the King and Government, and the Power of Parliaments to be considered. Sir, as I shall be cautious of taking away the Life of a Man, so I shall be careful of the Preservation of the King and Government, and the Power of Parliaments; and though I do not think it requisite, nor never will give my Consent to support the Government, or Honour of this House, at the Expence of innocent Blood; yet I shall not be afraid of giving my Opinion in this Matter, to bring a Criminal to Punishment: Besides, the Treason he hath committed, he hath Crimes of a Nature almost equal to Treason; and for which, because he hath evaded the Cognizance of *Westminster-Hall*, he is now brought before you; and there are several Instances, where this House hath taken notice of Offences of a less Nature, and for a less Reason, than this is brought before you.

To quote Precedents, is a little dry Subject; but however, I will instance in one, that (I think) does assert the Power of Parliaments in this Case, which has not been mentioned yet; and that was (as I remember) in the 3 *Rich. II.* of an Agent that came from *Genoua*, who was, by a Misfortune, killed upon a Quarrel that happened in the Streets; he that killed him was brought to his Trial; it could not be brought within the Statute of 25 *Ed. III.* but he was brought to his Trial, and it was found only *se defendendo*; but he being a Publick Minister, it was thought fit that the Nation should take more Notice of it; and he was Attainted afterwards by Parliament, and there is a Record of it: They did not

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think fit to make a general Law, but they made an Example of the Man that committed this Fact.

A great many Gentlemen have supposed this, and supposed that, and what ought not to be supposed; but I will make an easy Supposition; I will suppose that we are the Commons of *England* in Parliament assembled; and if so, Sir, we have a discretionary Power to do whatsoever we see is for the Good of the Kingdom; and if we are to be circumscribed by the Rules of *Westminster-Hall*, and we are to do nothing but what they would do, to what Purpose do we sit here? If we are entrusted with this Power, and may exert it, I think here is a fit Occasion for you to exert this Authority.

Sir, give me leave to take notice, That the Strain of Argument that was used some Years ago, is very much altered by the same Gentlemen; (I will mention it) I think it was in 78, when the Bill of Exclusion was brought within these Walls; the Arguments ran then (for I have seen them in Print) those that were against that Bill; What will you do? say they; Will you do this Thing? Pass a Judgment against a Man without hearing of him? Hath he been brought to your Bar, to answer what you have to say against him? How do you understand that he is guilty of the Crimes you accuse him of? And they did not use those Arguments against them that were for disinheriting the Duke of *York*: But the Answer then was, Do you dispute the Power of Parliaments? Is there not a discretionary Power in the Parliament? I do take notice, That those Gentlemen that used that Argument for the Bill of Exclusion, now use it a quite contrary Way. Sir, I think the Power of Parliaments is not to be trifled with.

It hath been urged and said, a little while ago, by a Gentleman, That he does not believe Captain *Porter* is a good Witness. I will give you a good Reason why I do think he is a very good one, and they at the Bar think so too, because they would have given a great Reward to have taken him off; and for the same Reason, I believe *Goodman* to be a good Witness too: Sir *John Fenwick* was satisfied, that *Goodman* did know how far he was concerned, and he hath been prevailed with to be out of the Way.

Sir, here are a great many Circumstances that agree so well together, that (I think) no Person can doubt of Sir *John Fenwick's* Guilt; and (I think) 'tis in this Case in the Body politick, as in the Body natural, when a Man is almost past the Cure of Physicians, when a Man hath a Gangrene, a rotten Member, which the Physicians by the ordinary Means can't cure, the Remedy, the College of Physicians themselves in that Case would use, is, they would say, *Immedicabile vulnus ense recidendum est*.

I am of Opinion, that the Legislative hath this Power, and that this is a proper Occasion to exert it; and to compare small Things with great, 'tis like Thunder and Vengeance in the Hands of Providence, that is not used but upon extraordinary Occasions; and then it ought not to fail, for that makes a Man trifle with and despise that Power that is not effectually able to exert it self; and if the Sword of Justice be drawn, if they find it rusty, and will not cut, they will have a mean Opinion of your Power for the future.

Gentlemen are afraid of Precedents in this Case; for that Reason I am for committing this Bill, because I would make this a Precedent; and I will tell you why; Because it may happen in future Ages, that Ministers of State, and Persons concerned in the Government, may be faulty (I think I may suppose that) and as the Law stands now, he is but a bungling Politician that can't ruin the Government, and yet not come within the Bill of Treason to be hanged for it: And therefore for the keeping an Awe upon Ministers of State, and because I would have this House always have it in their Power to punish future Offenders, as they shall see Cause, as well as this unfortunate Gentleman at the Bar, I am for committing this Bill.

Mr. *Finch*. Sir, the Question now before you, arises upon a Case wherein you have a Man accused of High-Treason, and for that there is but one Witness, which by the Rules of *Westminster-Hall*, is confessed by every Gentleman, is not legal Evidence.

I remember the other Day, when this Evidence was offered, and an Objection made to it, the Answer was, That we ought to hear it (though in *Westminster-Hall*, they could not do it) because we sit here as Judges, and we can distinguish what is legal Evidence, and what is not legal Evidence, and can give its just Weight to every Part of it. I do observe now, in this Debate, some Part of the Evidence, which no Man can say could have been given according to the Rules of Law, is insisted upon, and Weight laid upon it.

And here they have taken into Consideration the Power of Parliaments; and the Method of Parliaments has been insisted upon. As to the Power of Parliament, Whether the Parliament can do it? And whether if the Parliament pleases to do it, they are tied up (as Gentlemen are pleased to express it) to the Rules of *Westminster-Hall*? That the Parliament can do it, 'tis a hard Matter to gainsay, That any thing is out of the reach of the supreme Power of a Nation; the Legislative Authority can do every thing: Yet, though Gentlemen have said this, and others have observed, That there wanted no Authority to prove this, being self-evident; yet give me leave to instance in some Particulars in this Case, with the Authority of the Judges upon it, where the Parliament have proceeded according to the Rules of *Westminster-Hall*.

We read in *Hen. VIIIth's* Time, that the Lord *Cromwell*, Earl of *Essex*, was Attainted in Parliament; and History tells us, That he was Attainted by a Law of his own making. Now, says, my Lord *Coke*, That seems strange; but enquiring of an ancient Person that lived in those Days, he told him the Meaning of it; That Lord had consulted with the Judges, Whether or no, if a Man was Attainted by Parliament, and was not brought to be heard, such Attainder would be good in Law? The Judges started at the Question, but could give no other Answer than this; Truly, if such Attainder be made, we know no Law to find Fault with it, for 'tis done by the Legislative Authority. It fell out, That the Instance of condemning a Person in Parliament (not according to the Rules in *Westminster-Hall*) fell out to be the Nobleman's Case; for he himself was so Attainted immediately after.

Give me leave to instance in another kind of Authority, the Authority of Parliament touching these Attainders, and what has been the Consequence of them: If you will look into the Record of *Rich. II.*'s Time, I do not mean the Record that hath been quoted, nor the Case of *John Imperiall*, for killing the *Genoua* Ambassador, which was declared Treason in Parliament, Ten Years after the Man had been tried in *Westminster-Hall* for it; but I mean the 11 *Rich. II.* how many were attainted by the Proceedings of those Times; I do not mean by Acts of Parliament, but those Attainders were in an extraordinary Manner, not according to the Rules of *Westminster-Hall*: And 21 *Rich. II.* the whole Parliament, and its whole Proceedings were reversed, and the Parliament annulled: In that Year were the Prosecutors of the 11th Year themselves attainted: And 21st Year of *Rich. II.* the Act that repealed that Parliament, repealed the Pardon too; but in order to come to the Attainder of those Persons: That being done, was not enough; for the Lord *Arundel* had a Pardon the 17th of *Rich. II.* Upon that they made a Law to repeal his Pardon by Patent, that they might come to the Attainder of that Lord; and that Lord was Attainted by Act of Parliament. But I must observe one Thing a little further, That that very Parliament, that doubtless knew their own Power well enough, and that their Attainders were firm, being made by the Legislative Power, yet they had a little Jealousy themselves of their Proceedings; for they passed an Act to make it capital to go about to reverse any of those Laws; and another Act, that all the Lords and Bishops should be sworn. Now see what fell out after; *Rich. II.* was deposed, for consenting to those Laws; and *Henry IVth*, in the first Year of his Reign, abrogated the whole Parliament, and repealed all those Laws. These Turns have been upon these extraordinary Proceedings of Parliaments.

Give me leave to give you another Instance, and that in another Case, as odious as possible could be. In the Murder of *Edw. II.* there was *Roger Mortimer* attainted in the first Year of *Edward III.* and the Record says, That it was notorious to them all: And what then? They adjudged him to be attainted in Parliament. When Time had a little worn off that extraordinary Zeal (which truly was commendable, though it had transported them a little too far beyond the Rules of Justice) and they came to consider what Precedent they had made for Posterity, it had another Face; for in 28 *Edw. III.* was that Attainder reversed, because he was not brought to answer as he ought to have been. There was also an Act for attainting the Earl of *Arundel*, which in the same 28 *Edw. III.* was reversed, because he was not brought to Judgment by due Process of Law.

But now we are told, we are not tied here to the Rules of *Westminster-Hall*. Gentlemen do not enough distinguish in this Matter; the Forms of *Westminster-Hall*, say some; the Rules, say others; and others say, there is no Difference between the Form of Proceedings, and the Rules, of *Westminster-Hall*: But I hope no Gentlemen do think but the Parliament, though they have a Power to act as they think fit (as Instances have been given) yet the Parliament it self are tied by the Rules of common Justice. Now I would have Gentle-

men that say we are not tied by the Rules of *Westminster-Hall*, a little to consider the Matter. Are the Rules of *Westminster-Hall* no other than what are necessary for the executing of Justice? If they are no other, how can we be said to go according to Justice, when we go beside those Rules? I desire them to consider of the Consequence of this Proceeding; there is no danger, I hope, of this Parliament: But if we shall say, that the Rules of *Westminster-Hall* are not such as are necessary for the Proceedings in a Course of Justice, we shall shake those Barriers of our Liberty and Property, I am afraid, a little more than Gentlemen think of at present; And shall we declare they are not necessary, when our Ancestors have thought them so, and their Wisdom hath derived them to us, and the Wisdom of the Nation in Parliament hath established these Rules?

I can't say what Consequence may follow upon this. This Parliament can never do any Thing to endanger the Lives of the People of *England*; but heretofore Parliaments have been damned with several Brands, set upon them by succeeding Parliaments: As for Instance; One, I think, in the 38 *H. VI.* 39. That Parliament was wholly repealed, as packed, and passing Laws through Rancour and Malice, and having passed no good ones. Now, suppose a Parliament should come, that should not be so tender of the Liberties of the People as this; and they should be so bold as to shake those Laws that are made for the Rules of Justice, if they have so good a Parliament to guide them in it; Will not this be an Inducement to such a Parliament as that, to shake all our Laws and Liberties? But I can't trouble you any longer, my Head will not give me leave. I am against the Bill, and have offered you my Reasons.

Col. Wharton. I hope Gentlemen, in a Matter of this Moment, will have Patience to hear one another; and since every Gentleman is to give his Vote in this Matter, I desire to give my Reasons for my Vote: I am of the Opinion of another Gentleman, That we have not touched the Sore yet; yet I do not think, that the Rules for *Westminster-Hall*, are Rules for us. The Gentleman that spake last, as he always does, made a very florid and elegant Speech, and brought you several Examples of Attainders that have been condemned from one Parliament to another, in several Reigns: But I do not wonder at that, when the Crown went from one to another. An Instance was given in the Case of the Lord *Cromwell*, which was spoke too from the Bar; and Sir *Thomas Powys* laid a great Stress upon it, That this was condemned as a wrong Judgment, because he was not heard: I believe that may be a Reason why many of those Attainders were condemned; perhaps it might be a Custom of our Ancestors to pass Bills of Attainder without hearing the Party. This Person hath been heard, and fully heard; and I believe no Person, that hath been attainted, hath had so fair a Trial; and therefore Parliaments having condemned Bills of Attainder, because the Persons have not been heard, that will be no Reason why any Parliament should condemn us. A Gentleman told you, That the Law of God and Man was not to condemn a Man, but upon two Witnesses; but there are many Instances to the contrary.

It is told you, That *Porter*, here before you, is not a good Evidence, because he is not sworn; and that you are to go by the Rules of *Westminster-Hall*. Says the Gentleman that spake last, you are to go by their Rules, but not by their Forms: I must confess there is a great Difference between them two; for a Form is only the Manner and Method by which we proceed in doing of any Thing; but the Rule is the Foundation we are not to err from; but I can't agree we are upon the same Rules as *Westminster-Hall* is: The Rules of *Westminster-Hall* are, when a Man is brought upon his Trial, the Jury are all to be upon their Oaths; by which Oath they are to make a true Judgment according to Law. This is not the Case here; if I was a Jury-Man, and was to try a Man, and one Witness swore against this Man, and no other Witness, though I did in my Conscience believe him to be guilty, yet in that Case my Conscience is discharged, and I must find him not guilty: But no Man can say this is the Case here.

What are we now a doing? Here is a Bill to attain *Sir John Fenwick* of High-Treason: If I reject the Bill, I do declare him not guilty; and if I do think him guilty, I do declare against my own Judgment; for my Judgment here, is not bound up as a Man's Judgment upon a Jury; for his Judgment is bound up to Proof, according to Law; and my Judgment is bound up by my own Belief: This is the Proof I must go by; and I think every Man is bound in Justice and Duty to his Country, as he believes *Sir John Fenwick* to be guilty, to be for the Commitment of this Bill; and till any Gentleman will convince me, that this is not a Rule I am to go by, I must continue in this Opinion.

Mr. Boyle. The Disorder that worthy Gentleman was in, makes me the more concerned for fear of falling into it my self.

I hope in this Debate, Gentlemen will be very cautious of using it as an Argument, what Application our Votes shall have without Doors, and with those we represent, when we are to give Judgment, as far as in us lies, for the Life and Death of a Man: And therefore I must observe, that the Eagerness that is justifiable upon Impeachments, may not look so well now we are Judges upon a Bill of Attainder. You have gone over the whole Course of the Evidence, and I believe that this Debate will shew you pretty plainly, what is to be the Fate of this Bill; for I believe all the Arguments will now be used that can be: As to what hath been said of extorting a Confession, I take it to be quite out of the Case.

I am sorry to be engaged one way or another: I would not, if I could help it, out of the House, be upon a Jury of Life and Death; yet in that Case, I should know the Law, or be told it by the Judges: But in this Case, we are both Jury-Men, and Judges, and know not what Rules we are to go by; but set up a Court of Equity which hath no Bounds but our own Consciences.

As to *Sir John Fenwick*, I know him not; as to his Cause, I am sure, I am against it; but how far I think him guilty or not, I think is not the single Point to be considered: I must confess, there have been several People accused of this Conspiracy, and have been named by the Evidence at the Trials; and I believe they are much alike guilty, being upon the same Evidence; but as to all that hath been opened before you, and proved, it can amount to no more than this; There is but one

Evidence, which by the Law would not be a good Evidence to convict him in another Place; and therefore I do agree with the Gentleman that spake under the Gallery, that this is a very extraordinary Case; for one Witness is not sufficient at Law to convict him, and the Law would be very different hereof. I am to judge according to my own Opinion, and not by the Rules prescribed by the Law; but though this Proceeding is not strictly according to the Law of the Land, yet if it was such an extraordinary Case that required you to dispense with those Forms, and come to this extraordinary Manner of Proceeding; I think, for my own Part, it might be supported by the Necessity of it; for 'tis impossible that it should be otherwise in Practice: Thus when the Government is at Stake, and nothing will preserve it, but the breaking through the settled Forms, then the Government will break through them; and whatever Rule you prescribe, it will always happen so.

There is a very extraordinary Case, and that was in the Conspiracy of the State of *Venice*, above a hundred Years ago, I think, set on foot by the *Spaniards*: Then the State, to get the whole Matter out, promised a Pardon to as many as were concerned in it; and after they had promised it, and treated with them about it, they thought it necessary, for the Preservation of the Whole, to break their Faith, and they were all put to Death. This was upon Point of Preservation of the Government.

But, Sir, as to Precedents, give me leave to say, I do not give that Authority to them unless I know all the Springs and secret Histories and Transactions that were their Guide in making those Precedents; and as to Precedents that have been quoted, when the Parliament has declared what was Treason, and what was not Treason, or have declared Constructive Treason, they may be grounded upon the Statute of 25 *Ed. III.* But I think there is no Statute upon which they can ground the Condemnation of a Man upon one Witness.

In the Case of my Lord *Strafford*, upon constructive Treasons, it was there said, That it was a Fire that had lain hid for 240 Years, and that it never broke out before, but to consume him, and his Posterity. It was answered by *Pym*, If that was the Case, it was not for want of Law to justify such a Proceeding, but all that Time had not produced such an Offender.

I do not doubt, but if any one will consider the late Conspiracy; and if that was the Question, but it was as extraordinary as any Thing can happen; for it was to subject their Country to a foreign Power, which is very extraordinary, and several Persons were concerned in it: But there is one extraordinary Part which I do not remember this Gentleman is accused of; and that is, the Assassination. Treason it self is a very extraordinary Crime; but give me leave to say, that extraordinary Part is not alleged against this Gentleman, and this Bill does not seem to be brought in for that, wherein he is concerned in common with some others, but for the subsequent Matter alleged in the Bill. This Bill is grounded not so much upon that he is guilty, as a great many more are, as upon several Circumstances which have happened to no Body else. Give me leave to instance in a Case, now in my Head (I beg your Pardon that I ramble, 'tis from the Awe I have upon me from this Assembly) in *Cataline's* Conspiracy; and if that was our Case, no doubt there would be another

ther sort of Argument for it; there they consulted what to do with *Cetbegus*, and the other Conspirators; he was at the Head of an Army, which only expected his Orders to lay *Rome* in Ashes; the Question was, Whether they should break the *Porcian* Law; and for the Safety of the Senate they were put to Death before the Assembly rose.

Now to come to this part of it: Though Sir *John Fenwick* is a great Offender, yet I think his Case is not so extraordinary, as to make you proceed upon this Bill. I do take his living or dying not to be of that Consequence as this Bill of Attainder. I know not how he comes to be so considerable when in Hold; for when he walked about Town, I never heard he was feared or regarded at that Time.

But to come to the Allegations in your Bill, upon which they are to ground your Judgment: The first Part is a new Conspiracy, that is, for intending to create a Jealousy between the King and these noble Persons. As to them, you have already passed a Vote in their Justification; and I think their Actions may justify them to the World, as much as any Vote of the House of Commons; but whatever that may be, I think it was a foolish piece of Conspiracy, as well as an ill one; for one; when he was in danger of being hang'd for one Plot, to venture upon another; and I think, there was at that Time two Witnesses to bring him to his Trial, and that is an Allegation in the Bill. And as to the Protracting of his Trial, 'tis natural, and so justifiable, whether innocent or no, and what every Body attempts; and no Body can wonder at it; but in one Case or the other it can be no sufficient Ground to attain him.

The next Thing that is said is, That he hath been the Occasion of the withdrawing of the Evidence. Now I must observe, that is not alledged in the Bill, and is proved but by Hear-say: But suppose it was true, and alledged; if any Man concerned in Treason shall endeavour, by Friends, or otherwise, to get off an Evidence, can that amount to that which is designed to be punished by this Bill, to High-Treason? 'Tis the Part of those that are intrusted with those Matters, to be in Expectation of such Practices. What are Goals for, but to keep them in Custody? And the People employed in those Businesses are to take care of it. Are we to supply a Defect of what ought to have been done in another Place?

So that I do say, That a Precedent in an extraordinary Case is no Precedent to be used in a little Case. It may be urged, but 'tis but a Pretence, when you have passed this Bill, which is the Record, the Matter will appear no otherwise than are the Suggestions of your Bill. A Man hath aspersed great Persons, which is a great Fault indeed, (for he is not charged with the withdrawing of the Evidence) therefore attain him upon one Evidence. I think by this Bill you will open a Door for a Precedent of all Treasons of the same Nature. Sir, there have been many Precedents mentioned; I will trouble you with none, because most Gentlemen have read the Argument of Mr. *St. John's* in this Case. I must confess, unless there was that Necessity as is pretended, which I do not see, I do not see how you can justify passing this Bill of Attainder, either by the Law of God or Man, in any Nation allowed.

I must confess, I have no manner of Concern

how this Question goes; what I have said is more to satisfy my own Judgment, than work upon other People. I am not satisfied there is that Necessity that is pretended; and therefore as my Judgment is now informed, I can't give my Vote for Committing of this Bill.

Mr. *Smith*. Sir, I own my self to be very unfit to speak in this Argument; but since I am to give my Vote in a Matter of this Consequence, I beg leave to give my Reason why I give my Vote, as I intend to do. I know the Matter before us, both in the Nature of the Crime and Punishment, as well as the Consequence of it, requires a very deliberate Consideration; but at the same Time, I do take the Hazard and Danger of this Government to be a Matter of great Consequence too.

Though there have been several Precedents instanced in relation to Attainders; and though I have observed, that most have acknowledged, That they might be justified upon extraordinary Occasions; yet when they have asserted that, they have told you, they were upon a wrong Foundation, and so were laid aside. Now I think it no great Matter to say, That those Attainders that were made in Rancour upon contended Titles, were reversed when the opposite Party got the Power, no more than if any Action, be it never so justifiable, should be reversed when King *James* comes again, which I hope will never be. Is it any Argument, that when *H. IV.* came to the Crown, and deposed King *Richard*, that he reversed all the Attainders in his Time? There might be Reasons might sway with Persons for reversing particular Acts of Parliament, which might be very good, or might be not so, there was such a Change of Government at that Time; but they take notice it was made a particular Article against *Richard II.* as if when the Power was come to other Hands, they would not have deposed him if they had not had that Argument: Neither do I take that Argument to be of any weight; That Attainders have been reversed, because the People have not been heard; when this Gentleman hath had as full a Hearing as ever any Person had upon any Bill of Attainder, or Impeachment whatsoever; and he hath had the Advantage of Counsel in this Case (which, as has been told you, was excepted out of the late Act of Parliament) and of the most able Counsel too.

'Tis said this is a Matter of no great Consequence, because it concerns Sir *John Fenwick's* Life singly; and he is not thought to be so considerable, as by his Escape to bring the Publick in danger. Now it hath been always one Principle I have laid down, That if a Plot be discovered, and not thoroughly prosecuted, it strengthens and grows upon you, and ten to one if it does not subvert the Government.

Now, God be thanked, that we have prevented the Design upon the King's Person, and several have been punished for it; but I think we are not got to the Bottom of it, and that we ought to provide against it in a much other Manner. Can any one think that Sir *William Parkyns*, or Sir *John Freind*, and the rest that are discovered, were the only Persons concerned in this Conspiracy; I take it, that there have been much greater Men in it; and when I see such a Struggle both to get People out of Gaol, and send People out of the Way, and all Arts used that can be, I must suppose, when such extraordinary Courses are taken,

ken, that there is something extraordinary still to be done; and I would not have Men by bribing of Witnesses think to secure themselves: It hath been used as an Argument to lessen the Matter, That this was a little after the Act of Indemnity. Can any Thing aggravate a thing more? Sir, these very Arguments turn against them.

We are told here, that we must not consult our own private Judgments in the Matter; and we are told at the same Time, if there were two Witnesses that we did not believe, we must not find him guilty. We are told of a Judge, that though he knew a Person to be not guilty, yet it was a commendable Action in him, that he condemned the Man: But that hath been very well answered already, and I shall not meddle with it further; only this I will say, that I never will in any Case be a Jury-Man or a Judge, where the Convictions of my own Conscience shall not govern me, but an Evidence that I do not believe. And because that Story was told you, I will tell you another, that I think more commendable: And that was; a Man was try'd for a Murder, and there was positive Evidence against him. The Jury went out, and stay'd a great while: There was Eleven against One for finding him guilty; but at last the One almost starved them, and they brought the Man in not Guilty. The Judge sent for the Gentleman, and desired to know his Reasons for differing with the rest: And at last, upon Assurance that nothing should be done to him, Why, says he, Would you have me find the Man guilty, when I was he that killed the Man, and he was innocent?

Then, Sir, if you take the Evidence as it is; I think, first, here is Capt. Porter; I do not find any Body excepts to him; and his Evidence hath been approved of by several Juries, and several Persons executed upon it, and nothing material hath been objected against it. I will not say, That Sir John Fenwick hath owned a great deal of this himself; he hath given every body Satisfaction how far he stands guilty in his Opinion; but it is brought so far home, that there was Sir John Fenwick's own Letter was to convey him abroad. Here hath been Attempts upon other Persons; you hear what hath been done by the Solicitor. They say, he was not his Solicitor at that Time. Here are very pregnant Circumstances. One Gentleman said, you ought not to make use of Goodman's Evidence here; and yet he could make use of every Thing to disparage him; for he could say, there were three positive Witnesses against him.

Now when 'tis so notorious what Parties there are for King James, and we find Persons plotting in every Part of the Kingdom: When you have an open Invasion before you, and when Designs are laid against the King's Life every Day; if this be not a Time to exert an extraordinary Power, I submit it to you.

Sir Rich. Temple. Sir, I shall not trouble you with any Thing that hath been offered to Day. That which calls me up, is the Danger of the Precedent you are about to make, and the Arguments that have been used to support it; which, I think, are more dangerous than that. I must confess 'tis a new Doctrine to me, That the Laws that are made by the Parliament, are to be no Rule and Guide to this House. Sir, the Birth-right we have is in our Laws; and I did ever think till now, that the Laws were not only

made for *Westminster Hall*, but for all the Subjects of *England*; and especially, that they were to be a Rule to the Parliament that made them, till they should think fit to alter them.

Here have been great Mistakes between the Power of Parliament and the Jurisdiction of it; the Power of Parliament is to make any Law, but the Jurisdiction of Parliament is to govern it self by the Law; and this, give me leave to say it to you, hath been the Opinion of all your Ancestors, and the Method they ever used. Shall we make a Law here in a particular Case against all the Laws of *England*? 'Tis *ultimum remedium & pessimum*; you may use it in a Case of absolute Necessity, but otherwise it may be a Precedent to overturn all.

There are several Things in making this Precedent, that overthrow all the Laws and Liberties of *England*: First, you are passing Judgment upon a Man upon one Witness. I have heard a strange Debate to Day, That there was but one Witness in Treason, before the Statute of *Edw. VI.* You know, that in Case of Treason, there was by the Common Law required two Witnesses; for if there was but one, the Party might demand Trial by Battle, and that was the Common Law of *England*.

There is another Thing that is extraordinary: Here you are going to pass an Act without any Trial at all: For to say this is a Trial before you, the Commons, is a Mistake; you never did assume a Jurisdiction of trying any Person, nor can you: You may for your own Information hear what can be offered, but 'tis not a Trial, where Witnesses are not upon their Oaths. There is no manner of Power or Jurisdiction can be pretended for you to try; in that is a second Thing. All the Bills of Attainder you have had, have been in three Cases, where the Persons have been either dead, or fled, or have been without the Compass of the Law, and could not be brought to answer: And you have had some Bills of Attainder after Trials had in *Westminster-Hall*; but never a one of those have been called Trials, but they have been generally reversed; and for what? They tell you, That they have been reversed by one Party and another Party: It was in the same King's Reign, in *Rich. II.*'s Reign, they were forward and backward, as the Court Party or the Country Party were uppermost.

There is another Thing in this, that I think of a most dangerous Consequence; and that is, that you are for making way, for what I know, by this Precedent, for a Rack, for so 'tis said; this is to force a Man to be an Evidence. Why, give me leave to say to you, 'tis a new Way not known in *England*, that you will hang a Man unless he will confess or give Evidence; but I think 'tis something more than a Rack, for here is hanging, drawing and quartering in the Case; and I do not think this Proceeding will make him an Evidence with any Credit or Reputation to this House; nor am I of Opinion, that he can discover any Thing worth such a Precedent.

Now give me leave to say one Thing as to the Jurisdiction of Parliament. It hath passed here for current, That the Parliament hath a Power to declare what they will Treason, though so by no other Law: 'Tis the greatest Mistake in the World: I heard a great Debate upon this, upon my Lord *Clarendon's* Case; and 'tis plain, that Statute relates only to Cases brought from inferior

our Courts to Parliament; for it says, That if any other Case supposed Treason, which is not in that Statute specified, doth happen before any Justices, the Justices shall tarry, without going to Judgment of the Treason, 'till the Cause be shewed and declared before the King and his Parliament, Whether it ought to be judged Treason, or other Felony. I speak to the Jurisdiction that the Parliament has by that Statute: 'Tis, that if the like Treason (for at Common Law there was a great many Treasons) should fall out, and be brought before inferiour Courts, of which they doubted, whether they were Treasons or no; then they should be brought before the Parliament, to judge whether they were Treasons or Felony: But how shall they judge? By the Laws in being. And who is this Judgment in? Not in the Parliament by Bill, but only in the House of Lords: Much less is it, That you may judge that to be Treason in this House, that was not so by the Common Law before. So that, give me leave to say, therefore there is no such Power reserved to the Parliament, to declare any thing Treason that is not Treason before.

I must say, 'tis of the last Consequence, that we should make a Law in a particular Case, to take away from him all the Liberty that belongs to a Subject. Some Gentlemen talk of the great Favour he hath had at this Bar: I know not what to think of it; I am sure you allowed the King's Counsel such Privileges as I never saw before, and that was to offer that for Evidence that every body acknowledged was not so; and I do not think any body would think it a great Favour to be heard in this manner, especially to Things not in the Bill.

'Tis said, every Man must go according to his private Opinion, 'tis not said Judgment neither; the Instances that have been given are of a quite different Nature: A Man is not to give his Judgment against his Knowledge: I think that Judge ought rather not to have try'd the Cause at all; but if we sit here to judge, we sit to judge him according to the Law of *England*, and then we must judge him according to legal Proof. Will you sit upon a Judgment that is not only not tied to the Rules of *Westminster-Hall*, but is not tied to the Laws of the Land; and Attain a Man without a legal Trial, without legal Evidence, and upon One Witness, when the Law says, you shall have Two; and after all, say 'tis a reasonable Proceeding? I know not how it came about, that the Act of Grace was passed; it did not rise from this House: If it hath any ill Consequence, let them answer for it that were the Cause of it.

They say the Government is at stake, because the Plot hath not been found out to the Bottom. That is not our Fault: This Man hath been long enough in Custody; if he hath trifled with the Government, I am sorry he hath imposed upon them; but if it be so, I think there is nothing in this Case, of that Consequence, as to make you make this Precedent.

Sir *Will. Strickland*. Mr. Speaker, I would not make use of any ill Precedent: And yet if the present Occasion, and the Necessity of the Kingdom required it, I would make a Precedent: I am glad the several ill Precedents are avoided in this Case, and I would be bold to say, whether this Gentleman suffers or no, no Man can say that he hath been hared to Death by Counsel.

Sir, I should be as tender in Point of Blood as any Man; but I do think, if the Safety of the King and Kingdom is concerned, 'tis not one private Man that we must have respect for, so as to let the Publick suffer by it. I do think, that upon this Occasion there have so extraordinary Things happened as have hardly happened in former Ages; that one who is known to be in a Conspiracy to bring over a *French Power* with a *Papish Army*, to destroy our Lives and Liberties, after his Trial has been deferred by his Equivocations and Pretences to make a great Discovery; when he comes to make it out, he accuses the best of your Friends; and this is only an Artifice to get Time 'till they could get the Evidence out of the Way; I think, if you do not take notice of it, and let the Legislative supply that Defect, it may be of ill Consequence, and may encourage any one to commit the worst of Mischiefs, upon hopes, that if they can get the Evidence out of the Way, they shall go unpunished.

Sir *Francis Winnington*. I shall trouble you but a little while, it being late; but Gentlemen saying 'tis an extraordinary Case, I shall give my Reasons why this Bill ought not to be committed; for every Member here now is a Judge; and he must take the Blood of this Gentleman upon him in Judgment, either to condemn or acquit him; and I must confess, I have very much admired, to hear that Doctrine preach'd, That every Man, as he is satisfied in his private Conscience, ought to judge this Man guilty. I desire to know by what Authority we sit here? We sit here and have a Legislative Authority, and 'tis by the King's Command we come together; but at this Time we are judicially trying this Man for his Life; and therefore I humbly conceive, That we ought to proceed *secundum allegata & probata*; and for any Man in his private Opinion to say he is guilty, he does not act by the Commission he sits here. For to tell you of the *Lancashire Plot*, or that a Man shall not be chosen hereafter, seems to be Arguments to enflame, but nothing to the Question.

Now, Sir, I will humbly offer to your Consideration, and the Judgment of the House, why I think we cannot judicially condemn this Man; for I think the Question of Commitment to be the same as of his Life and Death.

I do agree upon all the Precedents good and bad that have been cited, and doubt not but in extraordinary Cases, 'tis in the Legislative Power of the Parliament to look after the Safety of the Kingdom; but I shall offer why this does not come to that Case.

I humbly conceive in this Case, for I will not speak to the Rules of *Westminster-Hall*, but upon the right Reason of the Thing; for if it be Reason in *Westminster-Hall*, it may be so here, and that ought to overcome every thing; But whereas Gentlemen say you have one Witness, I do not apprehend you have one good Witness, and I will give you my Reason for it; for you must take Capt. *Porter* upon his Parole, and consider what he says upon his Word; and then I do appeal, if you take what he says upon his Word, whether ever they did know that a Bill of Attainder proceeded against any Man upon bare Affirmation? No; in that Case you should have turned it into an Impeachment, if the Thing looked probable, and then you had the Witness upon Oath; and the ancient Method of Bills of Attainder used to be first by the Impeachment of the Person, and then to turn it into a Bill of Attainder.

Then

Then see what it is that is insisted on by the King's Counsel, and recited in the Bill, That there was a Bill of Indictment found by the Oath of two Witnesses, that is, *Porter* and *Goodman*: Under Favour, I think they are not to be counted as Witnesses in the Point; and I offer this as a Reason; and, I think, 'tis natural Justice in all Courts of the World, That if a Man be accused as a Malefactor, he hath the Liberty to cross-examine the Person that accuses him. Now we very well know, that in Case of Bills of Indictment, when they are found by the Grand-Jury, they never admit the Prisoner to put Cross-Questions, because the Bill of Indictment is but the Accusation; and if an Accusation be enough, who can be Innocent? Why, then if it be so, then this Oath that was given to the Grand-Jury, is not such an Oath upon which you can put such a Value.

Then, Sir, go to the Paper of *Goodman*, which you would read, and consider the Validity of that; *Goodman* being now absent, the Prisoner hath no Opportunity to cross-examine him; and I beseech the House to consider the ill Consequence of it: Any Minister of State may come and get an Examination before a Justice of Peace, or Secretary of State, and the Man is conveyed away, and a Bill of Attainder is clapp'd upon his Back, and this shall be read as Evidence against him: He is but half a Witness, and a Witness upon an Accusation, not upon a Trial.

Then come to Sir *John Fenwick's* particular Case; Sir *John Fenwick* is indicted, Issue is joined, and he hath Notice of his Trial; and one of the Witnesses goes away, no Man can tell upon what Account he went; I may believe why, in my private Opinion, but that is not our judicial Knowledge: Then if that be so, was it ever known, that when any Man was indicted, and Issue joined, because his Trial was deferred, therefore a Bill of Attainder must be brought against him? Here are Plots against the Government, and it may be Forty may be taken up for it; and as to Twenty, there may be two Witnesses, and the others may have the good luck to have but a single Witness against them; will you have Acts of Attainder against all the rest? If this had been an extraordinary Case, wherein the Government had been particularly concerned, it might have weighed with you; for no Man can shew me any Precedent of a Bill of Attainder, but where there was open Act of Hostility, or Men of great Relation and Power were concerned to subvert the Government. But what is Sir *John Fenwick's* Case? He is in Custody, and the Plot is detected; if he was run away, you might still suppose he was plotting against the Government, because he was fled from Justice. Gentlemen say the Government is concerned; so it is in every Felony and particular Treason; but must there therefore be a Bill of Attainder to punish it? When there is a Bill of Attainder, it must be from an immediate Danger that threatens the Government established, that such a Man is Attainted. But I do not see that Sir *John Fenwick* hath any of these Circumstances. All Men agree, That this is an extraordinary Way of Proceeding: Then the Question is, Whether Sir *John Fenwick's* Case be extraordinary? or, Whether he be more than a common Malefactor that is in a wicked Conspiracy? I do not see that this Case of Sir *John Fenwick's* is so extraordinary, that if he be not hanged, the Government must fail.

And, under Favour, a Precedent, when 'tis once made, I know not what Time may produce from it: It may be, after the Death of his Majesty, that came to restore our Liberties, we may have wicked Members, and Members chosen as in *Hen. Vith's* Time. It may be the Condition of every Subject in *England*. The Power of Parliament we must govern by Reason and common Justice; and if there be not so urgent Necessity to use this extraordinary Remedy, because it may be dangerous to Posterity, therefore I am against this Bill.

Sir *Tho. Littleton*. The worthy Gentleman took notice, That the *Lancashire* Plot, and some Words I used, were used only to inflame: I can't so well guess at his Thoughts, but I have heard him several Times bring his Wife and Children into his Speeches, to no Purpose at all.

Sir *Francis Winnington*. I have a Wife and Children, and that Gentleman none; therefore I think I may make use of that Expression.

Sir *Tho. Seymour*. Mr. Speaker, I have attended your Debate with the best Attention I can; and I have heard a great many Arguments, and some very wild ones too. I hope, how frightful soever Things have been opened, they will not lead your Understanding out of the Methods and Rules of Justice. I will not take upon me to tell you, what is nothing to the Question, as, that Treason is a very great Crime, or, that the Parliament hath an unbounded or unlimited Power, and are not tied to the Rules of *Westminster-Hall*; I think that is no Part of the Subject Matter before you.

That nothing bounds or can limit the Parliament, is what every Body does admit; but 'tis the right Application of that Power which is now to be considered of: For you may judge the Prisoner, and others will judge you. The World will judge you, if you do not apply that Power aright.

For my part, I shall avoid as much as can be, the saying of any thing that hath been said; and therefore I hope you will believe that my Discourse must be very short: But that which does move me in this Question, is in short this, That I do not give my Judgment to condemn any Man otherwise than the Law directs how, and upon what Terms I must give it. If the Law hath said, That Treason is not to be Treason, unless it be proved by two Witnesses, I am never to give my Judgment in that Case, when there appears but one.

And this I take to be the State of the Case, not to enter into Matters of Precedent of Attainders; for those are only Instances of so many Facts that have been done. And in all those Instances that have been urged and quoted, when Times have been sedate and quiet, Marks have been put upon them, as was hinted by a Gentleman that spake very ingeniously upon this Subject at the beginning of this Debate; I say, Marks have been put upon them for you to avoid, but not to imitate. I take it, that the Law hath determined that there shall be two Witnesses to the Proof of Treason, and there is no Treason that hath not two Witnesses to it. There is but one Attainder that we meet withal in sacred History, and that is the Attainder of *Naboth*; he was Attainted, and we know what induced that Attainder; he had nothing to object as to the Formality of the Proceedings there was set up against him: And though *Jezabel's* Letter had disposed the Rulers to deal by him as they did, yet there were two Witnesses that did appear against him.

I take it, that two Witnesses are requisite for the Knowledge of the Truth, that you may make a right Judgment whether they swear right or no. I will give you but one small Instance more; I must tell you, *Susannah* had been but in a bad Condition, if one Witness or circumstantial Evidence would have made her guilty.

A Gentleman here says, 'tis Apocrypha: But that which weighs with me is, that there may be Inconveniencies on one Side, and there are no Inconveniencies on the other. I know not what may be the Consequence of this Precedent, nor where it may bring you: I know the Consequence, if Sir *John Fenwick* be not executed upon a Bill of Attainder; for no Body will believe there is a Necessity for this extraordinary Remedy to be applied for an Offence, a Year and half after he hath been indicted and arraigned for it, and they might have proceeded to his Trial; and I know not whether 'tis his Fault that they did not; for it was not in his Power to prevent it: And if you, upon every Occasion, come to supply the Defects of them that are remiss in the Government, it will make them more so.

As to the Matter of Precedents; Why, it may fall out, that by this Precedent an innocent Man may be punished, and then we that make this Precedent are guilty of his Blood; and if he suffer never so remotely, it will be required of us, if they proceed from this Precedent. Now, if Sir *John Fenwick* be not executed, unless in a legal Way, what is the Consequence of that? Is it that Sir *John Fenwick* shall go unpunished? Though they are deprived of one Evidence, that would make it Treason, he may be punished for a Misdemeanour, and imprisoned for his Life; and I had much rather he did languish in that Condition, and I am sure it is much safer for you, for no Inconveniency can arise that Way; and I take it, that when those that are our Guides dispute which is the Way, we are to take that which is safest.

The Learned have disputed, Whether this Matter, as now it is charged upon Sir *John Fenwick*, be Treason: I will not take upon me to determine it; they differ about it; and when they can't determine it, will you by a Question determine it absolutely?

Upon the whole, there hath been so much said by the Counsel for the Prisoner, and so little said by the Counsel against him, and so few Arguments urged against him, that I must still retain the Opinion I had, That there is not Evidence enough for you to proceed upon this Bill of Attainder.

Mr. *Boscawen*. Sir, I desire to give my Reasons for my Opinion in this Matter. I have no personal Disgust against Sir *John Fenwick*. The great Argument for Sir *John Fenwick* against this Bill is, That this is an extraordinary Proceeding, and therefore should be against an extraordinary Person; and in the next Place, that it is against the Rules of Law. The Rule of the Law is, That there must be two living Witnesses: As to that Matter, Gentlemen generally agree, that 'tis within the Law of Parliament to attain People by Bill of Attainder; but they say, they have been often misapplied; which I do easily believe, because some have been attainted, and have not been heard; and some have been in tumultuous Times: But this Gentleman hath had a fair Trial, and a Debate in this House: But I would fain know,

though they confess Bills of Attainder may be, how it can possibly be, if the Lawyers at the Bar say true, That it must be upon Oath; and you give no Oath?

To say it may begin in the House of Lords: Under Favour, I take it, that a Bill against a Commoner can't begin in the House of Lords. And if you can't have Witnesses upon Oath, you must have as much Evidence as the Nature of the Thing will afford; that is, you must have Witnesses to convince your Consciences in the Thing; for if all this great Assembly are satisfied in their Consciences, that he is guilty of inviting an Army of *French* to come into *England*, I am astonished to think, that you should not pass this Bill against him. I think, as to this Witness *Porter*, they have not endeavoured to blemish him; but their Argument seems to run more upon *Goodman's* not being present. I would know, if there are two Witnesses, and I do not believe them in my Conscience, whether I can pass this Bill? But I appeal in this Case, *res ipsa loquitur*; the Thing is so plain. How many have been attainted and suffered for the same Crime, that have acknowledged Sir *John Fenwick* to have been present? There were several Members of the House sent to examine Sir *John Freind* and Sir *William Parkyns* in *Newgate*; and they were sent with this Intention, That the House would intercede with the King for a Pardon for them, if they discovered the full of the Plot (it was not the Death of Sir *William Parkyns* and Sir *John Freind* that was aimed at, but the Preservation of the Publick); and when they were examined, they did acknowledge, that they were privy to the calling in of the *French*, and that Sir *William Parkyns* was to have a Troop of Horse; there was to be 2000 Horse; but he would not redeem his own Life with the Blood of others. Now I do take it, that there is Evidence against Sir *John Fenwick* sufficient, in a Parliamentary Way, to attain him.

The Gentleman says, the Consequence of throwing out this Bill, would be nothing, and that Sir *John Fenwick* is a little Man: I agree he is, but 'tis the Consequence of bringing in a *French* Army that is to be considered. Would you pave the Way for them to come over, and make their Entrance easy? I hope the People of *England* are concerned in the Case, as well as their Wives and Children. If you let him go, what will be said? I have not heard one say, that he believes he is not guilty; there is none but think him guilty; and yet will you let him escape? What Encouragement will this be to your Enemies? He hath not denied the Matter himself: Nay, he hath not brought one Gentleman to vindicate him, that he is a Man of a Behaviour not to be believed to be guilty of such a Thing, which was done in other Trials.

I desire you would consider what the *French* King said of his Brother King *James*; How could he think to bring in Popery with a Protestant Army? I am sure the bringing in of a *French* Army must be for the Destruction of the People of *England*, and the Protestant Religion, and will bring your People to go in wooden Shoes. 'Tis the Example of this Thing you are to consider. It was said at the Destruction of *Carthage*, That the Commonwealth was always to be minded. I think you ought always to be mindful for the Preservation of *England*; and I believe he is guilty, and I am therefore for the Bill.

Lord *Digby*. I shall trouble you but with a Word or two. I suppose as long as we act by the known Rules of Justice, and the Laws of our Land, we shall not need to fear any Censure in our own Kingdom, or any where else; but 'tis a very uncertain Thing for Gentlemen to be Judges in the Case of Life and Death, without any Rule to walk by; a great many will not allow us any Rule at all: I always took our Rule to be the Law of the Land, and that even our selves are bound by the Laws our Ancestors have made, 'till we think fit to repeal them; and I am confirmed in this Case by one particular Argument from the Bill of Treason that passed last Sessions, in which there is a Clause, That it should not extend to future Parliaments. The only Argument for exercising of this Power, is the extraordinary Case of this Gentleman. When a Gentleman speaks of the Power of Parliament, I take it to be the just Power of Parliament: I think a Man may say, a Parliament can't do what they can't justly do. But all Gentlemen allow, that this Power ought not to be exercised but in an extraordinary Case, wherein the Government is nearly concerned. I believe very few but think, that if it had not been for the Vindication of some particular Gentlemen, we never had had this Matter before us; and then I will leave it to Gentlemen to consider, if the Government can be in so much Danger if Sir *John Fenwick* does escape.

Mr. *Brotherton*. Mr. Speaker, I perceive the Question, whether this Bill shall be committed, arises very much upon a Supposition that seems to be granted, That there is no other Law to try this Person by; and it hath been hinted, That before the Statute of *Edw. VI.* one Witness was sufficient: Now, if I shew you that here is a Law in being, and hath continued for several hundred Years, whereby a Man may be tried, and that by one Witness, I think it is something that hath not been spoke to yet.

Sir, I ground my Reason and Opinion upon the Authority of the Law, and upon the Historians of all Times, who agree in the Thing, and come down to my Lord *Coke*, which is printed by Authority; and he is express, That where there is but one Witness, (he treats of what Witnesses are necessary, and he tells you two Witnesses were required by the Common Law for Treason, if the Person was tried by a Jury); but, says he, if there be but one Witness in case of Treason, he shall be tried before the Constable and Marshal. And in treating of the Statute of *Hen. VIII.* which does appoint how Treason beyond Sea shall be tried; says he, that is only where there are only two Witnesses; but if there is but one Witness, he shall be tried before the Constable and Marshal; because, says he, the Statute of *Hen. VIII.* does not take away that Trial before the Constable and Marshal; and for that, Sir, there are several Precedents in this Case, of Persons that have been Attainted by a Court-Marshal; and if the Accuser was vanquished, he was to suffer the same Judgment the Defendant was if he was found guilty. I am upon a Gentleman's Life, and never was so before, and desire to be never so again; there have been several Precedents, I say, in this Case, and my Lord *Coke* is express in the Point; and I desire any Gentleman to shew me any Law that hath repealed this.

In case of Murder; suppose a Man be wounded upon the Land, and die upon the Sea, and I could shew several Cases where the Common Law can't

try a Man by Jury, but he shall be tried by the Custom of Merchants before the Statute of *Ed. VI.* If a Man was wounded in one Country, and died in another, he could not be tried. That which I aim at, is to shew you, that though the Common Law should fail, yet they need not come with a Bill in this Case. If two *Englishmen* beyond Sea fight, and one kill the other, it can't be tried by the Common Law; How then shall it be tried? It must be tried by the Court-Marshal. It was Sir *John Amesley's* Case in *Rich. II.*'s Time; and *Wells's* Case, and Lord *Herbert's* Case, in *H. VI.*'s Time, who (there being but one Witness) was accused before the Constable and Marshal.

Memorandum, [*Mr. Brotherton was here interrupted by the great Noise the House made upon the Novelty of the Argument, and did not go on further with it.*]

Mr. *Paget*. Sir, I attended to the Debate of this Day, and have not hitherto troubled you my self, because I did expect to be better informed by this Debate.

I think the Substance of the Debate of this Day hath been, not so much to shew us by what Rule we are to go, as to shew us that we have no Rule to go by but our Judgments. Sir, I never had the Honour to sit in Parliament before this Time, and therefore can't quote Precedents of what hath been done in former Parliaments; others have taken a great deal of Pains to shew you, that it is in the Discretion of Gentlemen, and they are only to be satisfied in their Consciences. I am not fond to hear my self speak, and therefore I hope I shall be favourably heard at this Time, and I do think I have the more Reason to speak at this Time, from something that fell from a very honourable Gentleman at the Bar: If I do misrepeat him, I hope he will excuse me, for I do not do it with an ill Design: But I think his Words were to this Effect; That he did not know, but if it was known in the Country, that Gentlemen did give their Judgment against passing of this Bill, it might hinder their Election in future Parliaments. Sir, since there seems to be so great Strefs upon our Determination in this Matter, I hope I may at this Time shew you my Reasons why I can't come up to agree in this Bill; and I shall submit it to them, whether they will do me the Honour to chuse me again. I must confess, I do think this is as nice a Case as I can pretend to give my Opinion in; and as it is so, I shall desire the best Assurance of the Truth of this Matter, before I give my Opinion for the passing of this Bill.

Sir, you have had before you one Evidence: I will admit him to be as much as a single Evidence can be: As to the Paper of *Goodman's* Examination, I have heard that and other Matters too, which I shall not repeat. But I do remember, that in the Debate of Yesterday, it was not insisted on to be Evidence: And if not so, I shall only take the Matter as depending before you upon one Evidence only.

Sir, it is true, I believe this House, as to its Legislative Proceeding, is not tied by the Methods of inferior Courts: But I hope I shall be excused, if in the Methods of Prosecution and Conviction of Offenders, after they have been prescribed by the Wisdom of the Parliament, I hope I shall be excused, if I believe this House can't take away any Person's Life upon less Evidence than inferior Courts could do.

And,

And, Sir, I shall not enter into any very long Vindication of my self, and my Zeal and Willingness to serve the Government; I never was employed in any other Government; and I think my Actions have been such, that no Body can instance in any one Thing that hath looked otherwise; and when I have said this, I shall trouble you no further about that: But there hath been so much stress laid upon this Bill, that who-soever speaks against it, seems to speak against the Government; because it is said, the passing of it is so necessary for the Support of the Government. And I was the more willing to offer you my Reasons, because, as the Nature of this Debate has been, I can't satisfy my self where my Judgment and Opinion shall rest: For if it be so, that you are not tied to have as much Evidence as inferior Courts, and, as they say, one Evidence is enough, and my Judgment is to be guided by Papers; then they, without any Evidence, may be enough to satisfy: And if you take up with less Evidence than inferior Courts, I can't come to declare how little Evidence may take away a Man's Life.

As to the Prisoner, I know him not; but I think this Bill is for all that he hath to lose, and is for all the best *Englishman* can lose upon the like Occasion.

Sir, I shall be very tender in giving my Opinion for the Bill, unless it was very clear to me that it was reasonable. Truly I have heard very little of the whole Plot, or of this Matter that hath been examined, or for which others have been executed; my Life has been generally in the Country, and I have not had the Curiosity to buy the Trials; and as this is the first Person that hath been called before me, to give my Judgment on, I hope I may be excused for taking this Liberty, upon such Evidence as appears before us, to tell you, I can't give my Consent to this Bill.

Sir *William Lowther*. Sir, you have had a very long Debate in this House, and long Discourse from the Bar; and though the Counsel was directed that they should not dispute the Privileges and Authority of this House, yet, as far as my Judgment carries me, their whole Discourse was against it: And most of the Gentlemen that have spoke against the Bill, it hath been, because it hath not been adequate to the Proceedings in *Westminster-Hall*, because there hath been but one Witness. Sir, if there had been two Witnesses, this House had not been troubled with it: It is a Case of a very extraordinary Nature, and so required an extraordinary Proceeding.

It hath been questioned by some Gentlemen, Whether one Witness be sufficient in this Case, or no? Which I wonder at, since a great many have been convicted upon his Evidence, and every one of them has confessed; which shews it to be a notorious Truth.

There is another Inference they draw from the Proceedings here; Because a great many of those Precedents of Attainders have been reversed, and those with Notes of Ignominy. If they did consider the Times they were made in, and the Times they were reversed in, there might be a great deal of Cause for it: We find, that it was contrary Factions that reversed them, and that makes it never the worse. And truly, Sir, I do not know but where Circumstances are so notorious, but they are *tantamount* to a second Witness, as I have heard in *Westminster-Hall*, and in Cases of

Life too. If a Man be murdered, and two in a Room, and one comes out with a bloody Sword, the Law does presume that Man murdered him, though there is no particular Evidence that he murdered him, but only this Circumstance; and yet the Man's Life is concerned in that Case. So that upon the whole, it appears to me that he is guilty, and, I think, nothing can be plainer.

There is another Circumstance, That he fled for it; and that is a Presumption of a Man's Guilt: For a Man loses his Goods, if he flies for Felony.

Mr. *Harley*. It would be very unreasonable and impertinent to trouble you long after such a Debate; I shall avoid Repetition of what hath been suggested to you much better from other Persons, than would have been from me.

I own 'tis a Case of great Concern, and 'tis my Misfortune that I should ever sit upon a Thing of this Nature; but I will discharge my Conscience always, and give what Arguments occur to me, why I am against this Bill.

Gentlemen have been pleased in their Arguments to enter upon the Debate of your Power and Authority, and have made that a part of their Argument; but I think, with Submission, we need not dispute that at all: It is admitted, that there have been Bills of Attainder passed formerly, and your Authority is not under dispute; for the Legislative in all Nations have a Power lodged in them, for the Safety of the Whole.

But your proper Enquiry is, Whether this is such a Case as you ought to exercise this extraordinary Power; *omne regnum sub graviore regno*: Though you have this absolute Authority, yet 'tis to be executed by the Rules of Reason, and by the Rules (for such there are) of eternal Justice; and I look upon this as one that is inviolable, That no Man can forfeit his Life, in such a Case as this is, without two Witnesses. I must adhere to that, because I have heard nothing in this Debate that can make me quit that Maxim: And 'tis such an ancient Land-mark, that I will never draw a Curse upon me, and my Posterity, for removing of it. I beg leave that I speak with this Earnestness to you.

Gentlemen have been pleased to make it part of their Arguments, The great Danger the Government is in, if this Bill does not succeed. I will not use many Words; but I think that Argument ought not to be taken in the gross, but to be examined, Whether this Argument, of the Hazard of the Government, is of equal Poize for you to break the eternal Rules of Justice. I won't quote the Case before; every Gentleman knows it, (though there was two Witnesses in that Case to put an innocent Person to Death) where it is urged, the *Romans* will come and take our State and Nation: But with how much Reason that was urged, every Body knows; and how far the Government is now in Danger. Let us consider, Is this Gentleman out of your Power? Is the Government in Danger of a Man that is your Prisoner? Is he in open Rebellion against you? If this Law does not pass, if you have not your Hands in his Blood, is he not under the Power of the Law? Did not he tell you so himself?

Every Gentleman ought to have a Zeal for the Government, and I wish it was visible in every Thing else; but if that be so, give us leave also to speak with Zeal for our Liberty, and ancient Constitution.

stitution. The Argument is turned two Ways: On one Side you are told, That this probably may make him confess something; and by others, he is to be made an Example of Punishment. This is the first beginning of a Bill of this Nature: But the same Reason that leads you to this, must lead you to all the rest: The same Reason that is urged for this Bill to make him confess, will lead you to bring in a Bill to make him a good Evidence: This every Body must allow to be the Consequence of it.

How does this Bill come before you? It comes before you upon a villainous, scandalous Aspersions of some great Men; though I know them not all, yet I have a great Value for them, and I would make their Case my own: But if they were the nearest Relations I had, I would be against this Bill upon their Account; and let any one examine the Reason of it.

Sir, I won't run into Precedents; but only because it hath been told you, That the Precedents were made in one Reign by one Faction, and then the Attainders were reversed in another Reign by another Faction: There is one occurs to my Mind, which hath been touched at, and is at least of Instruction to me. There was a Case in *Ed. III*'s Time; there was the Deposition of a King, a King barbarously murdered, and his Son upon the Throne; and there was the Notoriety of the Fact, for which a great Man was attainted in his Son's Reign, and no different Title: and four Years after, a Bill was brought in against the Earl of *March*: And one of the Articles against him was, That he had procured that Attainder of that noble Lord, under Pretence of some Letter, or Paper, that was signed by him; which, if it was so, says the Record, was no Evidence.

I say this before, Gentlemen, to shew them how Things have turned, and Precedents that have been made very unanimously; but in bad Times have been turned to shed the best Blood in *England*. It grieves me to my Soul to hear of Mr. *Cornish*, whose Attainder you have reversed, to hear that quoted as a Precedent in this House: 'Tis not whether two Witnesses be the Rule of *Westminster-Hall*, 'tis the Rule of right Reason; and 'tis a Maxim in your Law, Make what Law you will against the Law of God, 'tis void: And this is the Law of God, and right Reason.

You must provide for the Government; and when you can't do it by Course of Law, then Armies must do it, when the Courts are shut. I hope Gentlemen will not put a hard Construction upon what I have said; I have done it to discharge a good Conscience.

Mr. *Chancellor of the Exchequer*. Sir, I am for the Commitment of this Bill, because in my Conscience I think Sir *John Fenwick* is guilty; and because I think the Power of Parliaments may interpose in this Matter: And if they have such a Power, I think they may justly exercise it in this Case.

Gentlemen say, they will not dispute the Power of Parliament; and yet in their Arguments they tell us, we are not to proceed otherwise than according to the Forms of inferior Courts. And if the Parliament is not to proceed without two Witnesses in the Case of Treason, give me leave to say, there is no room left for a Bill of Attainder, unless you will take the Business of inferior Courts upon your selves: And I am confident, several Gentlemen, if there were two Witnesses,

would use it as an Argument, What have you to do with it? Refer it to the ordinary Courts of Justice; and I am sure that would be very reasonable. But I do think that Parliaments have that Power, and they have always used it; and I believe 'tis for the Advantage of your Constitution. The inferior Courts are to go by the Letter of the Law; and whoever can avoid that, is to escape Punishment there; but the Legislative is not to be dallied with: And if the Offence be of that Nature, that inferior Courts can't reach it, they can go beyond all Forms to preserve the Government. This they have done, and upon that Principle you sit here. Was it by the Forms of common Justice below, that you declared the Throne to be vacant, and King *William* to be lawful King? Is it upon the ordinary Rules of *Westminster-Hall*, that his Title does depend? No, it depends upon this Maxim, That the Parliament of *England* are intrusted for the Whole, and may constitute a Government for the Preservation of the Whole. And upon the same right Principle that I gave my Vote to declare him rightful and lawful King, by the same Principles I declare his Enemies to be Traitors.

You are told here, 'tis according to the Law of God and Nature, that there must be two Witnesses in Cases of Treason: I do not pretend much Skill in other Parts of the World, I think 'tis our particular Happiness to have this Way of Trial: I think in any other Part of the World, if he had dealt thus with the Government, he would have had another manner of Proceeding against him, than to be condemned by King, Lords, and Commons: But that is your Constitution, but it does not hold in other Parts of the World.

Some Gentlemen lay the Strefs of their Argument upon the ill Consequence it may have in another Reign: I would avoid ill Consequences in another Reign as much as I could, but our immediate Care is the preserving of the present Constitution.

But if Gentlemen are apprehensive, that by such an Example, if King *James* should return, others may be punished; if we may judge what he would do, by what he hath done, he would go another Way to work; if he came to *London*, he would proceed as his Party did at *Dublin*, and attain all the Protestants in one common Bill; that is the Precedent he hath set, and he will follow. And therefore in order to prevent that, and in order to punish our Enemies, and to preserve our Constitution and Prerogative of Parliament in all Points; and because I am convinced in my Conscience he is guilty, I shall give my Concurrence for Commitment of this Bill.

Col. *Granvil*. Sir, I would not presume to trouble you at this Time of Night, was the Debate upon a less Subject than it is; but since you are going to pronounce Judgment in a Case of Life and Death, and that this House is above any Rules, and we have no Precedent for it, but every Gentleman is to find out private Rules to walk by; the Rule that I shall take to is, That I would deal with Sir *John Fenwick* as I would have Mankind to deal with me, if I was in Sir *John Fenwick's* Place, and were indicted of High-Treason, and were not allowed any Trial, nor the Benefit of making my Defence, according to the known Laws of the Land; I should think my Blood unjustly spilt, let me be never so guilty.

The Laws are what are set up for the Defence of every Man; and when once we break through them, whatever our End may be at that Time, and tho' it may in some manner seem to justify us, because 'tis to come at an ill Man; yet pray consider, the best of Men may be come at as easily as the worst of Men. And what makes me cautious is, That my Hands are guiltless of Blood yet, and I will take care how I begin to dip them in it. And that which will make me cautious in any Case of this Nature is, what I read in the Story of the late Time, That when once a Set of People had begun to dip their Hands in the Blood of my Lord *Strafford*, nothing would quiet them till they had stained their Hands with Royal Blood. The Laws are the common Defence between the King and the People; but the King is safest when the Laws are most strictly observed.

I shall not pretend to talk of your Power, which hath no other Bounds but your Justice and Discretion; and what you think so, will, I hope, meet with Approbation abroad. And in this Case I shall always be against what is called a Trial to Day: But I do not think it any; for I do think we are an unfit Court to determine this Matter. We sit in so many Capacities, 'tis hard to distinguish in what Capacity we are here: Some are accused; 'tis hard to be accused, and to be a Judge at the same Time. I am sure I am as much concerned as if I was accused my self; and 'tis for my Innocence and Honour that I think my self bound to speak against this Bill. For as no Resentment shall make me do any Thing that is unjust, so I fear nothing that he can say; and I will never go about to stop his Evidence, by cramming a Bill of Attainder down his Throat.

Besides, 'tis an unfit Thing for any Gentleman who is obliged to be of Counsel for the King; 'tis hard for him to be so, and sit here as a Judge: I think also to proceed in this Manner, is a disrespectful Thing to the King himself; for in this Case you turn the Throne of Mercy into the Seat of Judgment. The King, who should have all the Ways to ingratiate himself with his Subjects; you make him, by this Proceeding, to pronounce the Sentence himself upon the Life of a Subject; and 'tis hard to offer a Bill to the King in such a Manner, by which you oblige him either to reject it (which was always look'd upon as an Hardship) or to pass Sentence upon this Gentleman, which perhaps his gracious Temper, and his Mercy make him averse to.

Sir, 'tis too late to give you other Arguments; you have heard a great many better than I can give: But I think this Bill is unjust in it self, and dangerous in its Consequence; and therefore I hope you will not commit it.

Sir Herbert Crofts. Sir, I did not think to trouble you in this Debate, but only for the Arguments that have been used by some that spake lately, who seem to lay a great Load upon Men, according as they give their Vote in this Matter, because 'tis in relation to the Blood of a Man. I have considered the Point, I hope, with as much Caution as any Man within these Walls, and hope to act with as strict a Conscience as any Man whatsoever; and shall be glad to be informed from those Gentlemen, that have laid the Stress so hard upon Religion, how they can shew me, that I do not as strictly, as to all Points of Religion, give my Vote for passing of this Bill, as they would ex-

cuse themselves from it. I must agree with those Gentlemen, That you are no ways bound or limited to the Rules of *Westminster-Hall*; and therefore what was said upon that, I did not think worth taking notice of; but when we are told, we are bound up by the Laws of Nature and Religion, and the Law of God, in this Matter, this touches me so nearly, that I must desire those Gentlemen to shew me in Scripture the Law that they quote.

If it be the Law of Nature, and the Law of God, that every Man that dies must be convicted by two Witnesses, as an honourable Person observed, I wonder it is not observed by all Christian Nations and Governments, That they are not all governed by this Law; if there be any Direction from the Law of God, that no Man is to die for Treason without two Witnesses, but he may suffer for Murder and Felony with one Witness. Now, I say, I must desire the Gentleman that asserts it, that he would be pleased to shew me it in Scripture, and I will be entirely of his Opinion: But till I hear that very plainly proved, 'tis not within my Reading or Remembrance, and therefore I desire it may have no weight. And now I am up, I shall give my Reasons, why I shall give my Vote for this Bill.

The Reason that governs me, is the Preservation of the Government, and the Commonwealth under which I live; and which I think I am in the Station wherein I stand bound to preserve, by all the Rules of Justice imaginable. Now if your Law hath bounded inferior Courts, but hath not bounded you in this Matter, though you have said inferior Courts shall not determine and give Judgment in such a Case; yet, I think, you are not bound up so here: But if the Matter be proved to my Satisfaction, I may give my Judgment according to the Evidence that comes before me, without that Restriction.

But, Sir, this ought not to be done, 'tis said, but upon extraordinary Occasions. You were told, some Time since, of the Case of the Duke of *Monmouth*; but it was said, that he was attainted because he was in Arms, and could not be come at otherwise: But I think this is a parallel Case to that, if not much stronger: for here is a Person that hath been accused, and fully proved to have been in Rebellion, and in treasonable Practices with your Enemies, to bring an Invasion upon you, and to subvert your Government; and tho' he hath not been proved to have been in that single Act of the Assassination, yet there is such a Correspondency between one and the other, that I do look upon him as equally guilty of both. Therefore this having been so fully proved, and the Person that stands accused being out of the reach of the common Course of the Law; what Remedy have you, but to fly to your Legislative Power, to attain him upon the Grounds and Allegations of your Bill, that one Witness is withdrawn? And I am very well satisfied, and I think we may presume 'tis by his own, or his Friends Encouragement and Procurement. And I do take this to be as reasonable a Ground for your Bill, as any Thing in the other Case; and I know not what is an extraordinary Case, if this be not one: Is it not an extraordinary Case, for a Plot to be laid for the total Subversion of this Constitution, and our Religion for ever, and we can't come at it to punish it another Way? But it hath been said, the Safety of the Government does

does not depend upon him : If we acquit him, we are to acquit every one alike : I hope the Government does not depend upon him alone ; but if you clear him, there is the same Right to clear any Criminal whatsoever. Sir, since I am brought up upon giving my Judgment in this Matter, (though I come as unwillingly as any body to it) I must go according to my Conscience ; and till I can see something of the Law of God, that has been hinted at, made out, I must go according to the Law of my Reason ; and that is, that I must be for the Bill.

Lord *Norreys*. I will not pretend to tell you what the Authority of this House is, 'tis what they please to make it ; but I am sure they will ground it upon good Reason ; but I think the Reason chiefly given for the Commitment of this Bill, leaves you a Latitude to do what you please, and give no Reason at all ; for it is only to say, I am convinced in my Conscience this Man is guilty ; no matter upon what Proof, no matter whether any Proof or not, you may believe it from his Life and Conversation, and the Company he keeps, or from his Interest ; and that may be Argument enough to find a Man guilty. But till I know a Reason better grounded than this, I cannot be for the Commitment of this Bill.

Sir *Christopher Musgrave*. I am sure at this Time of Night I am unfit to speak in so great a Matter : I must confess I should not have troubled you, if it had not been in the Case of Blood.

You have had a great Debate before you of the Power of Parliaments, and that hath been sufficiently argued ; and I have not Learning enough to give you any Precedents that have not been already quoted : But every body does agree in this, That what Power you have of this kind, is not to be exercised but upon extraordinary Occasions. Now I would be glad to know, What this extraordinary Occasion is ?

Every body allows, That Treason is the greatest Crime a Man can be guilty of ; and the Charge of this Gentleman is High-Treason : But therefore in this Case, must you exercise this Authority ? Pray wherein does this Case differ from any other Case of High-Treason, that any other Person will be practising against the Government ? All the Difference I can make of it, consists in two Points ; the one is, that he hath prevaricated with the Government ; and the other, That Gentlemen say he hath been a Means of *Procrastinating* his Trial, in which Time an Evidence hath made his Escape. I will allow you, that 'tis a very great Crime for any one to asperse so great Men as he hath done ; but I would be glad to know, whether there being such an Ingredient, it be sufficient to attain him upon High-Treason upon that Account.

Then as to that of a Witness being gone, Gentlemen have said, They are apt to believe, and there is great Presumption that he hath been the Occasion of this Witness being gone. Is that an Ingredient sufficient, though at present it hath not been proved to you ? But if it had been proved, I should not however think that is Treason. Then if this be the only Difference between this Gentleman, and any other Person that shall be practising to subvert the Government, I would know, if there be but one Witness against any Man, for Conspiring against the King, if they may not have recourse to this Precedent, to pro-

ceed against him by a Bill of Attainder ? For the Argument is, Whosoever is endeavouring to subvert the Government, provided there be but one Witness, you are obliged, by virtue of your Legislative Power, to bring a Bill of Attainder against him. And what then ? Of what Use is the great Care and Wisdom of your Ancestors, and your selves, that where a Crime is so great, and the Punishment so great, there should be two Witnesses ?

I was mightily surprized to hear Gentlemen tell you, That two Witnesses is a Form in your Law, and a Form in inferiour Courts. I never could believe that was a Form ; for according to your Law, no Man shall be declared guilty of Treason, unless there be two Witnesses against him ; so that it gives, in a manner, a Determination to the Crime ; that I take to be the Case.

A Gentleman told you, That he was fully satisfied by the Proof, that this Gentleman is guilty : But how can a Man satisfy his own Conscience, to condemn any Man by a Law that is subsequent to the Fact ? For that is the Case ; and pray see the Danger of Precedents : It now will appear upon your Journals, that you have caused to be read a Deposition of a Person that was absent, taken before a Justice of Peace, when the Person accused had no Opportunity to interrogate him ; and likewise, that you have heard a Witness as to what a Man swore in the Trial of another Man : All this will appear upon your Books.

And truly, I would be glad to know, if another Age may not be apt to think, that you took these to make good the Defect of another Witness ; and then I must appeal to you, if you have not admitted of a Testimony, which according to no Law is admitted.

They say you are not tied to the Rules of *Westminster-Hall*, not their Forms. Is there any Law in being, that says, a Judge may hear a Witness as to what was sworn upon the Trial of another Person, to condemn him that was not Party to that Trial ? If there be no such Law, then the Rule is founded upon Justice and common Right, that nothing shall be brought against a Man when a Man was not a Party when the Oath was made, and he had no Opportunity to examine him.

I thought it my Duty to tell you, That when you have made this Precedent, if any Person shall be accused of Treason but by one Witness, there will be the same Reason to proceed thus against him.

Then (being a little before Eleven a-Clock at Night) the Question was put, Whether the Bill should be Committed? And the House divided :

Ayes, 182.

Noes, 128.

So it passed in the Affirmative, and the Bill was committed to a Committee of the whole House.

Veneris 20 die Novembris, 1696.

The House resolved into a Committee of the whole House upon the said Bill, and several Words being offered as an Amendment to the said Bill, to import Sir John Fenwick's being Guilty ; at last the Words that were agreed on, were these [Of which Treason the said Sir John Fenwick

is

is guilty): It was also proposed to the Consideration of the said Committee, Whether the Lords Spiritual should stand in the enacting Part? But upon looking into the several Acts of Attainder, it appeared they were unconcerned in all those Acts of Attainder, in the enacting Part; and so the Committee was satisfied in that Point, and they were left to stand in the Bill by general Consent; and the Bill was ordered to be reported to the House; and afterwards, upon the Report, the House agreed with the Committee in the afore-said Amendment of the Words, importing Sir John Fenwick's being guilty.

Mercurii 25 die Novembris, 1696.

The said Bill against Sir John Fenwick was read the third Time.

Mr. Metbuen. Mr. Speaker, I have not troubled you in any of this long Debate, and do it unwillingly now; but I do think it every Man's Duty, in a Case of this great Importance, freely to own his Opinion, and give his Reasons for it.

The greatest part of the Debate hath run upon two Things; The Inconveniency of Bills of Attainder, and the having them too frequent; that it is necessary to have them sometimes, that any Person might not think they are not out of reach, if they could evade the Laws that were made to protect the People.

I think, in general, that this Bill, as every other, ought to have its Fate upon the particular Circumstances before you; and whoever gives his Affirmative to this Bill, ought to be convinced, That Sir John Fenwick is guilty of High-Treason; and also, That there are extraordinary Reasons why the Nation does prosecute him in so extraordinary Manner; and I do think one of these is not sufficient alone.

If between the Indictment and Arraignment, or Trial, Goodman should have died, and there had been no other Reason for Attainting Sir John Fenwick, only the Defect of his Evidence, I should not have thought it a sufficient Reason, though we should have had an Opportunity of being informed of his particular Evidence, and believed him guilty; and if Sir John Fenwick does not appear guilty, I do not think any Reason of State, though he hath prevaricated, and behaved himself to the Dissatisfaction of every Body; therefore, I think, there must be both these.

You have heard the Evidence; I shall not repeat it, but rather come to these Things that distinguish Sir John Fenwick's Case; only thus, you have received the Evidence against Sir John Fenwick, and given him Liberty to make his Defence, and have fully heard him; which I think hath altered the Reason of a great many Precedents cited from my Lord Coke, and other Authors.

That which distinguishes this Case, is, the great Danger the Nation was in from this Conspiracy, and the Sense the Nation hath had of it; and I find, by the general Opinion of all Persons, this Danger is not at an end.

There seems likewise to be an Opinion as general, That Sir John Fenwick could have contributed to your Safety by a Discovery.

The next Circumstance, That Sir John Fenwick knowing of this, and the Expectation the Nation

had from him, for that he could have contributed to your Safety, hath made use of that to put off his Trial; and at last, has made such a Paper, as does shew an Inclination to do you all the Prejudice he can, and tended to the creating of new Dangers; and by this Means Sir John Fenwick, against whom there was two Witnesses when he was indicted, hath delayed his Trial, so that now there is but one; and there is a violent Presumption, That this Person is withdrawn by the Practice of Sir John Fenwick's Friends.

There remains yet with me as great a Consideration as any of these; the publick Resentment of the Nation for such his Behaviour, is the only Means his Practice has left you; and it seems necessary for your Safety, to come the next best Way to what he could have done.

Against the Evidence that hath been given there have been great Doubts raised; not so much whether it be such Evidence as may incline us to believe him to be guilty; but whether it be such as you should hear in the Capacity you are in; and, whether after it is found, such as it is, that is not such as would convict him upon another Trial. Whether you ought to credit it, and that should influence you to give your Vote for this Bill of Attainder; this is a Doubt that I find weighs generally with them that differ from me in Opinion about this Bill; and therefore I desire leave to speak to that Particular.

'Tis said, That you are trying of Sir John Fenwick; that you are Judges; and that you are both Judges and Jury; and that you are obliged to proceed according to the same Rule, though not the Methods, of *Westminster-Hall*; *Secundum allegata & probata*.

But the State of the Matter, as it appears to me, is, That you are here in your Legislative Power, making a new Law for the Attainting of Sir John Fenwick; and for exempting his particular Case, and trying of it (if you will use that Word, though improperly); in which Case the Methods differ from what the Law requires in other Cases; for this is never to be a Law for any other afterwards.

Methinks this being the State of the Case, it quite puts us out of the Method of Trials, and all the Laws that are for limiting Rules for Evidence at Trials in *Westminster-Hall*, and other Judicatures; for it must be agreed, the same Rule of Evidence must be observed in other Places as well as *Westminster-Hall*, I mean in Impeachments, and it has always been so taken.

This Notion of two Witnesses has so much gained upon some Gentlemen, that we have had some Gentlemen say, That this is required by the Law of Nature, the universal Law of Nature, nay, by the Law of God: And, I think, if it was so, there would be no doubt but it will oblige us.

But therefore I go to the Bottom of the Matter: That any Man deserves to be punished, is because he is Criminal: That this or that Man deserves it, is because he is guilty of a Crime, let his Crime be made evident any Way whatsoever; for whatsoever makes the Truth evident, is, and is accounted in all Laws to be Evidence.

Now

Now as to the Rules for examining any Person, whether he is guilty or not, and the Evidence that is allowed in all Nations, no two Nations agree in the same Evidence for the Trial of Criminals, nor in the Manner of giving the Evidence against them.

Your Trials differ from all other Nations; not only that you are tried by a Jury, which is particular to you, but that the Witnesses are to be produced Face to Face before the Offender; and you have made Laws, that there shall be two Witnesses in Cases of High-Treason; and herein you are the Envy of all other Nations.

Sir, the Evidence that is to be given against Criminals, differs in the same Nation where the Offences differ; there is a Difference between the Evidence that will convict a Man of Felony, and the Evidence that is to convict a Man of Treason; and the Evidence to convict a Man of the same Crime, hath been different in the same Nation, according to the Reason of the Law. No doubt, by the Common Law of *England*, that Evidence was sufficient, which was sufficient to incline the Jury to believe the Person guilty. This before the Statute of *Edward VI.* though that was made upon great Reason, and appears to be for the publick Good, by the general Approbation it hath received; but I don't think in your Proceedings here, you are bound by it.

But, Sir, it is said, Shall we that are the Supreme Authority (as we are part of it) go upon less Evidence to satisfy our selves of Sir *John Fenwick's* Guilt, than the other Courts? And shall we resort to this extraordinary Way in this Case?

Truly, if it did shake the Manner of Trials below, I should be very unwilling to do it; but I do take it clearly, that it cannot; but on the contrary, I think there is no stronger Argument for your resorting to this extraordinary Way, like to that of the Caution which your Law hath provided for the Innocency of all Persons. For if we consider all those Laws that have been made, 'tis plain it must be in the View of our Ancestors, that Criminals might not escape; and the Laws are made for your ordinary Trials, and for those Things that happen usually; and your Government hath this Advantage, That they can keep to that which others cannot: For in a very wise Government (as was observed by a Person that sat in this House the last Time this was debated) the Ways of punishing Crimes of this Nature are extraordinary, when Persons are condemned: They are not only unheard, but they are condemned before they are accused; and that is thought necessary there, which will not be endured here; and yet that Government hath continued so long, and no Endeavours have been to alter it, though so many noble Families have suffered by it, because they are convinced, as to their Constitution, 'tis necessary.

The next Argument is from the Precedent we are about to make; and whatever the other Precedents have been, what you do now will be a Precedent for you and your Posterity; and whilst that is used to make you cautious, and tends to make you consider well, whether it is according to the Duty to your Country to pass this Vote (which no doubt is the only Question before you) 'tis a good Argument.

Sir, if this Precedent shall appear to Posterity to be a Precedent concerning an innocent Man, or a Person whose Guilt was doubted of, or one whose Guilt did not appear, and this Bill should be carried by a prevailing Party, I do agree it was a very ill Precedent: But if the Case be, that this Precedent will appear to Posterity, upon the Truth of the Thing, to be a Precedent made of a Man notoriously guilty; of a Man that had deserved this extraordinary Way of Proceeding, this extraordinary Repentment of the Nation; and that nothing could have hindered this Man from the common Justice of the Nation, but his having endeavoured to elude it in this Matter; and if it appears, that you would not be put off so, but made an Example of this Man, I shall not be sorry it should appear to Posterity; but I believe Posterity will (as I think they ought) thank you for it.

Sir, I do say for my own Particular, while I am Innocent, I should not think my Life in danger to be judged by 400 *English* Gentlemen, and the Peerage of *England*, with the Royal Assent; and when I reflect, I can't be of Opinion, That the Government could have procured a Parliament to have passed a Bill of Attainder against my Lord *Ruffel*, or Mr. *Cornish*, or Mr. *Colledge*, I don't think all the Power of the Government could have prevailed with the Parliament to have done it; and here I see that a great many Gentlemen have opposed every Step of this Bill, for fear of making an ill Precedent; yet those Gentlemen do believe in their own private Consciences, that he is guilty; and I can't think that any Person can be in danger by such a Bill, when Gentlemen oppose this Bill only upon the prudential Part, though they still confess him to be guilty.

All the Conclusion I make to my self is, That I do believe, I am convinced in my Conscience (which I think is sufficient, when I act in the Capacity I now do) that Sir *John Fenwick* is guilty: But there are Reasons so extraordinary to support this Bill of Attainder, that I do not see how any Person, that is so convinced, can refuse to give his Affirmative to this Bill.

Sir *Godfrey Copley*. Sir, I am very sensible a great deal hath been said upon this Subject; but I think there is something in Duty incumbent upon every Man, especially upon me, who can't concur with the general Sense of the House, to give my Reasons for my Disagreement; and I will make no use of Arguments but such as I can't answer my self. A great deal hath been said upon this Debate by Gentlemen learned in the Law; and many of these, though they have said they would not speak as to the Power of Parliaments, yet the greatest Part of their Arguments have touched upon your Method of Proceedings, and to shew you how they interfere with the Rules of *Westminster-Hall*; so great is the Force of Custom and Education: But I acknowledge some have brought us Arguments quite of another strain.

This is a Matter of so extraordinary Importance, that I think it proper to consider what Rules we have to go by; but I take the Punishment of Offenders and Criminals to be the necessary Support of all Governments whatsoever, without which no Government can continue; but all Societies of Men have supposed to themselves some Rules, whereby it may be known, whether Offenders are guilty or no.

It is the Custom of our Nation, to have two positive Witnesses to prove Treason. Now it may be imagined, that I make use of this as an Argument, that we are tied up to these Rules: No, I am not of that Opinion, that we are bound by the Rules of any Society whatsoever. The Parliament have a Power to abrogate all Laws that they have passed, if they think good; and so certainly cannot be tied up by any Rules now in being. But, Sir, there are the eternal Rules of Equity, and Justice, and Right Reason, and Conscience; and these, I think, are unalterable, and never to be swerv'd from; and therefore I shall take the Liberty to see how far agreeable our Proceedings are to these Rules.

Sir, I do look upon it, that 'tis a Rule agreeable to what I speak of, That no Man shall be accused by he knows not whom; and that no Man shall be accused, but that the Evidence against him, and he, should be confronted, and brought Face to Face.

I am one of those that believe Sir *John Fenwick* to be guilty; and there is clear Proof of it by one Witness; and you have added to this an Indictment that is found: But I must needs own, that I think that to be so far from giving any Addition or Strength to the Evidence, that when that is brought in, I look upon the Scales to be lighter than they were before; for if any Record or Writing that is sworn to behind a Man's Back, shall be brought here to supply another Part of the Evidence (and if not so, why is it brought here?) And if that be to be interpreted to make up a Part of the Evidence, I do, by parallel Reason, argue, that the like may make up the Whole at one Time or another; and may be so far made use of, that any profligate Knave, that gives Information before a Justice of Peace, or a Secretary of State, this may rise against any Man whatsoever, when he is obnoxious to the Government; or a Person may be accused for his good Service in this Reign, and this may be set up against him, and he run the Hazard of his Life.

Then, Sir, as to the Necessity of this Matter, I must confess, that those that brought this Matter before us, are much wiser than I; and therefore I will not examine what Reason they had to do it: But it is so little agreeable to me, I wish it had not come here. But is it to be supposed, that your Government is in hazard of any Man that is fast in *Newgate*? Can any Man think, that Sir *John Fenwick* can do any Thing in his Condition to hazard it? Can you expect that a Man that hath been Six Months in Prison, and no Body came at him, that he may make such a Discovery as may be worth your while? But suppose you had a Man of Invention and Practice, what a Spur do you put to it? May not a Man of Parts, when he hath no other Way to save himself, may not he frame such a Plot, as may make the best Subjects in *England* tremble?

Why then, Sir, I do say, by this you are in a very dangerous Way to suffer by the Invention of any Man: And suppose he should be so ignorant, as to know nothing; or so great a Blockhead, to be able to invent nothing, would you hang him either for Ignorance or Insufficiency? I must confess, I dread the Consequence of this for the Nation in general, and for our Posterity. 'Tis not Sir *John Fenwick's* Life I argue for; I do not think it worth a Debate in this House, nor the Consideration of so great an Assembly; but I do say, if this Method of Proceeding be warranted by an

English Parliament, there is an End to the Defence of any Man living, be he never so innocent.

Sir, I remember I heard it mentioned on the other Side of the Way, by an honourable Person, who never lets any Argument want its Weight; That King *James* attainted a great Number of Persons in a Catalogue, in a Lump. Sir, I am not afraid of what arbitrary Princes do, nor an *Irish* Parliament; but I am afraid of what shall be done here: I am concerned for the Honour of your Proceedings, that it may not be a Precedent to a future Parliament in an ill Reign, which I am satisfied you would not do. I had some other Thoughts, which I cannot recollect, &c.

Mr. *Foley, the Speaker's Son*. Sir, the worthy Gentleman that spake first upon this Debate, calls me up: He said, that he thought in this Matter, every one ought to give the Reasons of his Opinion: And in giving the Reasons of my Opinion, I do solemnly protest, I do it with the same Sincerity as I would do, if I was upon my Oath, and of a Jury.

The worthy Gentleman said, That if there could be any Danger from this Precedent, that an innocent Man might lose his Life, he would not be for it. I desire that he would consider, whether there be almost any Instances of any innocent Men that have lost their Lives, but what has proceeded from Precedents that have begun upon guilty Men. The same Gentleman told you, that if we did not believe Sir *John Fenwick* to be guilty, no other Consideration ought to move us to be for this Bill.

Now the Reason I am against this Bill is, because it does not appear to me, from the Evidence that hath been given at the Bar, that Sir *John Fenwick* is guilty. And I do think, that which is not legal Evidence is no Evidence; and I do think, that all the Lawyers that have spoke in this Matter, have allowed it to be no legal Evidence. And I desire Gentlemen will consider, if it has not been thought reasonable, that Men should be convicted upon such Evidence, why now it should be said to be necessary? I think the Saying of my Lord *Strafford* upon his Trial was this: If the Pilot was to direct a Ship in a dangerous Sea, and there was no Buoy to direct his Course, if he there split his Ship, it was excusable; but if there was a Buoy up, then he was accountable for it.

Now, comparing our Government to the Sea, there have been many Rocks and Sands, and many Men have lost their Lives by them; but the Treason Bill seems to be set as a Buoy to avoid that Mischief for the future. Now if we split upon these Rocks, I shall think we are but ill Pilots.

Upon a former Debate we were told, we are not tied up to the Rules of *Westminster-Hall*, and it was sufficient to justify a Man in giving his Vote for this Bill, that he was satisfied that Sir *John Fenwick* was guilty: See the Consequence of that, in Things that I have as much believed as I do this, I have found my self mistaken.

When a Jury acts according to legal Evidence, that they have no Reason to mistrust: When a Jury finds according to legal Evidence, they are in no manner of blame: And if this Man be innocent, when you have taken away his Life, and his Estate, and ruined his Family, all that you have to say for it, is, That you have acted according to the best of your own Understandings, guided by your own private Opinion.

Were this the Case of Sir *John Fenwick* only, and I not to give my Vote, I reckon him so de-

spicable, and because I believe him to be a Traitor, and I think the worse of him for the Part he hath acted since he was in Custody, I should not concern my self about it. But when I speak against this Bill, I speak on the Behalf of all those that may hereafter suffer by such a Precedent as this. Those Precedents that have been urged, don't come near this Point. And though the Power of the Parliament is above that of other Courts, yet there hath been no Precedent that comes up to this, That we should pass a Bill to attain Sir *John Fenwick*, because he will not give Evidence, or there is no Evidence against him. If Sir *John Fenwick* be to be hanged, because there is but one Evidence against him, any Man in the World may; and then I think every Man's Life depends upon it, whether this House do like him or not. Consider what a Reverse of Opinion this will be, to what former Parliaments have given in Cases of the like Nature. I think if this Bill does pass, every Man's Life will be as precarious as his Election.

We have been told, how much Danger the Government will be in, if this Bill does not pass. I have as much Zeal for this Government as any Man; but all the Government is concerned, is, That a Man that you think a Traitor should live. And I do think the Government is no more concerned in this Life, than in the Living of any *Jacobite* in *England*. But on the other hand, I think the Lives and Liberties of the Subjects of *England* are concerned; and, by this Bill, you will make all their Lives and Liberties precarious.

I am not for bringing the Blood of Sir *John Fenwick* upon me, or my Posterity; nor can I consent for to make a Precedent, that a Man may be hanged without Evidence.

Lord Cutts. The worthy Member that spake last but one, told you, That he thought the Life of Sir *John Fenwick* was not worth the Consideration of this Assembly: I do differ from him in that. If the Scripture tells us, That the most insignificant Creature does not fall without God Almighty's Consideration, I think the Life of a Gentleman may be thought worth ours.

The worthy Gentleman that spake last, told us, That he did believe in his Conscience Sir *John Fenwick* to be guilty: But because he hath found himself mistaken formerly, when he believed Things with the same appearing Certainty, therefore he may be mistaken now. I hope Gentlemen will not press an Argument upon our Judgments, from Precedents that are only Mistakes: I do agree, That any Man may be mistaken in a Thing which at that Time he thinks himself most certain of; but till that Mistake appears, I say, it ought not to make him doubt of any Thing that he does clearly and distinctly perceive: If otherwise, there is an End of all Religion and Law; and it shakes the Foundation of the most certain Belief a Man can entertain.

As it appears to me, some Gentlemen seem to lay a greater Stress on some Things than they deserve, and are not pleased to answer some Arguments; and therefore I desire leave to speak to two or three Points in short. I shall not say any Thing of the Authority of Parliaments, it speaks itself; nor of the different Consideration of our Proceedings, and that of inferior Courts; that seems to be agreed: But I shall apply myself particularly to mention some Things upon Sir *John Fenwick's* Case,

and in that take Care, as near as I can, not to trouble you with any Thing I have said upon this Subject.

I can't but observe, That every Gentleman that speaks against this Bill, begins with an Introduction, that he believes him Criminal; which does somewhat astonish me: I hope they will explain themselves a little. But to the Point: As to Sir *John Fenwick's* Case, I did take the Liberty in a former Debate to observe, That it was not only a Conspiracy against the lawful King of *England*, and had such Parts in it, but also in bringing in a tyrannical and foreign Power upon you. But there is one Consideration I did not mention then, because I thought what I said carried so great weight, it needed it not; I do say, not only as a Christian, as an *Englishman*, and as a Subject of this Government, against which he hath committed a Crime of the highest Nature; but I will say, as a Man of Honour, that he hath acted contrary to the Rules of Honour. I think Sir *John Fenwick* had made a much better Figure, if he had appeared in Arms in *Flanders*, where he might have charged this Prince at the Head of his Troops, than basely have contrived his Death in this Manner.

Sir, I have only one Thing more that I desire to speak to; for what I say is more for my own Information than to desire any Man's Opinion further than he agrees with it: I say, most Gentlemen have likewise owned, That if they thought this an extraordinary Case, they would be for this Bill. I do say, as it appears to me, I do think, if ever there was an extraordinary Case, this is one; and if ever any Government was in Danger, this is, or may be, upon your Resolution to Day. A great deal of Stress hath been laid upon this Argument, That Sir *John Fenwick* is in Hold: I take that to be nothing, for they keep a Combination together still. 'Tis by Rewards and Punishments that all Governments are supported. Robberies, that were so common in *France*, that you could not walk after it was dark, by Punishments they have been brought to that, that you may ride from one end of it to another with a Purse of Gold in your hand. And if you think it a trifling Matter, that wicked Men that have such Inclinations should escape, I don't doubt but you may have Plots every Day.

I don't doubt but this Gentleman knows a great deal that he hath never laid before you. I would not be thought to press it as an Argument that he should be condemned, because he won't confess; but I will be bold to say, if he does know of a great many Persons that have been concerned in this Business; if he knows of a Rising that was designed, when this Conspiracy was to be executed (and it may be executed still, if Things shall be ripe for it); I say, though you keep him in Hold, it will be an Encouragement to them to go on in the Cabals, in buying of Arms, &c. I think the Matter before you is no less than the Fate of *England*, and the Fate of *Europe*, and of all your Posterity; I am sure it is: And give me leave to say to you one Thing that is Matter of Fact, There are those Stories insinuated abroad, and those Matters of Fact asserted, with relation to a Conspiracy, and reviling this House, that are not fit for me to repeat. But your Enemies last Year, before the breaking out of this Conspiracy, had the same sort of Meetings, and the same sort of Discourse, as they have now. I will end with protesting to you, That I deal with Sir *John Fenwick* with the same Candour and

and Honour, as I shall always desire to be dealt with my self.

Sir *Godfrey Copley*. That noble Lord misunderstood what I said, as to the small Value I put upon Sir *John Fenwick*: I did say, That Sir *John Fenwick*, considered in his single Capacity, I did not think it was worth the while of this House to act in their Legislative Capacity upon him.

Sir *Charles Cartwright*. I think this Bill is of very great Moment, and ought well to be considered before it passes; for when it is passed, it will be too late to retrieve the ill Consequence which may attend it: There is so much Roguery in the World, I think it a hard Matter to arrive at the Truth. 'Tis not long ago there was a Plot contrived by one *Young*, and others, against the Bishop of *Rocheſter*; and so cunningly contrived, That if a Bill of Attainder had been brought in against the Bishop of *Rocheſter*, before the Truth had been discovered, I do not know what might have been the Consequence of it. I suppose no body questions the Truth of this Plot; but God forbid that every body that hath been named for it should be guilty. It may be true, That there was such a Meeting that Sir *John Fenwick* is accused of being at, and yet Sir *John Fenwick* might not be there; and I do not think it sufficiently proved, and therefore I can't give my Consent to this Bill.

Mr. *Manley*. Sir, I have, as well as I could, attended to this Debate in this Matter; and I did not trouble you in the last Debate, because I was willing to take all the Opportunities I could to inform my self.

'Tis to me an extraordinary Thing, not only for the Matter, but Manner of your Proceedings; which, considering all Circumstances, appears to me to be not only not common but unprecedented; and as we are all in this Matter Judges, so I hope we shall apply our selves to consider of it with that Temper, as may lead us to give a right Judgment. And if I had never so great Obligations upon me, and Dependencies, though from the Crown, I would lay them by, at least they should not influence my Judgment in this Matter. We are to pass Judgment in a Matter of Life and Death upon this Person; and 'tis urged we should do it, because the common Course of Justice will not reach him for the Crime objected against him, which is High-Treason; and the Species of that Treason, as it is laid in the Indictment, is, &c.

Sir, the Evidence that hath been given to support it, hath been the Affirmation of a single Witness at the Bar: Indeed other Things have been alledged in the Bill; but, as hath been said in *Westminster-Hall* upon another Occasion, They look like Pepper and Salt to me; for in themselves they are not Crimes (I speak with Submission to your Judgments) at least to bear Company with an Accusation of High-Treason.

As to the Evidence; first, Captain *Porter* tells you, That Sir *John Fenwick* was at a Meeting at the King's Head, and at Mrs. *Mounſiey's* afterwards, when there were treasonable Discourses amongst them, and *Charnock* was directed to go into *France*; but the End of that is not proved; for the Witnesses that told you of those Meetings, did not tell you, as I observed, that *Charnock* did go to *France*; and what he said upon other Occasions, is no Evidence to me. And though we are not tied up to the Rules of *Westminster-Hall*, I am so young a Member, I know not what Methods are observed

in Parliament, that I may in some measure make them a Rule to me.

The Law of *England* requires two Witnesses upon the greatest Reason; and 'tis not only the Policy of *England*, but the general Consent (in this Case) of the whole World, and it is grounded upon the Law of God. It was objected by an honourable Gentleman the other Day, to a Gentleman, that he said the Law of God required two Witnesses. A Gentleman who is very near allied to one, from whom he might have early informed himself, made us a Challenge, to shew him where it was to be found: If he will look into *Numbers* and *Deuteronomy*, there are three particular Texts very plain in it. The Reason of this is illustrated in the Story of *Safannab*; her Safety depended upon it: And the *Jews*, when they prosecuted our Saviour, though they wanted no Malice, nor nothing to animate them, to put him to Death, yet St. *Matthew* tells us, at last there was two Witnesses found against him: And this being the Law of the Land, and the Law of God, must be my Rule; I must have this Matter proved against Sir *John Fenwick*, as full as the Law of the Land, and the Law of God requires. The other Evidence brought to maintain this Bill, is what is sworn by *Goodman* before a Justice of Peace, and the Account of the Evidence given by *Goodman* to the Grand-Jury, which I must confess I declare I am very far from being convinced ought to have weight with us: But, I think, they must lay a great weight upon it, who give their Vote for this Bill; or otherwise they must give their Vote upon the Testimony of one Witness.

The Reason for this extraordinary Proceeding is, 'tis urged, There is a Necessity for it; the Plot will be lost else, say some; Sir *John Fenwick*, says others, will escape else. As for the Plot, I wish to God there was no such Thing; but 'tis probable the best Way of ending this Plot would be, if his Majesty in his Wisdom thought fit to interpose with his Mercy and Grace at this Time; and better than for the Legislative Power, in an extraordinary Manner, to take off a Person against whom there is not a legal Evidence. Gentlemen say, they are convinced in their Consciences; but I will appeal to their Consciences, whether there be legal Proof against him; and shall we then interpose, in an extraordinary Manner, to take away his Life?

No Man pretends to answer, but that this Proceeding may be dangerous to Posterity: If he had any Security this might be done without that Danger, it might be some Encouragement to Gentlemen to come into it; but since it may be dangerous, are not we, who are intrusted by the People, to have an equal Care of the Liberty of the People? We are to take Care of his Majesty's Life and Government; and the Reason is, because upon him, and his Government, the publick Safety does depend. 'Tis *Salus Populi*, is the great Reason that the Law takes such Care of the King; and as we are to do nothing to the Detriment of the King, so we are to do nothing for the King, that may be of Detriment to the People.

An honourable Lord hath been pleased to say, We are not yet out of Danger: I am sorry to hear it, and could not think it, when so noble a Lord is so near the King, and hath so great a Share in taking Care of the publick Safety. But sure, nothing can happen from this Person; there hath been Care taken he should have no Conversation

with any body: If I thought there was a Hazard to the Government, or to the King, and no Way to secure us, but taking away this Gentleman's Life; such a Reason as that would make me go counter to my own Reason and Judgment. But I can't be of Opinion, that a Man of Sir *John Fenwick's* size, who in his best Circumstances indeed, is a Gentleman by Birth, and hath a Gentleman's Fortune, but is now in a great measure without his Estate; so his Fortune can't do any hurt, and his Alliance I suppose is not considerable enough to do any neither.

Then as his Circumstances do not make him so considerable as to do us any hurt, let us take care, that we do not in any case, by his Blood, wound our selves.

Gentlemen lay but little Strefs upon the Dangerfulness of the Precedent; I do lay more; and 'tis chiefly upon that Reason I can't come up to be for this Bill. I would not that so good a Parliament should lay the Foundation of any, by which, in after Ages, the best Men in *England* may suffer. 'Tis said, an ill Parliament will not want a Precedent, but will make use of their Power; but they will fall sooner into, if led by a good Parliament.

Sir, This is a Matter I would not have presumed to have troubled you in; for I can't think any Thing I can say, will have any weight with any one that is not of my Opinion: But as an *Englishman*, and as I have the Honour to be of this House, when a Thing of this Nature comes before us, and I am to give my Opinion as a Judge in it, I was willing to give my Reasons for my Opinion. I think this Bill is unprecedented; and you will give me leave to say, it appears to me to be unreasonable, I think it contrary to the fundamental Rules of Reason and Justice; I doubt it may be dangerous to our Constitution; and I fear future Ages may have Reason to repent what we do; and therefore I am against this Bill, and I hope it will not pass.

Sir *William Strickland*. Sir, I do assure you I shall not in any Thing of this Bill, or any Thing else, run counter to my Conscience or Judgment; but I do think, and I think few deny it, I do think in my Conscience that Sir *John Fenwick* is guilty; and thinking so, I ought to condemn him. I do think, if we should spare this Gentleman for want of Form, as they call it, now we are in our Legislative Capacity, and there should be any ill Effects of it; and other People, by thinking they might avoid Punishment by the Forms of *Westminster-Hall*, should have the like Imaginations against his Majesty, and they should take Effect; I should think my self in a great measure guilty of that Misfortune. I think the Kingdom is concerned, and the King's Preservation, in this Bill; and I hope you will pass it.

Mr. *Dolben*. Mr. Speaker, I am against passing of this Bill; and I shall, with as much brevity as I can, lay before you my Reasons, why I am against it; and probably I should not have troubled the House with them, but that I think it necessary to justify my Opinion in a Case of this importance.

I do admit that the Fact that is charged upon Sir *John Fenwick* is an Overt-Act of High-Treason, within the 25th of *Edw. III.* though I must take leave to say, That a Judgment upon a Case, at least as strong as this, has lately been very much arraigned and controverted: But 'tis not my intent to dispute the Nature of this Fact; for I am

persuaded, That to consult how to procure an Invasion of this Kingdom with foreign Forces, is an Overt-Act of Compassing the Death of the King; and I do think this Charge does amount to such an Overt-Act. But I beg leave to reflect, How far Overt-Acts of this Nature, which fall directly within any Species of Treason mentioned in the 25th of *Edw. III.* how far such Treasons are cognizable in Parliament, and within the Intention of that Statute: Indeed, that they are cognizable by the absolute Power of Parliament, there is no doubt.

Sir, That Statute doth first enumerate several Species or Branches of Facts, which it says shall be adjudged Treason, that is, in the Courts of Judicature; and then afterwards it goes on, and says, *If any other Case, supposed Treason; not specified in that Act, doth happen before any Justice, the Justices shall tarry without any going to Judgment of the Treason, till the Cause be shewed and declared before the King and his Parliament, whether it ought to be judged Treason or Felony.* Now, Sir, with Submission, this is a great Argument, that the Intention of those that made this Law, was, That these Treasons, which were directly under any of these Particulars enumerated by the Statute, that they should be left and be appropriated to the Decision of the inferior Courts; but that Facts of another Nature, which did not come under the Particulars enumerated in the Act, as extraordinary Offences, and Misbehaviour of Magistrates and great Men, and the like; these indeed should be reserved for the Consideration and Judgment of the Parliament, who are only a Match for powerful Offenders, whom the common Justice of the Kingdom can't grapple with. And as this seems to be the Intention of the Makers of the Act, so I think the Instances generally have been pursuant to that Institution; for I know of but one single Instance of any one that ever was attainted by Bill for any Treason that is contained under any Species enumerated in the 25th *Edw. III.* 'Tis true, where Persons have been out of the reach of the Law, in open Rebellion, or fled from Justice; in these Cases the Parliament have thought fit to attain them; as in the Case of Sir *John Mortimer*, and others who made an Escape out of the Tower; and the Case of the Regicides; and likewise the Case of the Duke of *Monmouth*, who was in open Rebellion. But I say, that I have not found in my Reading, upon the best Search I could make, where any that were in Custody were attainted by Bill for any Treason within 25 *Edw. III.* and that was the Case of *Ferham*; but I think there is no Precedent of any Man, who is not only in Custody, but hath been indicted, arraigned, and Issue joined, and he hath put himself upon his Country for his Trial; and the Person accused, was to be convicted, or acquitted, by the Verdict of twelve Men; I never heard of any Instance, when after all this Proceeding a Person was taken off from this Trial, and debarr'd the Benefit of the Judgment of his Peers, and the Benefit of his Challenges, and destroyed, and cut off extrajudicially by an Act made on purpose, *ex post facto*: I never met with any Instance like it, unless it be that of my Lord *Strafford*; and I believe no body will cite that, if they reflect upon the Preamble of the Act for reversing his Attainder: For in the Preamble, 'tis said, That the turbulent Party did attempt the procuring of that Act, on purpose to condemn him. This shews the Opinion of our

Predecessors in relation to Proceedings of this sort; they esteem it contrary to the fundamental Rules of Justice and Right, which Parliaments, as well as other Courts, must be governed by.

Roger Mortimer was attainted, and afterwards his Attainder was reversed; and the Reason declared, because he was attainted against the good Laws and Customs of the Kingdom.

Ferbam's, that I mentioned before; and declared for the future, That it should be, &c.

Another Attainder there was of Sir Thomas Huxey; but that was reversed, and declared to be against all Law. Then there are the Attainders of H. VIII's Time; I shall not particularize them; but besides that, all the History of those Times, and Law-Books, condemned them, as Proceedings against all Law and Justice. There is the Statute of 1 Ed. VI. c. 12. seems directly levelled against those Attainders in the preceding Reign; for it says, That the Proceedings in King H. VIII's Time, were grounded upon Laws that were extreme and terrible; and therefore, that there might be no Proceedings of that kind for the future, it reduces all Treasons to the ancient Standard of 25 Edw. III. and goes on, and enacts, That no Man shall be convicted or condemned for Treason, but upon the Testimony of two lawful Witnesses.

Now I take that to be a general Law, and to extend to all Convictions and Condemnations for Treason; and can't but declare my Opinion of it, That it must extend to Bills of Attainder, since these are the principal and most powerful Convictions and Condemnations; and if that Statute does extend to Bills of Attainder, then pray consider, whether this Bill of Attainder now be supported by such Evidence as the Statute requires? There was indeed one lawful Witness produced; but instead of the other, they have only produced a Record between Parties not concerned in this Bill, and the Depositions of a Person, whether living or dead *non constat*; and I believe no Body will say these Depositions will be equivalent to a second Witness.

I do believe a great many Gentlemen are of Opinion, That those Rules of Evidence are not to guide you here: But I beg Pardon that I can't possibly be of that Opinion; I rather incline to my Lord Chief-Justice Vaughan's Notion, That though we are not bound by the Forms of Law, yet we are bound by the Rules of Law; every Body allows we are bound as to the Nature of the Fact; every Body will take himself bound by the Statute of 25 Edw. III. to form his Judgment as to the Fact: Why are not we then bound by these Acts? Likewise as to the Evidence, and the Proof of the Fact; if 25 Edw. III. be binding to us, so as to prescribe us a Rule to judge the Fact by, Why are not the Statutes of Edw. VI. binding to us as to the Evidence of that Fact?

But say some Gentlemen, if there be not two Witnesses, that is from Sir John Fenwick or his Agents. Sir, no Gentlemen will say, that there hath been any Proof of that; the very Bill does not charge him with it: But taking it for granted, what shall follow upon that? Shall it therefore follow, that Sir John Fenwick shall immediately be put to Death? No, God forbid! I think there is no Parity between the Crime of seducing away a Witness, and the Judgment of Death: But I think this a more reasonable and natural Inference to be made, That because Sir John Fenwick hath seduced away a Witness, therefore it is just to make a

Law, that the Depositions of that Witness should be of as good Force and Effect, as if Goodman was here, to give it *viva voce*; for then you will not take from him the Benefit of his Trial, nor the Benefit of his Challenges, which is the Birth-right of every Englishman.

And one Thing I will say further: These Bills of Attainder are like Sisyphus's Stone, they have rolled back upon those that have been the Promoters of them. 'Tis known, that my Lord Cromwell was the first Man that promoted them in H. VIII's Time; and the Advice that he gave his Master for the Ruin of others, proved fatal to himself.

Sir, this is the last Time we shall have the Opportunity of considering this Matter: I must take leave to declare, That my Opinion is, That if I consent to the passing of this Bill against Sir John Fenwick's Life, upon any other Grounds than such as are entirely agreeable, and justifiable by the Laws of God and Man, I am guilty of the Death of Sir John Fenwick. I am not satisfied that I can give my Consent to this Bill upon those Grounds, and therefore I beg leave to be against it.

Sir Edw. Seymour. Mr. Speaker, you all know I have born my Testimony against this Bill, being not persuaded that it is just: Now we are come to the finishing Part of it; and I shall lay before you those Reasons that prevail with me, and submit them to the Judgment of the House; and if I am more tedious than I used to be, I hope the Occasion is such, that you will pardon me; for I will endeavour to contract my self into as near a Compass as I can.

I shall not trouble you with any Arguments that have been laid before you already; nor shall I enter into the Examination of Precedents; a great many have been laid before you, and a great many of them have been reversed, most of them; and the Reasons why they have been reversed, because the Persons condemned have not had the due Benefit of the Law: And if that be a good Reason for reversing of such an Attainder, 'tis a good Reason why you should not do it.

I can't but take Notice, That the Beginning of this Bill in the House of Commons is the first Step of this kind, that hath been made in Parliament, except that of the Duke of Monmouth; and the Reason of it, I take to be this, because you hear not upon Oath; you condemn not upon Oath: You, nor the Party under Accusation have that Advantage against a forsworn Evidence, as there is in the other House; the Method has been to pass such Bills in the House of Lords, and transmit them hither, upon which you then judge.

I think, in this Case you have no Evidence; and instead of two Witnesses, you have no Witness at all; for as to Goodman, *De non apparentibus & non existentibus eadem est ratio*. As to Porter, he hath been examined: But when you consider, that he was a Person engaged in this Conspiracy, and that he had no Repentance of his Crime till he was discovered, and then he comes to be an Evidence; how far that shall sway, every Man must allow, that I must submit to you: But thus much I may say, every Man must allow me, that in far less Cases no Man that does swear for himself, or upon his own Account, is to be admitted as an Evidence. If a Robbery be committed in an Hundred, though a Man be but to pay a Groat towards it, he shall not be an Evidence; how much more then in a Case, when a Man comes to swear to take away another Man's Life to save his own; for he

is not in the Condition of a Freeman, who gives his Evidence without check or controule, but he is drudging on for his Pardon, as the Counsel told you, which depends according to the Evidence he does give or not give.

For my Part, I can't go so far as some Gentlemen have done, to say Sir *John Fenwick* is guilty: For where there is no Law, there is no Transgression; a Man that is guilty, must be guilty according to the Law: And the Law hath required and said, That there shall be no Treason but what is proved by two Witnesses, and here it appears that you have not one. The same Law that calls it Treason, says it shall be so proved: Then if you pass this Bill, you make that Treason which before was not Treason.

Sir, the Law does require two Witnesses, and there is divine Authority for it too: It hath been hinted at, the Place in *Numbers*, *No Man is to die upon single Evidence*; and it says, *These are the Statutes you shall observe throughout your Generations and Dwellings*. But I will go a little further, because a worthy Gentleman declared, there was no such Law of God. He will find in the 19th of *Deuteronomy*, a Case just as 'tis here; for the Case of High-Treason was Idolatry at that Time; and the Law says, *Whoever shall set up Idols, shall be stoned to Death*; but it says, *No Man shall be condemned to die by the Mouth of one Witness, but by two or three Witnesses he shall suffer*: I think this is positive enough. I shall not trouble you with more Instances, though I could repeat several.

Sir, the Law enjoins Forms strictly, even to the least Circumstance: If a Man be condemned to die, and after he is condemned to die, another take away the Life of that Man, 'tis Murder. I will go further: If the Officer that is to do Execution, if a Man be condemned to be hanged, drawn and quartered; if the Officer shot him, it is Murder in him; so that Men are not left to a discretionary Power to act according to their Consciences.

I take the Reason by which this Bill is supported, to be destructive to all human Society; for if that be admitted, that a Man shall act according to his Conscience, and not according to the Rules that are prescribed him, I know not who is safe; For how can an innocent Man make his Defence upon that Principle? It is a safe Consideration for them that take upon them that Way of judging, because they are bound by no Rules; but what hath not that done almost within Memory; *Felton*, that killed the Duke of *Buckingham*, what was his Justification, but he was persuaded in Conscience he did well in so doing. *Ravillac*, that killed *H. IV.* in *France*, he justified the same by his Conscience, and said he had done a good Thing; and I may say this Argument of Conscience hath acted all the Villainy of the last Age, and I am afraid hath gone a great Way to disturb the Happiness of this.

For if this be a Rule to this House, How is the King bound? I thought he had been bound by Law; but if this shall be admitted as an Argument, 'tis enough to say, if this House be arbitrary, the King is. I do not reflect upon this Reign; but it will be enough to say, tho' he act against Law, and turn twenty Colleges out of Doors, his Conscience persuades him to it. We see how unbounded Liberty the Lords take, is, they are become Masters of all our Estates; and I would be very loath for my Estate to depend upon the feeble Tenure of a Lord's Conscience.

If then this be the Case, as it is, according to this Method, I desire to know into what Condition we shall bring our selves?

You have been told, it is expected from you by your Country, that you should exert this Authority and Power: Sir, I would have been glad that in Cases more reasonable we had exerted this Authority and Power of Parliament; I wish it had gone to the preventing the debasing and abusing your Coin; I wish it could be exerted, that we might not see our selves cheated under Countenance of an Act of Parliament; but contrary to that, you are fond of being sprinkled with the Blood of Sir *John Fenwick*. As long as the Government is not in danger, I believe the Country would be glad that their Blood might run secure in their Veins, and not be tapt upon every Occasion to serve a Turn; for if you break the Laws, what Man can promise himself Security?

We know the Consequence, if this Bill does not pass; Sir *John Fenwick* may live in Misery all his Time.

But what this Precedent may make, no Man can foresee. This Bill is against the Law of God; against the Law of the Land; it does contribute to the Subversion of the Constitution, and to the Subversion of all Government; for if there be Rules to be observed in all Governments, and no Government can be without them, if you subvert those Rules, you destroy the Government; and therefore for these Considerations, no Body will think it strange, if I give my Negative to this Bill.

Mr. *Chancel. of the Excheq.* Sir, the Gentleman that spake last, hath carried the Reason against this Bill a little further than some others; for it seems now, we are not to reject the Bill for want of one Witness that is legal in *Westminster-Hall*, but it seems there is no Evidence at all; and by Capt. *Porter's* not being pardoned, and yet drudging for his Pardon; as to all that have been condemned upon his Testimony, he hath arraigned the Evidence as not sufficient, and hopes that will be the Judgment of the House upon this Bill. I think if the House reject this Bill upon that Argument, it will go further than many mean that oppose it.

Another Thing he says, He compares the Convictions that I have upon my Judgment, and of every Body else that speaks from the Proofs that are made, that he is guilty, to the Whimsy of two or three mad Men; whereas we go according to the Evidence brought at the Bar; we don't go upon the Whimsies of *Ravillac* nor *Felton*, but upon the Proofs that have been made here; and though there are not two Witnesses, yet upon what appears in Proof, I am convinced that he is guilty; and upon that Conviction, I think, according to the Duty I owe my Country, and the Constitution of *England*, when a Bill does come to punish the Man whom I think guilty, I think I ought to be for the Bill. As to what is said out of *Deuteronomy*, That the Law of God was against it, if you will argue *à Fortiori*, 'tis literally true in the Case of Murder; but whether Murder or Treason, there is the Life of a Man concerned; and 'tis not the Punishment, whether to be hanged, or hanged, drawn, and quartered, that makes any great Difference; and give me leave to say, if you go to make Precedents from the *Jewish* Law, then I say, the Law of *England* is against that Law, in Case of Murder; and by the same Reason you may desire leave to bring in a Bill to repeal all those Laws.

Sir, if this was the eternal Law of God and Man, where was this eternal Law in *England* before *Edward VIth* Time? If it be the eternal Law, that there must be two Witnesses, why does it not hold in *England* even in some Cases of Treason to this Day; I mean the Treason of Clipping and Coining? So that if Gentlemen will argue, the Nature of these Faults are what the Law of every Country ordains, and that is the Law.

And the Way of Evidence and Proof too differs in every Country; and I may affirm, That there never was any Government in which there was not a Power lodged somewhere to be exerted upon extraordinary Occasions, beyond the legal Way of Prosecution.

I don't care to travel into the several Countries to see how their Constitution is, but I believe there is not one Place in *Europe* in which it is strictly necessary there should be two Witnesses to take away the Life of a Man; but it is generally so as it is here in all ordinary Cases, but in this very Law; this last Law does not go upon two Witnesses, but you have a Proviso in it does absolutely exempt Proceedings in Parliament: I do not infer from thence, that you should not have two Witnesses, if you proceed by way of Impeachment, I think you ought; and so for having Witnesses upon Oath, &c. When these Proceedings are in Parliament, there is a direct Proviso, by which the Parliament is exempted from those Rules. Upon the whole Matter, I think this Man is guilty; I think the Precedent would be more fatal, to say, that a Parliament can't proceed in such a Case, than that a guilty Man should suffer. I think this Bill comes before you with more Circumstances and Reason to justify it, than any that hath been brought here before; here is a Bill found against him by his Country, the Evidence of his Friends having tampered with one of the Witnesses, confirmed by a Jury, &c.

A learned Gentleman says, He would come up to make this Paper Evidence; but can't come up to make such a Law, by which every Man that is concerned in that Deposition would be affected: But here is something particular in this Case, a Man that hath been abroad, and hath not used the like Artifice, I think you ought not to use the like Power to punish him that is not guilty of the like Crime. And therefore I shall conclude; but I must take notice of one Thing: It was said, That this was the first Precedent of this kind begun in this House, but that of the Duke of *Monmouth*: But I believe, if this Bill of Attainder is not to be begun in this House, 'tis not to be brought in at all; for I believe there is a Statute, That the Life of a Commoner is never to be meddled with by the Lords originally. I will not trouble you any further: I do in my Conscience think that Sir *John Fenwick* is guilty, and therefore I am for this Bill.

Mr. *Pelham*. I did not think to have troubled you this Day: I did rather intend to have left it to others that can speak better, or have not spoken upon this Subject; but that which hath been mentioned by several, as if they did think that we who mentioned the Law of God upon this Occasion, did it as if we did think the Law of God was binding to you at this Day: I never thought any such Thing otherwise than as to the Morality of it, so far forth as it is grounded upon Reason and Justice, and tends to the clearing of an innocent Man; and so far we and all Mankind are bound

by it; and that Law having been afterwards confirmed in the *New-Testament* by our Saviour and his Apostles, at least approved of by them; and this having been confirmed by the Law of *England* likewise; I do not think this a fit Occasion for you to pass by so fundamental a Law as that is: And I conclude with this, That I can't satisfy my self in my Conscience, and should think some Misfortune might follow me and my Posterity, if I passed Sentence upon Sir *John Fenwick's* Life, upon less Evidence than the Law of *England* requires.

Sir *H. Crofts*. I shall endeavour as much as I can, to give you little trouble in this Matter: But because it hath been hinted and remarked so particularly upon me, I must beg leave to discharge my Duty, as well as my Conscience, as to what I said here the other Day.

Sir, I do very much forget my self, if I did assert, That there was no such Place in Scripture that required two Witnesses: The Thing that I said, was this, That if any Gentleman could shew me any Rule from Scripture that required two Witnesses, more in the Case of Treason than in the Case of Murder and Felony, I should be glad to see it. I do say that the Scripture shall be a Rule to me, as far as the Scripture requires; but I do take the *Jewish* Law not to be so absolutely literally binding upon us here. And as to the Text out of *Numbers*, that very Text of Scripture is particularly and literally applicable to Murder; and if that be binding now, we have been very much misguided by our Predecessors; and I think we are bound to take it in hand, to repeal all Laws that are against it.

Sir, he is pleased to deny us, in some measure, the Liberty of being guided by our Consciences: Truly, I don't know what he would have Gentlemen go by: Truly, let him go by what Rules he pleases, I will go by the Rule of my Conscience, and will not do any thing against it upon any Consideration or Consequence whatsoever; nor will I part from the Liberty and Power of Parliaments, for any Rule or Law of inferior Courts whatsoever.

Sir, you are told, You ought to be guided by the Rules of Law, that is not the Forms of Law, but the Rules of Law. Sir, I say, if these Rules were made to bind Parliaments, it was reasonable they should be bound by them; but if they were made only to bind inferior Courts, they were far enough from being intended to put a Cramp upon the Proceedings of Parliament; and if you shall subject your selves to them, you give the Lawyers such a Power, that I don't doubt, but their Books will be of greater Authority than your Journals: Therefore in Consideration of that, and because I would leave that which is the Right of Parliaments to my Successors, I shall not submit to that.

Therefore, I say, I come clear to the Point, Whether Sir *John Fenwick* be guilty or not; only I must observe a little back, That as to those Instances that the worthy Member was pleased to make use of, of *Ravillac*, and of *Felton*; shall those extraordinary Cases, that which Men did in heat of Blood and private Malice, shall these be brought to bear a Parallel with what is done in Parliament for the Justice of the Nation? I don't doubt but there are Men enough, in their Consciences, at least with pretence of it, will justify the Destruction of your Government and Religion, and every Thing

Thing else: All those Men that deny the Right of your Government, have Conscience and Justice enough to subvert it, if they could; and therefore I do not so much wonder, that many Men without Doors have argued in that Nature.

But I say, my Conscience is the Rule I must go by; and to me the Question is, only whether Sir *John Fenwick* be guilty, or not guilty, and am called to give my Judgment in it; and I think I am bound by the Law of Nature, by the Law of the Nation, and I see nothing in the Law of God that prohibits me, to give my Judgment according to the Evidence, and the Opinion I have in my Conscience of the Truth of it.

If there be no such Rule, that requires two Witnesses binding upon me; if I may go upon one Witness, if I believe he speaks true, and that the Person is guilty; then I am bound to act for the Preservation of the Nation, and all our Posterity: They that made this Attempt, made it upon you and your Posterity for ever: 'Tis not so small a Matter as some represent it; 'tis not the Person, so much as the Nature of the Fact we are to consider; and we are not to let Men escape Punishment according to their Greatness or their Smallness, but according to the Nature of the Fact, and their Guilt. I think I have that Freedom, and I am so little bound by those Rules that have been urged, that if both Witnesses were here, and gave Testimony against him, if I did not believe him to be guilty, I would lose my Life rather than vote him so; but on the contrary, if here be sufficient Evidence to convince me, though not according to the Rules of inferior Courts, I will not subject the Freedom of Parliaments to those Rules.

Sir, you have been told formerly, and I think it a Matter of that Weight, I beg leave to urge it again, because 'tis a great Reason that guides me in this Matter; if you lay it down for a Doctrine in this House (for a Resolution here taken is as much a Rule as a Law, for it shall be brought as a Precedent); and therefore, if it shall be laid down as a Rule here, that you will never attaint any Man, or find him guilty, but upon two Witnesses, I think the Government, and all you have, stands upon a tottering Foundation: He must be a very ordinary Statesman, that can't lay his Plot so, as you shan't reach him by two Witnesses.

Therefore, I say, I think it becomes the Wisdom of Parliament, not to declare themselves bound in that respect; I would have them bound by Justice, but not by the common Rule of the Law.

Sir *Robert Cotton*. Sir, I do find that Gentlemen do very much insist in this Case, That if a Gentleman does believe that Sir *John Fenwick* is guilty, he must give his Vote for the passing of this Bill: If that be so, I am glad that Opinion did not take Place in the last Reign; if it had, I am of Opinion I should not have been here now, and I believe my Lord *Warrington*, who was very instrumental in promoting this Revolution, would not have died in his Bed. My Lord and I were accused of a Crime, which I believe, if proved by two Witnesses, had been Treason. I have heard some Gentlemen say in this House, they did believe my Lord *Warrington* was guilty (though he was not guilty of the Fact as it was laid.) There was a Man sworn, &c. and there was some corroborating Evidence; but as to Mr. *Fley*, and my self, there was none but this particular Person, and they indicted us of Misdemeanor; though it would

have been Treason, if there had been two Witnesses. Now if the same Fact was Treason when proved by two Witnesses, and but Misdemeanor when proved by one, methinks we are doing an extraordinary Thing; we are going, after the Fact committed, to make that which is but a Misdemeanor, to be Treason. And for these and other Reasons, I can't agree to the passing of this Bill.

Lord *Norreys*. Sir, though I had always an Apprehension of the ill Consequence of this Bill, yet never so much as now; for this Gentleman hath given Arguments that shake me more than all that I have heard before; for he says, there are a great many Men, if they may proceed according to their Consciences, will subvert this Government, and bring in King *James* and arbitrary Power: And he tells you, that every Precedent in this House, is equal to a Law, and will justify the like for the future. I am sure I am very unwilling to make a Precedent that shall justify Men in such ill Actions, in saying their Consciences prompted them to it.

Then a Question was put for bringing in Candles; which passed in the Affirmative, and they were brought in.

Mr. *Hamond*. I don't think the Power of Parliaments in Question in this Case; but then, as all other Powers, it must be founded upon Justice, and never used but upon extraordinary Occasions, and when Criminals are not to be met with otherwise. The Power of Parliament is not lessened, if this Bill does not pass: But the Question is, Whether this Power shall be exerted in this Case? What Gentlemen say of being guided by Conscience, hath no Weight with me, further than that is governed by the Law of the Land: If it be to be admitted in the Case of Life and Blood, why not in *Meum & Tuum*? Why was he brought to the Bar then, if, according to our private Judgment, we are to determine this Matter? No Man thought but he was guilty.

I beg leave to mention one Thing that is come to my Knowledge: After the Trial and Condemnation of Mr. *Cook*, I had an Order sent me, that I might see him; and I went to him by Virtue of that Order; and the greatest Part of the Time I spent with him, he took up in declaring against the Evidence of *Goodman*, and that he would receive the Sacrament upon it, and give it in Writing, as his dying Words. I saw also three positive Witnesses confront him at his Trial; and when I heard him say this, it weighed so much with me, that I have very great Ground of Suspicion, that *Goodman* was perjured in the Case of *Cook*.

Here hath been popular Expressions of Plots, and Jacobites, that no Man can apply to this particular Case, or say, this is a Case wherein we ought to use this extraordinary Power: He was in the Hands of the Law, and no Body can say, that the Government must sink, if he does not die. If we go from the Rules of Justice, I believe it will give a great Blow to the Government.

Mr. *Vernon*. Sir, I rise up only upon what that worthy Gentleman hath offered unto you; for I did not think to trouble you with any Thing of that Nature. But if you will give me leave to acquaint you with what I believe, who have been later with him

him than this Gentleman, and much oftner. Sir, he does tell me, that he is very far from denying what hath been sworn against Sir *John Fenwick* and himself, concerning the Consultation to bring over the *French*; for he hath a very particular Remembrance of it: And if that Gentleman was to speak with him now, he would satisfy him, I believe, in that Point. And since I am up, I think every Man that speaks upon this Occasion, should likewise give some Account of himself, in what Manner, and for what Reason, he discharges his Conscience here: I hope I may use that Word, since Gentlemen make use of Conscience for his Acquittal; and a Man ought to have a very good Conscience for his Condemnation.

As to Sir *John Fenwick's* Innocence, I wish he had given no Occasion to have it called in question: And since he did fall under this Accusation, I wish he, or his Counsel for him, would have taken some Pains to have made his Innocency appear: But I don't find the Question is, Whether Sir *John Fenwick* is guilty? But whether there be any Evidence of his Guilt? And I shall tell you, in short, my Opinion of that: I take the Proof of the Fact to be, in general, such a Demonstration, as the Nature of the Thing is capable of; and that is sufficient, and capable to convince a reasonable, honest, unprejudiced Man, of the Truth of what is asserted. And there is no manner of Doubt left, Whether it is so or no; nor Appearance of any Possibility, that it could be otherwise. I think there hath been that Proof in this Case, and nothing attempted to disprove it, and nothing hath been proved on Sir *John Fenwick's* Behalf, that any Wrong hath been done him: And therefore in short, my Sense is, That whereas some Gentlemen think him guilty, but the Matter not proved, I think him guilty, because 'tis proved; and there hath been no Offer made to disprove it.

Mr. *Bromley Warr*. Some Gentlemen have spoke of the Power of Parliaments; but I shall say nothing to their Power, which, I have learned from my Lord *Coke*, is so transcendent and absolute, that it cannot be confined within any Bounds: But the more Just and Honourable it ought to be in its Proceedings, to give an Example to inferior Courts. And though their Power cannot be deny'd, yet the Exercise of it, hath been often censured and condemned; and Acts that have passed in one Parliament, have been in the same Reign repealed, and sometimes severely branded, *Id possumus, quod jure possumus*. 'Tis certain, here is a Defect of legal Evidence: We are not tied here to the Forms of *Westminster-Hall*; but certainly, with Submission, we ought to tie our selves up to the Rules of *Westminster-Hall*, especially when they are founded upon common Justice, which is the same, is not mutable, and ought to be universal.

By the Law of the Land, no Person ought to be convicted in Cases of Treason, but upon two Witnesses; the Law of God is the same. However, if you will pass this Bill, all Persons must acquiesce; and there is no disputing of your Power afterwards. It hath been an Argument used to Day, That the Security of the Government requires the Passing of this Bill; which I think to be a good one too, if they can make it appear, that unless you proceed in this Way, the Government is in Danger: Though I must observe, it was not that Consideration, but the Vin-

dication of an honourable Person's Reputation, that brought this Matter first before you.

It does not appear to me, that Sir *John Fenwick's* Life or Death can endanger the Government. You have been told of a Design that he hath been engaged in, and is carried on at this Time; That an Invasion from *France* seems to threaten us: The former Design hath been happily discovered and defeated; and 'tis not probable, that Sir *John Fenwick* should have any great Share in any that is carrying on at present: And as far as I can learn, he is not so considerable a Man, in his own Person or Interest, that we need fear him.

An honourable Person said, If we do not pass this Bill, they that sent us here, would give us no Thanks. 'Tis not a good Way of arguing; but, I believe, if those look forward, they will thank us. Sir, in the Act for declaring the Rights and Liberties of the People, you have it said, That the late King *James*, by the Assistance of divers evil Counsellors, &c. How comes it to pass, that we have never Attainted any of them? And if we are for proceeding in this Way of Attainder, because it pleases them that sent us hither, I dare say, the Attainting one of those Men, would gratify those that sent us hither, more than the Attainting twenty such as Sir *John Fenwick*. It was pretty well known what Share some Gentlemen had in bringing in of Popery and Arbitrary Power; and I will take the Liberty to say, That there is never a Gentleman in this House, but believes them to be the worst of Criminals.

Upon the whole Matter, I do not think you have any Occasion to exert a Power, that no body denies: I see no Security this will be to the Government, and consequently, no Necessity of it. I think you are making a most dangerous Precedent, and that it will be of ill Consequence to you; and therefore I am against this Bill.

Mr. *Smith*. Sir, I will be as short as I can; and if it had not been for something in this Day's Debate, I should not have troubled you. As to what was said by the Gentleman that spake last, of making Examples of some that had been Criminal in the last Reign: How that came to happen, that no such Examples were made, I shall not now entertain you; but I believe most of the Gentlemen in the House know pretty well.

But I take the Matter before you is, What Evidence you have to prove Sir *John Fenwick* to be guilty? and Whether there be not an extraordinary Occasion at this Time to exert the Legislative Power.

I shall not enter into the Matter of Precedents, those are out of my Province, but I have read some: However, it shall not pass upon me for a Rule, because some Bills have been reversed, no others shall be brought in; it is possible, that the reversing of them, may be worse than the first bringing of them in.

But to apply my self to the Evidence; I cannot but observe one Thing, that seems this Day extraordinary: We are told by some Gentlemen, they are against our Proceeding upon this Bill, because it does not *quadrate* to the Rules of *Westminster-Hall*; and at the same Time, Gentlemen take Liberty to make Exceptions here against that Evidence that *Westminster-Hall* has allowed: That

they should take Exceptions to that Evidence which the Law of *England* allows to be good! For it is notorious, it hath been admitted in *Westminster-Hall*; and Gentlemen might as well have told you, That those Men that suffered, died innocent, as to have denied it. And I think there is a further strengthening of his Evidence; for there is not one Man, who hath died upon his Evidence, but hath acknowledged himself guilty of what he hath charged him with.

As to the Matter of the other Evidence, Sir, I do not say, that it is Evidence that will come at *Westminster-Hall*; but at the same time, give me leave to tell you, they seem to lay a little stress upon it, when they tell you, they believe it was false Evidence, and instance in what *Cook* said to a Gentleman of this House, after his Condemnation; but I think thus far I may say, That when you sent some of your Members to examine Sir *John Freind*, he did own all those Persons to be at that Place; and that is a much better Argument for the Validity of *Goodman's* Testimony. But as to the Matter before you, some Gentlemen have made it a Question, Whether Sir *John Fenwick* be so considerable a Man, as you should proceed in this extraordinary Manner with: Though they all say, you may do it, yet at the same Time they tell you, this was never put in Execution, but they were in the Wrong that did it.

Now, Sir, the Question is, Whether you should make use of this Power at this Time? Say some, The Plot is over: I wish it was: But when a Conspiracy hath been laid so deep and general as this was, 'tis not the hanging of one or two that will make us safe; when 'tis apparent to you, here is all the Artifice in the World, all the Endeavours in the World, by Sir *John Fenwick's* Friends, to remove *Goodman* out of the Way; 'tis some Argument that he had something to say to him: And when we see Prisons broke open daily; we have known Persons murdered in the Streets for giving Evidence. Very notorious is the Case of *Dodsworth*: You have Plots all about you; and yet can you think there is no Occasion to make use of this extraordinary Power?

I would have as great a Conviction upon my Conscience as I could; but 'tis very hard a Man must throw his Conscience aside in the Case: 'Tis very hard to believe, That if there be two Witnesses produced, though I don't believe the Witnesses, yet I am safe if I condemn the Man; and if there be but one Witness, I am to acquit the Man, though I believe him to be guilty.

And though they go to Scripture, to tell you there must be two Witnesses, yet they don't go so far as to tell you there have been very extraordinary Things done, even by God himself, for the preserving a Community.

And there is the Reason of it, that one Witness may take away a Man's Life in one Case, and not in another. There was a Thing said, that was one Thing that occasioned my standing up: A Gentleman said, truly, it seemed to him to be a better Way to put an End to the Plot, to have an Act of Indemnity, than the Conviction of Sir *John Fenwick* would be. Sir, there seems very little Reason for Acts of Indemnity, when we have seen an Act passed so lately, which has not restrained Persons, nor brought them to a Sense of their Duty; and we have heard

Persons own at your Bar, That the Fact was committed just after the Act of Indemnity. Sir, I do heartily, according to my Conscience, vote for this Bill.

Mr. *Harcourt*. Sir, I am sensible it is very difficult to say any thing, and not seem tedious at this Time of Night; but I take it to be my Duty not to be silent in this Matter.

All the Arguments, that I remember have been made use of in any former Debate, or in this Day's, may be reduced, in short, to these two Heads; The Danger of the Government, and Gentlemen's private Opinion.

Sir, as to the Danger of the Government, if any Body will convince me there is such Danger, (I promise him, if it be worth his while so to do) I will be his Profelyte, and vote for this Bill: But, to tell me the Government is in Danger, and that the Fate of *England* and *Europe* depends upon this Bill, is certainly rather offered to amuse, than to convince.

It hath been asked, Can the Circumstances that Sir *John Fenwick* is in admit of any Danger to the Government, which hath Power over his Liberty every Day, and may restrain him of his Liberty during his Life? A Man, by the Account I have had of him, of little Interest, not worth Ninepence. (I have no Acquaintance with him, and so I may easily mistake his Circumstances.) But, Sir, whatever his Circumstances are, he is in safe Custody, and no doubt there he will be kept; and to say the Government is in Danger by such a Man, sure, that cannot be thought by any Man living: And God forbid this should be the Case of the Government, that it cannot support it self without taking away this unfortunate Gentleman's Life, contrary to the Rules of Law!

For the Argument of private Opinion, 'tis almost as dangerous as the Precedent you are making. I will not argue it from the Case of the People, *Enthusiasts* and Madmen; but I will urge it in the Case of Men that sat in Judgment. If Opinion is to justify the Condemning of a Man, let us never more call the Verdicts against Mr. *Cornish*, Mr. *Sidney*, Lord *Russel*, and others, Murders. Ask the Jury, no doubt none of them are so silly, but in his Opinion, they were guilty. But if Opinion may condemn a Man without Proof, why not acquit him as well, where there is Proof? Such a Practice, I am sure, would never be endured.

The properest Method, I think, was proposed by the Gentleman that began the Debate; and I beg Leave to follow the same Steps, to consider his Guilt, how it appears to us, and whether there be any Reason for this extraordinary Manner of Proceeding.

The Recital of that Bill are the Arguments for it; and those we send up to the House of Lords for the Passing of this Bill: And first, it says, That Sir *John Fenwick* was indicted by the Testimony of *Porter* and *Goodman*, &c. It says, that several Days were appointed for his Trial; and at one of those Days the Trial had come on, if it had not been for the Discovery that he pretended to make; but it does not say it was put off at any other Days or Times, for that Reason: But it goes on, and says, He hath made several Reflections, &c. instead of making an ingenuous Discovery; and then it recites how that *Goodman* is withdrawn.

I would beg leave to put Gentlemen in mind of what was a great Inducement to bring this Bill in: It was said, That Sir *John Fenwick* and his Relations had done it; that they would prove that *Goodman* was withdrawn by his Means. Give me leave to say, That there was no Proof of it, unless the Hearsay of *Clancy*, and the Actions of my Lady *Fenwick*, are to be Evidence, contrary to the known Laws of *England*, to effect this unhappy Gentleman in the Case of his Life: I say, if any Gentleman had been of another Opinion, no doubt, he would have offered that Amendment to the Committee.

As to the Discovery that Sir *John Fenwick* hath made, it does not appear to me, whether it be true or false: It is one Thing to give a Vote to clear a Gentleman's Reputation, and another Thing to carry it so far, as to give Judgment, That the Person that made those Reflections shall die, and that before any Proof of their Falshood.

Here is an Indictment found, and here is an Evidence withdrawn; that is all I am satisfied in: And supposing the Person guilty, it is no manner of Inducement from these Arguments, to proceed in this extraordinary Manner.

But I would consider the Matter of the Amendment made at the Committee [Of which Treasons he the said Sir *John Fenwick* is guilty.] I can't say that; and therefore I can't vote for the Bill. If he be guilty, it does not appear so by legal Evidence; and therefore I am to judge him, as he appears to me, an innocent Man. The Law requires two Witnesses to convict a Man of this Crime. 'Tis the greatest Crime, and the Law is so merciful, that it won't expose a Man to such great Penalties, without demonstrative Evidence.

The first Act of Parliament that requires two Witnesses is, 1 *Edward VI.* The next is 5 *Edward VI.* And upon that Act, give me leave to takenote, that Act goes a little further than the first; for the 5 *Edward VI.* does not only say there shall be two Witnesses, but it goes on, and says, — which two Witnesses (they are there called Accusers, but mean the same Thing) shall be produced in Person before the Party at his Arraignment, and shall there, before his Face, maintain and avow what they have to say. So the Parliament particularly provided, That there should not only be two Witnesses, but that they should appear in proper Person, in open Court.

I beg leave to observe, That after the making of the first Act, in the 2 or 3 Year of *Edward VI.* there was an Attainder of Sir *Thomas Seymour*, in Parliament, without hearing of him; and that very self-same Parliament, within two Years afterwards, seems so to have repented that Matter, that they made that Provision, I have mentioned, in the 5 *Edward VI.* and to secure, that that ill Precedent should do no harm, they put in that Clause. If this Act pass, I wish we do not repent it in less Time than that Parliament did the Attainder of Sir *Thomas Seymour*. Let us be guided by the Reason, the Justice, and the Discretion of that Act, though we are not bound in our Legislative Capacity, by the Power of it. I can't but observe, that from the making of that Act, no Person has been attainted in any other manner, till the Duke of *Monmouth*: So great a Veneration has that Law always had in all Reigns, though a multitude of Conspiracies have happened in them all. I do not think it so material, that there should be

two Witnesses, as that these Witnesses should be heard Face to Face, and cross-examined. It hath been told you, That 'tis natural Justice and Reason that there should be two Witnesses. A Gentleman asked you, where that natural Justice was before the Statute of *Ed. VI.*? Sir, the Statute of 25 *Ed. III.* says, That every Person that is attainted, shall be *Provablement attaint*; and somewhat may be from thence infer'd more than that the Crime should be prov'd, for so must every Crime. But as to the Proof required by that Act, and the Acts of *Ed. VI.* all those Acts, by very learned Opinions, have been thought declarative of the Common Law: But that's scarce worth the Enquiry, since 'tis certain how the Law stands at this Day.

An honourable Gentleman took notice, That such Evidence as we have had, and such Proceedings as these, would not be reasonable in Case of Impeachment; but distinguished between that Proceeding and this. But certainly, the Reason is the same. 'Tis true, the same Persons that accuse in one Case, give their Judgment in the other; but in each Case, such Privileges as are just and reasonable, ought to be allowed to the Party accused.

I shall add no more, but that we are making a Precedent, which can't be made without breaking through all the Fences of the Law; and when 'tis made, we know not who may suffer by it.

Sir *Rich. Temple*. As to the Evidence you have before you, I appeal to any Man, Whether at the Common Law, if there was but one Witness against a Man, whether he was not at Liberty of demanding Trial by Battle? Those Acts that have been made since, are made certainly to provide, That in no Case whatsoever, a Man should be so much as accused without two Witnesses of the Treason.

As to what hath been said of the particular Evidence before you; what hath been observed here, is a good Objection in the Courts below. I do not say it does disable a Man from being an Evidence, because he is not pardoned; but he is not so good an Evidence as if he was pardoned: But that I stand upon is this: Shall you come here, and make a Precedent in this Place to condemn a Man to the highest Penalties, upon less Evidence than you will allow any Body else to do it? That is what was never done in Parliament before. Will you make a Precedent in Parliament, that at any Time they may bring in a Bill here, and judge a Man to Death for Treason upon no Evidence?

As to this Bill it self, consider what a Precedent you will make: There is nothing that any Bill was condemned for in Parliament, that is not in this Bill. All Mankind must perceive, that you have but one Evidence, and such a one as I have told you: And whatever any Man's private Persuasion is, 'tis the Proof must govern you. Then this is a Law *ex post Facto*, and that hath always been condemned; you make that Evidence, that was not so before. Sir, this is, besides making a Law in a particular Case, against the Common Law of *England*, and the Right that every Subject has: It is making a Law to hang a Man without a Trial; 'tis making a Law here, that was introduced here upon a Pretence to make him an Evidence. Every one said, That they did not seek his Blood; and if that be the secret Inducement in this Case, 'tis a dangerous Precedent. The Earl of *Exeter*, when he brought the Rack into the Tower, every Body knows the Fate that came upon him afterwards.

Let any body shew me there was any Reason for reverſing any Act of Parliament; they are all againſt this Bill.

Then to the Neceſſity of it; I can't imagine any Thing that hath been ſaid to you upon that, is a ground for this Bill. Pray conſider firſt how this Matter came before you; it was for an honourable Perſon's Vindication, and it was not tranſmitted to you by the King, but by the honourable Secretary: He told you, That if you had a mind to ſee theſe Papers, and required it, he had Leave to let you have them; but if it had been a Thing of this conſequence, that the Government had been in the utmoſt Danger, would it have been tranſmitted only at the Requeſt of a private Gentleman, and left unto you, whether you would proceed upon it or no?

But 'tis obſerved, That the Plot may go on ſtill: Pray if this Gentleman be cut off, does that cure it? You are ſecure of him now, that he can't act in it; ſo that I have not heard the leaſt Ground to convince me, that the Government would be in leſs Danger if this Gentleman was cut off.

Sir, we are told here of going according to our Conſciences; give me leave to ſay to you what was inſtanced in the other Day; That in the worſt of Times, when they did not ſtick at murdering of the King, yet they ſtuck at this; they would not allow any Man to ſuffer upon one Witneſs; and they did not admit of Depoſitions againſt my Lord *Mordaunt*, and my Lord *Mordaunt* ſaved his Life by it.

You have depoſed King *James* for breaking in upon the Law; and did any body believe that Mr. *Hampden* was not guilty of the Treason he was charged with? He owned it before this Houſe; and yet he was tried only for Miſdemeanor, there being but one Witneſs againſt him; and they that ſtrained all other Laws, ſtuck at this, and would not violate this Law; ſo that I think there is no Neceſſity for making ſuch a Precedent, and I think it would be the worſt of Precedents.

Mr *Boscawen*. I have obſerved upon this Debate, that ſome Perſons deny that 'tis juſtifiable at any Time, to proceed upon Bills of Attainder, and yet they don't diſpute the Power of Parliaments; but at the ſame Time ſay, they ought to go according to the Rules of *Weſtmiſter-Hall*.

Another ſays, it is the ſame Thing whether we proceed by Way of Impeachment, or Bill of Attainder: I think him much out of the Way; for in that Caſe, the Lords only are Judges, and you are the Proſecutors; and you don't uſe your Legiſlative Power in that.

A worthy Friend of mine ſaid, He had often been miſtaken in his own Conſcience, when he thought himſelf very much in the Right. That might be ſo; and if there was any room rationally to ſuppoſe, that Sir *John Fenwick* was not guilty, I ſhould be of Opinion to be of the more favourable Side; but I take it, there is no room for any Man to believe but he is guilty.

Now I would examine what Grounds we have to believe him guilty. Upon Trials, when they charge a Jury with a Priſoner, one Part of their Charge is to enquire, whether he fled for it or no. 'Tis notorious, that Sir *John Fenwick* fled for this, which is no ſmall Argument of his Guilt. Another is, that he was hear at the Bar, and did not deny the Fact; if he had confeſſed it, no doubt but you would have concluded him guilty; and when he does not deny it, this is next door to it.

It hath been told you, many Bills of Attainder have been reverſed as unjuſt; it hath been as noto-

rious, that the Verdicts of twelve Men, and when Men have been tried by their Peers, have been reverſed too. I will inſtance in two or three. The firſt I begin with, was that of the Duke of *Somerſet*; but no body could ſay but he was guilty of the Fact, for he confeſſed it; but there was a powerful Enemy, the Duke of *Northumberland*. The next is, the Duke of *Norfolk*, who was attainted in Queen *Elizabeth's* Time; and they were not by Parliament, and yet both were reverſed. And I think, as this Matter ſtands now, ſome Gentlemen are of Opinion, by the Evidence they have heard, that he is guilty; but I think no body hath ſaid, that it appears to him, by the Evidence he hath heard, that he is innocent. Now I deſire to know, whether every Man muſt not uſe his Conſcience to judge, whether there be ſufficient Evidence? I acknowledge there is not ſufficient Evidence to convict him in *Weſtmiſter-Hall*; but there is more to ſatisfy my Conſcience, and the World abroad, than if *Goodman* was here; beſides his not denying it, you have the Evidence of the Perſons that died, who owned the ſame Thing: And I mention that the rather, becauſe they confeſſed it to Perſons ſent from this Houſe; and did not only confeſs themſelves to be guilty, but acknowledged, that there was ſuch a Conſpiracy; and Sir *William Parkyns* acknowledg'd in particular, that he was to raiſe a Troop of Horſe, and that the *French* were to be invited over: Is this nothing for the Legiſlative Power, that is to ſecure the Peace and Welfare of the Government?

Gentlemen ſay, there is a great deal of Danger in this Matter: Some, if you acquit him; others, if you condemn him. If you are ſatisfy'd he is guilty, by this Bill you ſet up a Land-mark, that others may take Care they do not come into this Predicament: On the other hand, if you reject this Bill, you will give Advantage to your Enemies; when they ſhall ſee a Man that is ſo notoriously concerned in calling in a *French* Army, the worſt of your Enemies, to be Scot-free. If he be guilty, what Danger is there of the Precedent? When a Perſon in the like Nature, that hath fled for it, that does not deny it; when living Perſons confeſs it, and dying Perſons confirm it, then there will be Danger in ſuch a Perſon.

Upon the whole Matter, I think there is no Man that ever I heard, that does not believe him to be guilty; and 'tis ſtrange you ſhould want Evidence, and yet every one think him guilty; and I think no Man muſt be acquitted or condemned, but according to a Man's Conſcience.

An honourable Perſon ſaid, *Porter* was no good Witneſs: If *Goodman* was here, he would not be ſo much; and yet we muſt acquit him becauſe *Goodman* is not here: And therefore, upon the whole, I think you will give your Enemies a great Advantage, if you acquit him; and if you condemn him, you will do your ſelves Right.

Mr. *Cowper*. Sir, being concerned in Proſecutions of this Nature without Doors, I have hitherto declined concerning my ſelf in any Debate of this Evidence, though unconcern'd in the Conduct of the Evidence againſt Sir *John Fenwick*; but being to give my Opinion and Vote as a Judge, I ſhall crave Leave to give my Senſe of this Matter.

I would beg Leave, in the firſt Place, to make uſe of a Diſtinction, which, I think, will ſerve to anſwer ſeveral of the Arguments that have been made uſe of: I think there are two Things to be conſider'd; Firſt, his Crime and the Proof of that

that Crime, and then the other Matters done by him subsequent, &c.

The Crime and Proof of it that hath been given against him at your Bar, is the Ground by which, I think, before God and Man I ought to give my Affirmative to this Bill, by which you judge him to die. What he hath done subsequent, convinces me in my Judgment, that we are here in a proper Method and Course of Proceeding against him; therefore let no Man say, That you have condemned him because he hath protracted his Trial: No, you have condemned him for having been guilty of High-Treason, manifestly proved against him: Then let them not say on the other hand, Will you condemn any Man that is at any Time guilty of High-Treason? No; but when a Man is guilty of the worst of Treasons, and this would have been manifestly proved against him in the ordinary Course of Proceedings, but that he undertaking to atone for his Crime, and serve his Country, hath protracted his Trial till one of the Evidences is gone; and then, though he pretended to have a Reserve, which he would make known to the King's Person, yet when he thinks he is out of the ordinary Reach of Justice, he sets the Justice of his Country at defiance. These are Grounds, not why he is to die, but to justify our Proceeding in this Manner.

Sir, I would beg leave, in a few Words, to take notice of a few Things said in this Matter: Gentlemen are afraid, that this will be made use of by Posterity to the Disadvantage of honest Men: And you have been told, That Precedents have begun with the Punishment of the Guilty, and then have been carried on to the Punishment of those that have not been so. 'Tis true, there hath been a very bad use made of very just Acts in relation to the Publick: But what do Gentlemen infer from that? Must we have no such Thing as Justice? Must not the Guilty be punished, because the same Methods may be made use of for the punishing of honest Men?

I am not afraid of what use Posterity will make of it; if there come Times of Violence when there are no Parliaments, they will not want this Precedent; there are others that have been cited, that will much more justify those Proceedings; nay, this may protect the Innocent. If a Bill come to be proceeded in against another, he may say, Sir *John Fenwick* was heard personally, and by his Counsel; that the Evidence was produced before him, and confronted with him. An innocent Man may say, There was that extraordinary in his Crime, which is not in mine; he would have introduced a foreign Army, and afterwards have aggravated his Crime, by endeavouring to abuse the King, and creating a Jealousy between the King and his Ministers.

Sir, in the next place it is said, That here is not legal Evidence; which I think is a Mistake: And, say some, Though here is an Evidence, that really convinces them in their Consciences (I am not ashamed to make use of that Word) yet they are not for passing this Bill, because there is not a legal Evidence. With submission, that is a Mistake; before 1 *Ed. VI.* one Witness was a good Evidence in High-Treason; but there was Variety of Opinions touching Treason before that Time; but neither the 1st nor 5th *Ed. VI.* in the penning or wording of them, nor in the Reason of them, were intended to extend to the High Court of Parliament; so that, for ought that hath been said,

though one Witness corroborated by Circumstances, as this Case is, and the Confession of the Party, would not be legal Evidence below; yet, with submission, it is a legal Evidence in Parliament, even according to the strict Rules of Law; because no Law hath made two Witnesses requisite in this Case; so that 'tis a convincing Evidence: I think it may be justified to be a legal Evidence; and as it convinces me, that I can't resist the Belief of it, I must be for this Bill, notwithstanding what some Gentlemen have said, by way of endeavouring to explode Conscience as a Rule not to walk by in this Case. One Instance given against it was, because a Hangman has not a discretionary Power to execute a Man according to his Conscience, and put him to what sort of Death he pleases; as if we had not a better, and more legal, and discretionary Power in the High Court of Parliament than the Hangman has.

But we are told of several Instances, where mad, and hair-brain'd Men have made use of their Conscience to palliate their Extravagancies. No doubt it hath; and let me tell you, Religion hath been made use of as a pretence to the worst of Villanies in all Ages; and yet I hope they will not argue, that there ought to be no Religion neither, for a Guide to Mens Actions.

When Men come to be Judges, I would know what Rule they can have better than a sedate, well-informed Conscience? Below, when a legal Evidence is given, yet the Jury are not bound to go by that legal Evidence; they are, when they have heard it, Judges of the Fact, and are to go by no other Rule, than what is ridiculed here, even the Rule of their own Conscience.

It was said early in the Debate by a Member of great Reputation, that this (except *Monmouth's* Case) is the first Precedent of a Bill of Attainder that began in this House. It seems the ancient Way was, for the Lords to give the Witnesses their Oaths, and when they thought fit, they sent down a Bill, and the Commons were to proceed upon it: But I think, with submission, this is a much better Way; and I had much rather give my Consent upon hearing convincing Evidence, and that the Party has nothing to say for himself, than upon any Bill transmitted from the Lords, and no other Evidence, than that they thought fit to pass it.

Some Gentlemen have set a great Weight, or rather mistaken the Argument: Say they, Sir *John Fenwick* is not a Man so considerable as to endanger the Government. Admit that those that have spoke for the Bill, have not made that use of the Argument; but this is that I lay my Finger upon in particular; 'tis plain he was to be General, and knew a great many of the Officers. I am satisfied he hath not made that Attonement to his injured Country, that he ought to have done. I am satisfied, that unless this Bill proceed steadily against him, you will have none of that Discovery —

[Here he was interrupted by the Noise of some Gentlemen, shewing Dissatisfaction at that Way of arguing.]

Mr. *Cowper* proceeds. Don't let Gentlemen pervert this Argument, and say, Will you hang a Man if he don't confess? No; but when I have heard Proof, that he is guilty of the worst of Treasons, and hath aggravated his Crime in that manner which he hath done, he deserves to die; unless

unless he will merit his Life by a Discovery of what he knows. I think it of the highest Importance to you, that can be, that you should come to the further Knowledge of the other Branch of the Conspiracy; the Meeting of the *French King's Forces in England*. I think you are in a proper Method, and perhaps may have a better Issue of this Bill than his Death: But if not, he will but pay the Debt, which he owes to the Justice of his Country.

Mr. *Paget*. Sir, I can't believe but I shall be heard, as to the little I have to say, with some uneasiness, after so long a Debate. But, Sir, since I did take the Liberty to give my Opinion, why I was against this Bill before; I think it as reasonable to give you my Reasons, why I don't stand convinced by the Arguments I have yet heard. And that I may the better give you my Reasons, I shall, as well as I can remember, repeat some of the Arguments that have been urged for the Passing of it.

If I mistake not, some of the Arguments have run upon the Power and Prerogative of Parliaments; some upon what was proper Evidence in this High Court of Parliament, other than what would be in other Places; others upon the Extraordinariness of the Occasion.

As to the first of these Arguments; since Gentlemen much more experienced in Rules of Parliament, do not think fit to deliver their private Opinion, what Rules Parliaments may in Reason be supposed to have, I shall not say any Thing to that.

As to the Arguments, of what Evidence shall be sufficient to adjudge a Man to Death in this House; I confess, I shall at all Times be very careful, how I give my Opinion in Matters of Life and Death; because I think the greatest Caution is to be used in that Case: And for this Reason, I can't consent to give my Opinion in one Case, that I shall think fit to retract in any Case afterwards.

If I understand the Meaning of the House, 'tis not in favour to Sir *John Fenwick* himself, that Gentlemen oppose this Bill, but for fear of ushering in a Precedent, that may be made use of against a better Man.

I confess, here is a worthy Member that spake last, said something in his Argument that hath some Weight with me. I did apprehend by the general Debate of the House, That the Parliament had no Rules at all, but what they would fix to themselves; but I have a great Regard for his Opinion: But if he says true, the Evidence before you is not legal Evidence in *Westminster-Hall*; but 'tis legal Evidence according to the Rules of Proceeding in the High Court of Parliament: But I think, truly, if they may be presumed to have any Rules to go by, nothing is so plain to me, as that a Rule of their own of so late Date, as the Act for regulating Trials in Cases of Treason, should be a Rule to them: And 'tis said in that Act, That after such a Day no Person shall be brought to Trial in any Case of Treason, &c. but he shall be condemned upon the Evidence of two Witnesses; and I must needs say, that Act that was passed last Sessions, is so much for the Liberty of the People of *England*, that I think it will be very hard to repeal that substantial Part of the Law so soon after it was made.

As to the Extraordinariness of the Case, I am sensible what Strefs hath been laid on that Argument, as if the Strength of this Government did

in some measure depend upon your Disposal of this Matter one Way or the other: And since that is the Case, I shall speak tenderly of it; for I do as much abhor Acts of Treason against the Government, as any Man that hath spoke for this Bill: I think, as the Crime is to be distinguished from all others, as being a more than ordinary Crime; so I think the Person that is concerned, must be extraordinary: And I think, with submission, there is some difference between Principals and Seconds in an Act of Treason. When you can't come at a Man being at the Head of a Rebellion, it may be reasonable to proceed by Bill of Attainder; but I think 'tis not to be used upon all Occasions, or when you may come at a Person another Way; which, I think, is the Case of this Gentleman. I am of Opinion, that there does not depend more upon Sir *John Fenwick* now, than when he was first taken. Why he was not tried, I shall not examine the Reason; I suppose it was because he gave some Assurance of his Confession: Truly, I have heard no other Reason for proceeding against him now, but those Papers which have been adjudged scandalous, and are so to all Intents and Purposes, I do think truly: But the Liberty of the People of *England* is very much concerned in the Revocation of that Act, which was promoted for the Liberty of the People; and none of the Arguments that have been used can convince me, That I ought to give Judgment upon less Evidence than is provided by that Act.

Mr. *Sloane*. Sir, I hardly thought I should have needed to have troubled you with my Thoughts in this Matter, but that this honourable Gentleman that spake last, has gone so far in his Reason, as to speak to Matter of Law: He seems to extenuate the Fault of Sir *John Fenwick*; and gives it as a Reason why he should not be attainted by this Bill, for that he was none of the Principals, but only an Accessary: There is no Gentleman of the Gown but will tell you, that there is no Accessaries in Cases of Treason, but they are all Principals, and equally guilty; and there is no Evidence in this Case to make him Accessary, but he is either Principal or nothing.

When I have made this Observation, give me leave to tell you my own Thoughts: As every Man is to be saved by his own Faith, so may my Salvation depend upon my Opinion, according to my Conscience in this Matter, which is for passing this Bill.

The last Time, I gave you my Reasons why I was for this Bill; and yet I have not heard them answered, though a Gentleman said I answered myself: But I will state the Case, and desire him to reply to me. I did say then, Sir, and do so again, That I do not think those scandalous Papers any Reason to provoke you to pass this Bill; and I do think, if he should be threaten'd, it would be a Blemish upon his Confession. Another Thing I put out of the Case, That he is a Man so dangerous to the Government, that if he escape, we are all undone. I do take him, that in his Person, Interest and Friends, he is not so; and would not have that be a Motive for the passing of this Bill: But take it upon the Evidence that is before us, and in the Nature of our Proceedings; then I will say, we have great Reason to proceed upon this Bill, for the Preservation of the Government, and for this Reason; Whereas it is insisted on one side, that here are the Laws and Liberties of *England* at stake, and no Body knows whose

whose Case it may be next. Sir, if we don't go upon good Grounds and Reasons, that we don't fear any Body's following, God forbid we should make this a Precedent! But pray turn the Tables on the other side, and see what the Case will be; that here is a Gentleman that every Body of the House does believe guilty; that he hath been in a Conspiracy to bring in the *French*, and depose the King; and the Man came before us, and we had no Power to reach him; What will be the Precedent on the other Side? It will be easy to take off one of the Witnesses by Men of great Estates, and then there is no coming at them, even by the Parliament themselves: This Parliament was of Opinion, That they could not come at Sir *John Fenwick*, though they were of Opinion that he was guilty.

But now, Sir, to that which is the Question: 'Tis allowed by every Body, you may do what you please; but without straining your Legislative Power, I shall offer my Thoughts and Reasons for it, upon these three Points; That the Fact is Treason; That he is plainly guilty; and That we have a plain Jurisdiction in this Case, in the ordinary Methods and Proceedings of Parliament.

Sir, the Fact is Treason, the Meeting at several Times, and conspiring, and consulting to bring in a *French* Power to depose the King. You have been told by several Persons, and the Counsel at the Bar, That such Meetings without some other Overt-Act, is not Treason; but I affirm the contrary, for that is an Overt-Act of compassing the Death of the King: And Sir *Bartolomew Shower*, who did insist upon it at the Bar, did otherwise act his Part upon it at the Trial of Mr. *Cook*; for he offered it at first, but afterwards he deserted, it as a Thing he could not stand upon; for 'tis the Opinion of all the Judges, upon a late Resolution.

Then, Sir, the Fact being Treason, is no Act *ex post facto*. We are not making that Treason which was not so, but we are only judging of the Fact that was Treason before; though if it was a Doubt whether it was Treason or no, the Parliament hath a Power, by 25 *Edw. III.* to judge that Treason, that the Courts below have no Power of.

The next Thing is, Whether there be sufficient Evidence of his Treason before us? I will put it out of the Case, as no conclusive Evidence at all, what *Goodman* hath said upon his Oath (further than that there was such a Witness that did and could swear such a Thing, and that he was examined before the Jury); and this I will take upon me to say (and I will give my Reason for my Opinion) That the Parliament is not obliged to Two Witnesses by any Law now in being.

It hath been told you, That from the Time of *Ed. III.* one Witness was sufficient till the Statute of *Ed. VI.* Now I will prove to you, from the Statute of *Phil.* and *Mary*, That by the Common Law, and all the Time between the Reign of *Ed. III.* and *Ed. VI.* one Witness was sufficient for this Treason. For that Statute of *Phil.* and *Mary* does say, that any Person that shall bring from beyond Sea, any false and counterfeit Coin, or be accused or impeached of any Offence concerning the Impairing, Counterfeiting, or Forging of any Coin current within this Realm, shall, and may be indicted, arraigned, convicted, or attainted by such like Evidence, and in such-like Manner as was accustomed before the first Year of K.

Ed. VI. Now, what was the Reason of that Statute before the Statute of *Ed. VI.*? Those Counterfeits were to be tried by one Witness; and therefore at this Day all the Counterfeiters, and Utterers of false Coin, have been Attainted by one Witness.

'Tis said again, That there is the Law of Nations, and the Law of God, to the contrary. Gentlemen have said several times already, That in Murder and Felony, one Witness is sufficient; which, saving some little Parts of the Judgment as to the Forfeiture and Attainting of the Blood, is the same Penalties. We are not in the Land where that Law was in Force; for by that Law, as to common Felons, there was a Restitution only: But I would put a Gentleman that sits by the Bar this Case; By the same Law of *Deuteronomy* and *Numbers*, that he hath quoted, Adultery is Death: Will you be contented that that should be so here? They are either all of them in Force, or none of them in Force.

I do say, That by the Statute of *Ed. III.* and ever after, till the Statute of *Ed. VI.* one Witness was sufficient to convict any Man of Treason. And I do say, That the Statutes of *Ed. VI.* do not preclude the Parliament from any Method of Proceedings.

The Statute says, That no Man shall be indicted, &c. nor shall they proceed upon such Indictment. From which Words in the Statute, I do plainly make it appear to any Gentleman that will read it, 'tis confined only to the Courts of *Westminster-Hall*: For certainly, you can't call a Bill of Attainder, to be a Proceeding upon an Indictment. What I say, is only to discharge my own Conscience, and to salve the tender Consciences of them that hear me; and therefore, I desire them never to say, That there ought to be two Witnesses, before they answer what I have said upon that Statute.

Then, Sir, you have need but of one Witness, and you have had Captain *Porter* before you; who, I think, notwithstanding all that hath been said, is a credible Witness. A Gentleman made some Objections to his Credit, and told you, he was not to be believed, because he was in the same Conspiracy, and had been in such a villainous Action: But, Sir, the same Gentleman hath often confined you to the Rules of *Westminster-Hall*; and he hath told you, 'Tis a wrong Place here, and that a Man has not so good a Trial here, as in *Westminster-Hall*. Why? the Thing that was spoke of, of his being concerned in the Assassination, and of his being a Fellow-Conspirator with them, which is now urged as an Objection before you, is no Objection in *Westminster-Hall*.

I would only take notice of another Objection this Gentleman made to the Witness, which he said he had from the Bar; which was, That Captain *Porter* was not pardoned, and he was now drudging for his Pardon: But that is so far from what ought to be quoted, that he that said it, ought to be reprimanded for it.

He made another Objection against his being a good Witness, and compared it to the Case of an Hundredor; but he did not remember, that the Man that was robbed is a good Witness; and the Reason is, because of the Necessity of the Thing, and that no others can be; and the Defendant in an Hundred can't be a Witness, because there may be others; and that is the Reason of this Case.

And for the Precedents in *Richard III*'s and *Henry IV*'th's Time, no Gentleman can insist upon them, considering the Differences of the Crown, and the one Attainted the other; and they were not reversed upon the Point of Jurisdiction, but because of the different Rights of the Kings; and no body had pretended to answer the Case of the Regicides; they were not left to the Law, I mean such as were actually tried before the Parliament; but the Parliament passed different Judgments on them; and some of them were in Custody. What was told you of *Cromwell*'s Case and others, they go upon the same Reason, that they were not heard, though they were in Custody.

Col. *Wharton*. A Gentleman lately told you, We had lately passed an Act for Trials in Cases of Treason, and how we are in this Proceeding, about doing something that is contrary to it: That is a Thing that would stick with me, if I could not answer it; but I appeal to every Gentleman in this House, whether that Act hath any sort of relation to Trials in Parliament; for that is only to direct the Courts in *Westminster-Hall*.

I have only this to say; I think the Evidence very full before you. I think you have had one very good Witness, and the Counsel for the Prisoner had Liberty to confront him: If he had not been guilty, the Prisoner at the Bar would have deny'd it: I am convinced of the Truth of it, and my Conscience is to make a Judgment upon it, and that is all we can go by here.

Mr. *Jefferys*. A worthy Gentleman of the Long Robe hath taken Pains to find out Precedents to justify our Proceedings; and another says, there is no Act to circumscribe our Proceedings. But since Gentlemen differ so much, it gives me a great deal of Caution: This I know, there is a Law of the Land, by which Persons ought to be governed: I take this to be an extraordinary Method of Proceeding, and I hope the Lords will take more Care of the Matter than the Commons.

Mr. *Edward Harley*. Sir, I can't satisfy my self to be for this Bill; and in a few Words, I shall give my Reason for it. It hath been said, That the Parliament is unlimited. I do agree, that we are not tied to the Rules of *Westminster-Hall*. I shall only mention the Reason why two Witnesses are required in Cases of High-Treason. If any will look into the History of *England*, they will find it hath been often the Design of the Crown to trump up Plots upon the Subject; and therefore these Acts took particular Care there should be two Witnesses to prove the Fact: This is the Reason of the Law, and, I think, upon it the Liberty of the Subject is founded; and therefore I can't be for this Bill.

Then the Question for passing this Bill was put, and the House divided.

Ayes, 189.

Noes, 156.

The Writ for Executing Sir *John Fenwick*, being under the whole Broad-Seal, and inclosed in it.

Guilielmus tertius Dei Gratia, Angliæ, Scotiæ, Franciæ & Hiberniæ, Rex, Fidei Def. &c. Vic. Com. London, & Vic. Com. Midx. Salutem: Cum Johannes Fenwick, Bar. per quendam actum ad sessionem præsentis nostri Parlamenti apud West-

minst. super vicesimum diem Octobris, Anno Regni nostri octavo, per prerogationem tent. Edit. de alia prodicione per ipsum perpetrat. & commiss. attinctus fuit, & executio super inde adhuc restat faciend. & quia pro certis causis & considerationibus nos specialiter moventibus, totam executionem Actus attincturæ prædict. super dict. Johannem Fenwick, præter amputationem Capitis sui, omitti volumus; ideo precipimus vobis & per præsentis firmiter injungendo mandamus, quod in & super vicesimum tertium diem instantis mensis Januarii. inter horas nonam & undecimam ante meridiem ejusdem diei dictum Johannem Fenwick in Goala nostra de Newgate sub Custodia vestra nunc existens. à Goala prædict. usque ad Tower-Hill, ducatis, & Caput ipsius Johannis Fenwick ad tunc & ibidem amputari & à Corpore suo omnino separari faciatis. Teste me ipso apud Westmonast. decimo octavo die Januarii. Anno Regni nostri octavo.

CHUTE.

The Label.

Vic. Com. Lond. & Midx. de executione faciend. John Fenwick, Bar. auctoritate Parl. Attinct. CHUTE.

All the Punishment being remitted but Beheading, he was brought to a Scaffold erected on Tower-Hill, where he delivered this Paper to the Sheriffs.

Speaking nor Writing was never my Talent: I shall therefore give a very short, but faithful Account, first, of my Religion, and next, what I suffer most innocently for, to avoid the Calumnies I may reasonably expect my Enemies will cast upon me when dead; since they have most falsely and maliciously aspersed me, whilst under my Misfortunes.

As for my Religion, I was brought up in the Church of *England*, as it is establish'd by Law, and have ever professed it; though I confess I have been an unworthy Member of it, in not living up to the strict and excellent Rules thereof; for which I take Shame to my self, and humbly ask Forgiveness of God. I come now to die in that Communion, trusting, as an humble and hearty Penitent, to be receiv'd by the Mercy of God, through the Merits of Jesus Christ my Saviour.

My Religion taught me my Loyalty, which I bless God is untainted; and I have ever endeavoured in the Station wherein I have been placed, to the utmost of my Power, to support the Crown of *England* in the true and lineal Course of Descent, without Interruption.

As for what I am now to die, I call God to witness, I went not to that Meeting in *Leaden-ball-street* with any such Intention as to invite King *James* by Force to invade this Nation; nor was I my self provided with either Horse or Arms, or engaged for any Number of Men, or gave particular Consent for any such Invasion, as is most falsely sworn against me.

I do also declare, in the Presence of God, That I knew nothing of King *James*'s coming to *Calais*, nor of any Invasion intended from thence, till it was publicly known: And the only Notion I had, that something might be attempted, was from the *Tboulon* Fleet coming to *Brest*.

I also call God to witness that I receiv'd the Knowledge of what is contain'd in those Papers that I gave to a great Man, that came to me in the *Tower*, both from Letters and Messages that came from *France*; and he told me, when I read them to him, that the Prince of *Orange* had been acquainted with most of those Things before.

I might have expected Mercy from that Prince, because I was Instrumental in saving his Life: For when, about *April*, 1695, an Attempt form'd against him came to my Knowledge, I did, partly by Diffusions, and partly by Delays, prevent that Design; which, I suppose, was the Reason that the last villainous Project was concealed from me.

If there be any Persons whom I have injur'd in Word or Deed, I heartily pray their Pardon, and beg of God to pardon those who have injur'd me; particularly those who with great Zeal have fought my Life, and brought the Guilt of my innocent Blood upon this Nation, no Treason being proved upon me.

I return my most hearty Thanks to those noble and worthy Persons who gave me their Assistance, by opposing this Bill of Attainder, without which, it had been impossible I could have fallen under the Sentence of Death. God bless them and their Posterity; though I am fully satisfy'd they pleaded their own Cause, while they defended mine.

I pray God to bless my true and lawful Sovereign King *James*, the Queen, and Prince of *Wales*, and restore him and his Posterity to this Throne again, for the Peace and Prosperity of this Nation; which is impossible to prosper till the Government is settled upon a right Foot.

And now, O God! I do with all humble Devotion commend my Soul into thy Hands, the great Maker and Preserver of Men, and Lover of Souls; beseeching thee that it may be always dear and precious in thy Sight, through the Merits of my Saviour Jesus Christ. Amen.

JOHN FENWICK.

Then he submitted to the Block, and the Executioner sever'd his Head from his Body.



CLXIV. *The TRIAL of Edward Earl of Warwick and Holland, before the House of Lords, for the Murder of Richard Coote, Esq; March 28, 1699. 11 Will. III.*

ABOUT Eleven of the Clock the Lords came from their own House into the Court erected in *Westminster-Hall*, for the Trials of *Edward Earl of Warwick and Holland*, and *Charles Lord Mounbun*, in the Manner following.

The Lord High Steward's Gentlemen Attendants, two and two.

The Clerks of the House of Lords, with two Clerks of the Crown in the Courts of *Chancery* and *King's Bench*.

The Masters in *Chancery*, two and two.

Then the Judges.

The Peers eldest Sons, and Peers Minors, two and two.

Four Serjeants at Arms with their Maces, two and two.

The Yeoman Usher of the House.

Then the Peers, two and two, beginning with the youngest Barons.

Then four Serjeants at Arms, with their Maces.

Then one of the Heralds, attending in the Room of *Garter*, who by Reason of his Infirmary could not be present.

And the Gentleman Usher of the Black-Rod, carrying the White-Staff before the Lord High Steward.

Then the Lord Chancellor, Lord High Steward of *England* alone.

When the Lords were seated on their proper Benches, and the Lord High Steward upon the Wooll-Pack;

The two Clerks of the Crown in the Courts of *Chancery* and *King's Bench*, standing before the Clerk's Table with their Faces towards the State;

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The Clerk of the Crown in *Chancery* having his Majesty's Commission to the Lord High Steward in his Hands, made three Reverences towards the Lord High Steward, and the Clerk of the Crown in *Chancery* on his Knees presented the Commission to the Lord High Steward, who delivered it to the Clerk of the Crown in the *King's Bench*, (then likewise kneeling before his Grace) in order to be opened and read; and then the two Clerks of the Crown making three Reverences, went down to the Table; and the Clerk of the Crown in the Court of *King's Bench* commanded the Serjeant at Arms to make Proclamation of Silence; which he did in this Manner.

Serjeant at Arms. O Yes, O Yes, O Yes, My Lord High Steward his Grace does straitly charge and command all manner of Persons here present, to keep Silence, and hear the King's Majesty's Commission to his Grace my Lord High Steward of *England* directed, openly read, upon Pain of Imprisonment.

Then the Lord High Steward stood up, and spoke to the Peers.

Lord High Steward.* Your Lordships will be pleased to stand up, and be uncovered, while the King's Commission is reading.

* Lord Somers.

All the Peers stood up, and were uncovered, while the Commission was read.

Clerk of the Crown. **G**Uilielmus Tertius Dei Gratia Angl. Scot. Franc. & Hibern. Rex, Fidei Defensor, &c. Prædilecto & fideli Consiliario nostro
T
Johanni

Johanni Domino Somers, Cancellar. nostro Angl. Sciatis quod cum Edrus. Comes Warwic. & Holland. nuper de paroch. Sti. Martini in Campis in Com. Middlesex. & Carolus Dnus. Mobun, nuper de paroch. prædict. in Com. prædict. coram dilectis & fidelib. nostris Carolo Lee, Mil. Samuel. Buck, Willielmo Witbers & Francisco Tysson, Armigeris, & aliis sociis suis Justiciar. nostris ad inquirend. per Sacramentum, probor. & legalium hominum de Com. nostro Middlesex. prædict. ac aliis viis modis & mediis quibus melius sciverint aut poterint, tam infra libertat. quam extra, per quos rei veritas melius sciri poterit & inquire de quibuscunque Proditionibus Misprisionibus prodicionibus. Insurrectionibus. Rebellionibus. Controfactis. tonsur. lotur. falsis fabricacionibus. & aliis falsitat. Monet. bujus Regni nostri Angl. & alior. Regnor. sive Dominior. quorumcunque ac de quibuscunque Murdris Feloniis Homicid. Interfectionibus Burglar. Raptibus. Mulier. Congregationibus. & Conventicul. illicit. verbor. prolationibus. Coadunacionibus. Misprisionibus. Confederacionibus falsis Alleganciis Transgressionibus, Riotis, Routis, Retentionibus. Escapiis Contempt. Falsitat. Negligentiis, Concelament. Manutenent. Oppressionibus, Cambiparciis, Deceptionibus. & aliis Malefactis Offens. & Injur. quibuscunque; necnon Accessariis. eorundem infra Com. prædict. tam infra libertat. quam extra, per quoscunque & qualitercunque habit. fact. perpetrat. sive commiss. & per quos vel per quem cui vel quibus quando qualiter & quomodo & de aliis Articulis. & Circumstanciis. præmissis. seu eor. alicujus vel aliquor. qualitercunque concernen. plenius veritat. & ad easdem proditiones & al. præmissis. audiend. & terminand. secundum legem & consuetud. Regni nostri Angl. nuper assignat. de Felonia & Murdro per ipsos Edrum. Comitum. Warwic. & Holland. & Carolum Dominum Mobun, Commiss. & Perpetrat. per sacrament. probor. & legal. hominum Com. nostri Middlesex. prædict. Indictat. existunt. Nos considerantes quod Justitia est virtus excellens & altissimo complacens, volentesque quod prædict. Edrus. Comes Warwic. & Holland. & Carolus Dominus Mobun, de & pro Felonia & Murdro unde ipsi ut præfertur Indictat. existunt. coram nob. in presenti Parliament. nostro secundum leg. & consuetud. Regni nostri Angl. Audiantur, Examinentur, Sententientur & Adjudicentur, ceteraque omnia quæ in hac parte pertinent debo. modo exerceantur & exequantur; ac pro eo quod Officium Seneschalli, Angl. (cujus præsentia in hac parte requiritur ut accepimus) jam vacat, Nos de Fidelitate Prudentia provida Circumspectione & Industria vestris plurimum confidentes Ordinavimus & Constituimus vos ex hac causa Seneschallum, Angl. ad Officium illud cum omnibus eidem Officio in hac parte debitis. & pertinent. (hac vice) gerend. occupand. & exercend. Et ideo vob. Mandamus quod circa præmissis. diligenter intendatis & ea omnia quæ in hac parte ad Officium Seneschal. Angl. pertinent & requiruntur (hac vice) faciatis exerceatis & exequamini cum effectu. In cujus rei Testimonium has Literas nostras fieri fecimus Patentes, Teste meipso apud Westmonasterium vicesimo quinto die Martii, Anno Regni nostri Undecimo.

Per ipsum Regem propria Manu Signat.

Serjeant at Arms. God save the King.

Then the Herald and the Gentleman-Usher of the Black Rod, after three Reverences, kneeling, presented the White Staff to his Grace, and his Grace removed from the Wooll-pack to the Chair, which was placed upon an Ascent just before the uppermost Step of the Throne, and seated himself in the Chair.

Clerk of the Crown. Serjeant at Arms, make Proclamation.

Serjeant at Arms. O yes, O yes, O yes, My Lord High Steward of England, his Grace, does straitly Charge and Command all manner of Persons here present, to be uncovered upon pain of Imprisonment.

Then the Judges and Masters in Chancery sat down in their Places upon the Wooll-packs, uncovered.

Then the Clerk of the Crown read the Return of the Certiorari in hæc verba.

Gulielmus Tertius, Dei gratia, Angl. Scot. Franc. & Hibern. Rex, Fidei Defens. &c. Justic. nostris per Literas nostras Paten. confect. ad inquirend. per Sacrm. probor. & legal. hom. Com. nostri Midd. ac aliis viis mod. & med. quibus melius sciverint aut poterint de quibuscunque prodic. mispris. prodic. insurrection. rebellion. controfactis. tonsur. lotur. falsis fabricat. & aliis falsitat. monet. bujus Regni Angl. & alior. Regnorum sive Dominiorum quorumcunque ac de quibuscunque; murdris, felon. homicid. interfection. burglar. raptibus mulierum, congregacon. & conventicul. illicit. verborum prolationibus, coadunat. misprision. confederat. falsis alleganc. transgres. riot. rout. retention. escapiis contempt. negligenc. concealament. manutenen. oppression. deception. & aliis malefactis offens. & injur. quibuscunque; necnon accessariis eorundem infra Com. prædict. tam infra libertates quam extra per quoscunque, & qualitercunque; habit. fact. perpetrat. sive commiss. ac de aliis articulis & circumstanciis præmissis. & eorum quodlibet seu eorum aliquod vel aliqua qualitercunque; concernen. plenius veritat. & ad easdem prodition. & al. præmissis. audiend. & terminand. assign. Necnon Justic. nostris ad Gaol. nostram de Newgate de Prisonar. in ea existen. deliberand. assign. & eorum cuilibet Saltm. volen. certis de causis omnia & singula Indictamen. & Inquisition. de quibuscunque; felon. & murdris, unde Edrus. Comes Warwic. & Holland. & Carolus Dominus Mobun, & al. coram vobis Indictat. sunt; necnon Record. conviction. Rici. French, Rogeri James & Georgii Dockwra, pro felon. & homicid. unde indictat. sunt. Et superinde per quandam. Jur. Prie. inde inter nos & præfat. Richardum French, Rogerum James & Georgium Dockwra, capt. convict. exist. ut dicitur coram nobis & non alibi terminari vobis & cuilibet vestrum mandamus quod omnia & singula in Indictament. & Record. convict. prædict. cum omnibus ea tangen. quibuscunque; nominibus iidem Edrus. Comes Warwic. & Holland. Carolus Dominus Mobun, Richardus, Rogerus & Georgius nuncupentur in eisdem coram nobis sub sigillis vestris aut unius vestrum in octab. Sti. Hilarii ubicunque; tunc fuerimus in Angl. mittat. seu unus vestrum mittat una cum hoc brevi ut ulterius inde fieri fac. quod de jure ac secundum legem & conf. Regni nostri Angl. fore viderimus faciend. Teste J. Holt, Mil. apud Westm. xxviii die Novembris, Anno Regni nostri decimo.

per Cur.

Astry.

Ad instanc. prosecutor. quoad duos Def. & ad instanc. cæterorum Def.

J. Holt.

Virtute cujus brevis mihi & aliis direct. Indictament. & Inquisition. infra mentionat. necnon Record. conviction. infra nominat. Rici. French, Rogeri James & Georgii Dockwra, pro felon. & homicid. unde indictat. & superinde per quandam Jur. prie. convict. exist. cum omnibus ea tangen. coram Dom. Rege in qui-

quibusdam Sched. huic brevi annex. mitto prout interius precipitur.

*Respons. Fra. Child. Mil. Major. Civit.
Lond. un. Justic. infra script.*

Midd. ff. Memorandum quod ad deliberationem. Gaol. Domini Regis de Newgate tent. pro. Com. Middlesex. apud Justice-Hall in le Old Bailey in Suburbis Civit. London. die veneris (scilicet) decimo tertio die Januarii Anno Regni Dom. nostri. Gulielmi tertii Dei gratia. nunc Regis Angl. &c. decimo, coram Fran. Child, Mil. Majore Civit. London. Edro. Ward, Mil. Capital. Baron. Secii. dict. Dom. Regis, Henrico Hatsfel, Milit. un Baron. Secii. dicti Domini Regis, Thoma Stamp, Mil. Edro. Clarke, Mil. Aldris dict. Civit. London. Salathiel. Lovell, Mil. servien. dict. Dom. Regis ad legem ac Recordator. dict. Civit. London. & aliis sociis suis Justic. dict. Dom. Regis ad Gaol. ipsius Dom. Regis de Newgate predicti. de prisonar. in eadem existens, deliberand. assign. ven. hic in Cur. Carclius Lee, Mil. Samuel Buck, Will. Withers, & Fran. Tysson, Ar. Justic. dict. Dom. Regis per Literas patent. ipsius Dom. Regis eidem Justic. prenominat. & aliis ac quibuscumque quatuor vel plur. eorum sub magno Sigillo dict. Dom. Regis Angl. concess. ad inquirend. per Sacrament. probor. & legal. hom. de Com. Midd. præd. ac aliis viis modis & mediis quibus melius sciverint aut poterint tam infra libertat. quam extra, per quos rei veritas sciri poterit de quibuscumque; proditio. misprison. proditio. insurrection. rebellion. controfractur. tonsur. lotur. falsis fabrication. & al. falsitat. monet. & hujus Regni dict. Dom. Regis Angl. & al. Regnorum sive Domin. quorumcumque; ac de quibuscumque; murdris, felon. homicid. interseccon. burglar. Rapt. mulier. congregac. & conventicul. illicit. verborum prolation. Coadunac. misprison. Confederac. falsis Alleganc. transg. Riot. Rout. Retention. escapis contemp. negligenc. concealamen. manutenen. oppressio. Cambiparcis Deception. & aliis Malefact. & Offenc. quibuscumque; nec non accessar. eorund. infra Com. præd. tam infra Libertat. prædict. quam extra, per quoscumque; & qualitercumque; habit. fact. perpetrat. sive commiss. ac de aliis articulis & Circumstant. præmissis & eorum quodlibet seu eorum aliquod vel aliqua qualitercumque; concernen. plenius veritat. & ad easdem proditi. n. & al. præmissa audiend. & terminand. secundum legem & consuetud. hujus Regni dict. Dom. Regis Angl. Assign. & per manus suas propr. deliberaver. hic in Cur. dict. Dom. Regis quoddam Record. Indictament. coram eis & aliis sociis suis nuper præantea præsent. & capt. versus Edrum. Comit. Warwic. & Holland, Carolum Dominum Mobun, de Oakebampton in Com. Devon. Ricum. French, Rogerum James & Georgium Dockwra, pro murdro ejusdem Ricci. Coote, Ar. in forma juris terminand. &c. (ejusdem Rico. French, Rogero James & Georgio Dockwra, prisonar. in dict. Gaol. dict. Dom. Regis de Newgate, causa in eodem Indictament. content. adtunc. existen.) Record. cujus quidem Indictament. patet in quibusdam Schedul. huic annex.

*Midd. ss. Memorandum quod ad Sessionem de Oyer
& Terminer Domini Regis tent. pro Com. Middlesex.
apud Hicks-Hall in St. John-Street, in Com. præd.
die Mercurii scil. septimo die Decembris, Anno Regni
Domini nostri Gulielmi tertii, Dei gratia, nunc Regis
Angliæ, &c. decimo, coram Carolo Lee, Mil. Samuele
Buck, Willielmo Witbers, Francisco Tyssen, Armige-
ris, & aliis sociis suis Justic. diēt. Dom. Regis per
Literas Paten. ipsius Dom. Regis, eisdem Justic. præ-
nominat. & al. ac quibuscunque quatuor vel pluribus
eorum sub magno Sigillo diēt. Domini Regis Angliæ
confect. ad inquirend. per sacrament. probor. & lega-*

lium bom. Com. Middlesex. præd. ac aliis viis mod. & med. quibus melius sciverint aut poterint tam infra libertat. quam extra per quos rei veritas melius sciri poterit de quibuscunque proditio. misprison. proditio. insurrection. rebellion. controsactur. tonsur. latur. falsis fabrication. & aliis falsitat. monet. hujus Regni dicti. Dom. Regis Angl. & al. Regnor. sive Dominior. quorumcunque ac de quibuscunq; murdris, felon. homicid. interfection. burglar. rapt. Mulier. congregat. & conventicul. illicit. verborum prolation. coadunat. misprison. confederat. falsis allegan. transgr. riot. rout. retention. escapiis contempt. negligenc. concealmen. manutenen. oppressio. cambiparciis deception. & aliis malefactis & offensis quibuscunq; necnon Accessar. eorumdem infra Com. præd. tam infra libertat. quam extra, per quoscunque & qualitercunque habit. fact. perpetr. sive commiss. ac de aliis articulis & circumstantiis præmissa & eor. quodlibet vel aliqua qualitercunque concernen. plenius veritat. & ad easdem proditio. & al. præmiss. audiend. & terminand. secund. legem & cons. hujus Regni dicti Dom. Regis Angl. assign. per sacrm. Egidii Riddle, Richardi Reed, Roberti Leg, Josephi Partherich, Johannis Marriott, Jonathan Hall, Nicolai Baker, Roberti Teague, Thomæ Briggs, Willielmi Brace, Thomæ Williams, Georgii Bishop, Thomæ Hodges, Johannis Lynn, Samuelis Lee, Richardi Rogers, Josephi Rogers, Johannis Cheney, Johannis Fowler, & Roberti Nicholson, probor. & legalium hominum Com. præd. ad hunc & ibidem jurat. & onerat. ad inquirend. pro dicto Dom. Rege & corpore Com. præd. præsentat. existit. qd. Billâ Indictament. huic Schedul. annex. est vera.

Midd. Jf. Juratur. pro Domino Rege super sacrum. suum præsentant quod Edwardus Comes Warwic. & Holland, nuper de paroch. S. Martini in Campis in Com. Middlesex. Carolus Dominus Mobun, Baro Mobun de Okehampton, in Com. Devon. nuper de paroch. præd. in Com. Middlesex. præd. Richardus French, nuper de paroch. præd. in Com. Middlesex. præd. Gen. Rogerus James, nuper de paroch. præd. in Com. Middlesex. præd. Gen. & Georgius Dockwra, nuper de paroch. præd. in Com. Middlesex. præd. Gen. Deum præ oculis suis non habentes, sed instigatione diabolica moti & seducti tricesimo die Octobris, Anno Regni Domini Gulielmi tertii, Dei gra. Angl. Scoc. Franc. & Hibern. Regis, fidei defens. &c. decimo, vi & armis, &c. apud paroch. præd. in Com. Middlesex. præd. in & super quendam Richardum Coote, Ar. in pace Dei & dicti Domini Regis, nunc adtunc & ibidem existen. felonice voluntarie & ex malitiis suis præcogitat. insult. fecer. & qd. præd. Edwardus Comes Warwic. & Holland, cum quodm. gladio. (Anglice a Sword) de ferro & chalice confect. valor. quinque solidor. quem ipse idem Edwardus Comes Warwic. & Holland, in manu sua dextra adtunc & ibidem extract. habuit & tenuit, præfat. Ricardum Coote in & super sinistram part. pectoris ipsius Ricardi Coote prope Os Collar, (Anglice the Collar Bone) ipsius Ricardi Coote adtunc & ibidem felonice voluntarie & ex malitia sua præcogitat. percussu pupugit & inforavit (Anglice did strike, stab, and thrust in) dans eidem Richardo Coote, adtunc & ibidem cum gladio extract. præd. in & super dict. sinistram partem pectoris ipsius Ricci. Coote, prope Os Collar, (Anglice the Collar Bone) ipsius Ricci. Coote unum vulnus mortal. (Anglice one mortal Wound) latitud. dimidii unius pollicis & profund. quinq; pollicium; de quo quidem vulnere mortal. præd. Ricus. Coote adtunc & ibm. instant. obiit. Et qd. præd. Carolus Dnus. Mobun, Ricus. French, Rogerus James & Georgius Dockwra, adtunc & ibm. felonice voluntarie & ex malitiis suis præcogitat. fuer. presen. auxilian. abettan. confortan. assysten. & manutenen. præfat. Edrum. Comit. Warwic. & Holland, ad præfat.

præfat. Ricum. Coote, modo & forma præd. felonice voluntarie & ex malicia sua præcog. interficiend. & murdrand. Et sic Jur. præd. super sacrm. suum præd. dic. qd. præd. Edrus. Comes Warwici & Holland, Carolus Dnus. Mobun, Ricus. French, Rogerus James & Georgius Dockwra, præfat. Ricum. Coote, modo & forma præd. felonice voluntarie & ex maliciis suis præcogitat. interfecer. & murdraver. contra pacem dei. Domini Regis nunc Coron. & Dignitat. suas, &c.

Ricus. French, 13 Januar. 98. pon. se Cul. de Felon. & Homicid. tant. Non cul. de Murdro. catalla nulla. Pet. Librum. Legit ut Clericus. Crematio respectuatur quousq; &c.

Rogerus James, 13 Jan. 98. pon. se cul. de Felon. & Homicid. tant. Non. cul. de. Murdro. catalla nulla. Petit Librum. Legit ut Clericus. Crematio respectuatur quousq; &c.

Billa vera. Samuel Cowthorne de paroch. sti. Martini in Campis in Com. Midd. Yoman, Willus. Cripps de paroch. præd. in Com. præd. Yoman, Henricus Pomfret de paroch. præd. in Com. præd. Yoman,

Willus. Salmon de paroch. præd. in Com. præd. Chirurgus,

Robtus. Applgate de paroch. præd. in Com. præd. Yoman.

Jur. in Cur.

Midd. ff. Memorand. qd. ad. Deliberation. Gaole Dni. Regis de Newgate tent. pro Com. Midd. apud Justice-Hall in le Old-Bailey in Suburbis Civitat. London. die Mercurii scilicet. Septimo die Septembris, Anno Regni Dni. nri. Gulielmi tertii Dei grat. Angl. Scot. Franc. & Hiberniæ Regis, Fidei Defens. &c. decimo coram Franco Child, Mil. Majore Civitat. London. Georgio Treby, Mil. Capital. Justic. dei. Dni. Regis de Banco, Littleton Powis, Mil. uno Baron. Secii. dicti. Dni. Regis, Thomas Stamp, Mil. Edro. Clarke, Mil. Aldris. dicti. Civitat. London. Salathiel Lovell, Mil. Servien. dei. Dni. Regis ad Legem ac Recordatore dicti. Civitat. London. & aliis Sociis suis Justic. dei. Dni. Regis ad Gaolam ipsius Dni. Regis de Newgate præd. de Prisonar. in eadem existen. deliberand. assign. ven. Robertus White, gen. Coronator dei. Dni. Regis infra libertat. Decani & Capituli Ecclesiæ Collegiat. bti. Petri Westm. Civitat. Burgi & Ville Westm. in Com. Midd. præd. Et per manus suas proprias deliberavit hic in Cur. quandam Inquisition. de morte Ricci. Coote, Ar. coram eo nuper capt. in Cur. hic de Recordo in forma juris terminand. Quæ quidem Inquisitio huic Schedule annex. est,

pon. se

Civitas, Burgus } ff. Inquisitio indentat. capt. pro
& Villa Westm. } Dno. Rege apud paroch. sti.
in Com. Midd. } Martini in Campis infra Libertat. Decani & Capitli. Ecclesiæ Collegiat. bti. Petri Westm. Civitat. Burgi & Ville Westm. in Com Midd. tricesimo die Octobris, Anno Regni Dni. nri. Gulielmi tertii Dei gra. Angl. Scot. Franc. & Hiberniæ Regis Fidei defensoris, &c. decimo, coram Roberto White, gen. Coronatore dei. Dni. Regis Libertat. præd. super visum Corporis cujusdam Ricci. Coote, Ar. ibm. jacen. mort. per sacrm. Jobis. Harris, Petri Solomon, Ricci. Newgent, Willi. Fryer, Samuelis Thomson, Jacobi Timberlick, sen. Jacobi Timberlick, jun. Ricci. Jackson, Jobis. Finch, Samuelis Powell, Samuelis Dimont, Robti. Giltrick, Jobis. Paulin, Josephi Vernon, Thomæ Smithson, Andreæ Rogers & David Jones, proborum & le-

gium. homin. Libertat. præd. jurat. & onerat. ad inquirend. pro dno. Dno. Rege quando qualiter & quomodo præfat. Ricus. Coote ad mortem suam devenit dicunt super sacrm. suum præd. qd. Edrus. Comes Warwic. & Holland, nuper de paroch. sti. Martini in Campis infra Libertat. præd. in Com. præd. Carolus Dnus. Mobun, nuper de paroch. præd. infra Libertat. præd. in Com. præd. Ricus. French, nuper de paroch. præd. infra Libertat. præd. in Com. præd. gen. Rogerus James nuper de paroch. præd. infra Libertat. præd. in Com. præd. gen. & Georgius Dockwra nuper de paroch. præd. infra Libertat. præd. in Com. præd. gen. Deum. præ oculis suis non hentes, sed Instigatione diabolica moti & seducti deo. tricesimo die Octobris Anno decimo suprascripto, vi & armis, &c. apud paroch. præd. infra Libertat. præd. in Com. præd. in & super præfat. Ricum. Coote, in pace Dei & dei. Dni. Regis, nunc adtunc & ibm. existen. felonice voluntarie & ex maliciis suis præcogit. insult. fecer. & qd. præd. Ricus. French, cum quodam Gladio (Anglice, a Rapier) de ferro & chilibe confect. valoris quinq; solid. quem ipse idem Ricus. French, in manu sua dextra adtunc & ibm. extract. buit. & tenuit præfat. Ricum. Coote, in & super sinistram partem pectoris ipsius Ricci. Coote, prope Os Collar, (Anglice, the Collar Bone) ipsius Ricci. Coote, adtunc & ibm. felonice voluntarie & ex malicia sua præcogitat. percussit & pupugit dans eidem Rico Coote, adtunc & ibm. cum gladio præd. extract. in & super præd. sinistram partem pectoris ipsius Ricci. Coote, prope dict. Os Collar ipsius Ricci. Coote, unum vulnus mortale longitudinis dimid. unius pollicis & profunditatis quinq; pollicium, de quo quidem vulnere mortali præd. Ricus. Coote, apud paroch. præd. infra Libertat. præd. in Com. præd. instanter obiit. Et qd. prædicti Edrus. Comes Warwic. & Holland, Carolus Dnus. Mobun, Rogerus James, & Georgius Dockwra, adtunc & ibm. felonice voluntarie & ex maliciis suis præcogitat. faer. presentes auxiliantes abstantes consertantes assistentes & mnutentes præfat. Ricum. French, ad prædictum Ricum. Coote, in forma præd. felonice voluntarie & ex malicia sua præcogitat. interficiend. & murdrand. Et sic Jur. præd. dicunt super sacrm. suum præd. quod præd. Edrus. Comes Warwici & Holland, Carolus Dnus. Mobun, Ricus. French, Rogerus James & Georgius Dockwra, præfat. Ricum. Coote, modo & forma prædicti. felonice voluntarie & ex maliciis suis præcogitat. interfecer. & murdraver. contra pacem dei. Dni. Regis nunc Coron. & Dignitat. suas, &c. Et ulterius Jur. præd. dicunt super sacrum. suum præd. qd. immediate post Feloniam & Murdrum. præd. per ipsos modo & forma præd. fact. & perpetrat. apud paroch. præd. infra Libertat. præd. in Com. præd. fugam. fecer. Quæ bona & catalla terras sive tenementa præd. Edrus. Comes Warwici Holland, Carolus Dnus. Mobun, Ricus. French, Rogerus James & Georgius Dockwra, tempore Feloniæ & Murdri prædicti. per ipsos modo & forma præd. fact. & perpetrat. sive aliquo tempore postea usque diem Captionis hujus Inquisitionis hab. erunt Jur. præd. penitus ignorant. In cujus Rei Testimonium tam præfat. Coronator quam Jur. præd. huic Inquisitioni Sigilla sua alternatim apposuerunt die anno & loco, primo supra dictis.

Ricus. French, 13 Jan. 98. pon. se cul. de felon. & homicidio tant. Non cul. pro Murdro. Catalla nulla. Judicium super Indictamentum.

Rogerus James, 13 Jan. 98. pon. se cul. de felon. & homicid. tant. Non cul. pro Murdro. Catalla nulla. Judicium super Indictamentum.

Georgius

Georgius Dockwra 13 Jan. 98. pon. se cul. de felon. & homicid. tantum. Non cul. pro Murdro. Cattalla nulla. Judicium super Indictamentum.

Midd. ss. Memorandum qd. ad Sessionem de Oyer & Terminer Domini Regis tent. pro Com. Middlesex. apud Hicks-Hall in S. John-street in Com. præd. die Mercurii scilicet septimo die Decembris Anno Regni Domini nostri Gulielmi Tertii Dei gratia nunc Regis Angliæ, &c. decimo, coram Carolo Lee, Mil. Samuele Buck, Willielmo Withers, Francisco Tysson, Armigeris, & aliis Sociis suis Justic. dict. Dom. Regis per Literas Patent. ipsius Dom. Regis eisdem Justic. præ-nominat. & al. ac quibuscunque quatuor vel pluribus eorum sub magno Sigillo dict. Dni. Regis Angliæ confect. ad Inquirend. per sacrm. probor. & legalium bom. de Com. Middlesex. præd. ac aliis viis mod. & med. quibus melius sciverint aut poterint, tam infra Libertates quam extra, per quos rei veritas melius sciri poterit & inquiri de quibuscunque Prodition. Misprision. Prodition. Insurrection. Rebellion. Controfactur. Tonsur. Lotur. & falsis Fabrication. & aliis falsitat. Monet. hujus Regni dict. Dom. Regis Angliæ & aliorum Regnerum sive Dominior. quorumcunque ac de quibuscunque Murdris Feloniis Homicidiis Interfection. Burglar. Rapt. Mulier. Congregat. & Conventicul. illicit. Verborum prolation. coadunat. Misprision. Confederat. falsis Alleganc. Transgr. Riot, Rout, Retention. Escapiis Contempt. Negligen. Concelamen. Manutenen. Oppr. sionibus Cambiparciis Deception. & aliis Malefactis & Offensis quibuscunque, necnon Accessar. eorundem infra Com. præd. tam infra Libertat. quam extra, per quoscunque & qualitercunque habit. fact. perpetrat. sive commiss. Ac. de aliis Articulis & Circumstantiis præmissa & eorum quodlibet seu eorum aliquod vel aliqua qualitercunque concernen. plenius veritat. Et ad easdem Proditiones & alia Præmissa audiend. & terminand. scdm. Legem & Conf. hujus Regni dei. Dni. Regis Angliæ assign. per sacrm. Ægidii Riddle, Ricci. Read, Roberti Legg, Josephi Partherich, Jobis. Marriot, Jonathan Hall, Nicholai Barker, Roberti Teague, Thomæ Briggs, Willi. Brace, Thomæ Williams, Georgii Bishop, Thomæ Hodges, Jobis. Lynn, Samuelis Lee, Ricci. Rogers, Jobis. Cheney, Jobis. Foxel r & Roberti Nicholson, proborum & legalium Hominum Com. præd. & tunc & ibm. jurat. & onerat. ad inquirend. pro dco. Dno. Rege & corpore Com. præd. presentat. existit qd. Edrus. Comes Warwici & Holland. nuper de paroch. S. Martini in campis in Com. præd. Carolus Dnus. Mobun, Baro Mobun de Oakehampton, in Com. Devon. nuper de Paroch. præd. in Com. Midd. præd. Ricus French, nuper de paroch. præd. in Com. Midd. præd. gen. Rogerus James, nuper de paroch. præd. in Com. Midd. præd. gen. & Georgius Dockwra, nuper de paroch. præd. in Com. Midd. præd. gen. Deum præ oculis suis non bentes, sed instigatione diabolicamot. & seduct. 30 die Octobri Anno Regni Gulielmi tertii Dei Gratia Angl. Scoc. Franc. & Hiberniæ Regis Fidei defensoris, &c. decimo, vi & armis, &c. apud paroch. præd. in Com. Midd. præd. in & super quendam Ricum. Coote, Ar. in pace Dei & dei. Dni. Regis nunc ad tunc & ibidem. existen. felonice voluntarie & ex maliciis suis præcogitat. insuit. fecer. Et qd. præd. Comes Warwici & Holland, cum quodam Gladio (anglice, a Sword) de ferro & Chalibe confect. valoris quinq; solid. quem ipse idem Edrus. Comes Warwici & Holland, in manu sua dextra adiunc & ibd. extraet. buit & tenuit, præfat. Ricum. Coote, in & super sinistram partem pectoris ipsius Ricci. Coote, prope Os Collar (anglice, the Collar Bone) ipsius Ricci. Coote, ad tunc & ibm. felonice voluntarie & ex malicia sua præcogitat. percussit pupugit & inforavit (anglice, did strike,

stab, and thrust in.) Dans eidem Rico. Coote, ad tunc & ibm. cum gladio extraet. præd. in & super dict. sinistram partem pectoris ipsius Ricci. Coote, prope Os Collar, (anglice, the Collar Bone) ipsius Ricci. Coote, unum Vulnus mortale (anglice, one mortal Wound) latitudinis dimidii pollicis & profunditatis quinq; pollicium, de quo quidem Vulnere mortali præd. Ricus. Coote, ad tunc & ibm. instanter obiit. Et qd. præd. Carolus Dnus. Mobun, Ricus. French, Rogerus James & Georgius Dockwra, ad tunc & ibm. felonice voluntarie & ex maliciis suis præcogitat. fuer. presentes auxiliantes abettantes confortantes assistentes & manutinentes præfat. Edrum. Comitem Warwici & Holland, ad præfat. Ricum. Coote modo & forma præd. felonice voluntarie & ex malicia sua præcogitata interficiend. & Murdrand. Et sic fur. præd. super sacra. suum præd. dicunt. qd. prædict. Edrus. Comes Warwici & Holland, Carolus Dnus. Mobun, Ricus. French, Rogerus James, & Georgius Dockwra, præfat. Ricum. Coote, modo & forma præd. felonice voluntarie & ex maliciis suis præcogitatis interfecer. & murdraverunt contra pacem dei. Dni Regis nunc Coron. & Dignitat. suas, &c. Per quod Præceptum est vic. Midd. qd. non omitteret, &c. quin caperet predictos Edrum. Comitem Warwici & Holland, Carolum Dnum. Mobun, Ricum. French, Rogerum James & Georgium Dockwra, ad respondend. &c. Quod quidem Indictamentum præfat. Justic. dei. Dni. Regis (per decas. Literas paten. ipsius Dni. Regis eisdem Justic. præ-nominat. & aliis ac quibuscunque quatuor vel pluribus eorum sub magno Sigillo dei. Domini Regis Angliæ ut præfertur confect.) postea scilicet. ad Deliberationem Gaolæ dei. Dni. Regis de Newgate tent. pro Com. Midd. præd. apud Justice-Hall in le Old-Baily in Suburbis Civitat. Lond. dco. die Mercurii scilicet septimo die ejusdem Mensis Decembris Anno Regni dei. Dni. Regis nunc decimo supradicto coram Francisco Child, Mil. Majore Civitat. Lond. n. Georgio Treby, Mil. Capital. Justic. dei. Dni. Regis de Banco, Littleton Powis, Mil. uno Baronum Secii. dei. Dni. Regis, Thoma Stampe, Mil. Edro. Clarke, Mil. Aldris. dco. Civitat. London. Salathiel Lovell, Mil. Servien. dei. Dni. Regis ad Legem ac Recordatore dco. Civitatis London. & aliis Sociis suis Justic. dei. Dni. Regis ad Gaolam dei. Dni. Regis de Newgate, præd. de Prisonar. in eadem existen. deliberand. assign. per manus suas proprias deliberaverunt hic in Cur. de Recordo in forma juris terminand. &c. Super quo postea scilicet. ad deliberationem Gaolæ dei. Dni. Regis de Newgate præd. die Veneris scilicet. 13 die Jan. Anno Regni dei. Dni. Regis nunc decimo supradicto coram Francisco Child, Mil. Majore Civitat. London. Edro. Ward, Mil. Capital. Baron. Secii. dei. Dni. Regis Henrico Hatfall, Mil. uno Baron. Secii. dei. Dni. Regis Thoma Stamp, Mil. Edro. Clarke, Mil. Aldris. dco. Civitat. London. Salathiel Lovell, Mil. Servien. dei. Dni. Regis ad Legem ac Recordatore dict. Civitat. Lond. & aliis sociis suis Justic. dei. Dni. Regis ad Gaolam ipsius Dni. Regis de Newgate prædict. de Prisonar. in eadem existen. deliberand. assign. vener. prædict. Ricus. French, Rogerus James & Georgius Dockwra, sub custod. Willi. Goare, Militis, & Josephi Smart, Militis, vic. Com. præd. (incustod. cujus ex causa præd. in Gaolam. de Newgate præd. præcanea commissi fuer.) Ad Barram hic duct. in propriis personis suis & statim de præmissis in Indictamento præd. superius specificat. eis superius separatim imposuit. separatim allocut. qualiter se velint inde acquietari iidem Ricus. French, Rogerus James & Georgius Dockwra, separatim dicunt qd. ipsi non sunt inde culpabiles nec aliquis eorum est inde culpabilis & inde de bono & malo separatim. pon. se super priam, &c. Jo. immediate ven. inde Jura. coram p afa.

præfat. Justic. dci. Dni. Regis ult. noiat. hic, &c. Et qui nec, &c. Ad recogn. &c. Et Jur. Jure. ill. per præfat. Vic. ad hoc impanellat. (scilicet.) Cbrus. Rednap, Thomas Moody, Thomas Dunck, Simo. Smith, Jobes. Smith, Michael Miles, Thomas Rowell, Naibaniel Lee, Josephus Devenish, Henricus Bradbury, Willus. Giles & Jobes. Burgoyne, exalti vener. qui ad veritat. de & super præmissis præd. dicend. electi triati & jurati dicunt super sacrm. suum qd. præd. Ricus. French, Rogerus James & Georgius Dockwra, sunt culpabiles, & quilibet eorum est culpabilis de Homicidio & Felonica Interfectione præfat. Rici. Coote, in Indictamento præd. superius nominat. Et qd. iidem Ricus. French, Rogerus James & Georgius Dockwra, tempore Feloniæ & Homicidii præd. per ipsos Ricum. French, Rogerum James & Georgium Dockwra, in forma præd. commiss. seu unquam postea non buer. nec aliquis eorum buit. nec bent. nec aliquis eorum bet. aliqua bona seu catalla terras sive tenementa ad noticiam Jur. præd. sed. iidem Jur. ulterius dicunt super sacrum. suum præd. qd. præd. Ricus. French, Rogerus James & Georgius Dockwra, non sunt culpabiles nec eorum aliquis est culpabilis de Murdro præd. in Indictamento præd. superius specificat. eis superius separatim imposit. prout iidem Ricus. French, Rogerus James & Georgius Dockwra pro seipsis superius plitando. allegaver. nec seipsos ea occone. unquam retraxer. nec eorum aliquis se ea occone. unquam retraxit. Super quo visis & per cur. hic intellectis omnibus & singulis præmissis Conf. est per cur. hic qd. præd. Ricus. French, Rogerus James & Georgius Dockwra, quoad Murdum præd. in Indictamento præd. superius spec. eis superius separatim imposit. sint quiet. Et eant & quilibet eorum sit quiet. & eat inde sine die, &c. Et superinde statim separatim per cur. hic quesit. est de præfat. Rico. French, Rogero James & Georgio Dockwra, si quid pro se habeant vel discere sciant vel aliquis eorum aliquid pro se habeat vel discere sciat quare cur. hic ad Judicium & Executionem de eis & eorum quolibet super Veredicto præd. quoad Homicidium & Felonicam Interfectionem præfat. Rici. Coote, procedere non debet, qui separatim dicunt qd. ipsi sunt Clerici & quilibet eorum est Clericus & separatim petunt Beneficium Clericale eis & cuilibet eorum in hac parte allocari & super hoc (tradito eisdem Rico. French, Rogero James & Georgio Dockwra separatim per cur. hic Libro) iidem Ricus. French, Rogerus James & Georgius Dockwra, separatim legunt ut Clerici & quilibet eorum legit ut Clericus; sed quia cur. dci. Dni. Regis hic & præfat. Justic. dci. Dni. Regis ult. noiat. de Judicio suo de & super Præmissis præd. quoad Homicidium præd. & Felonicam Interfectionem præfat. Rici. Coote reddend nondum advisantur, Ideo dies inde dat. est præfat. Rico. French, Rogero James & Georgio Dockwra, in statu quo nunc, &c. usq; prox. Gaule deliberationem dci. Dni. Regis de Newgate, præd. pro Cem. Midd. præd. tenend. de Judicio suo de & super præmissis illis aud. &c. Eo qd. præfat. Judic. dci. Dni. Regis ult. noiat. & cur. hic inde nondum, &c.

Lord High Steward. Is it your Lordships Pleasure that the Judges may be covered?

Lords. Ay, ay.

Then the Judges put on their Caps.

Clerk of the Crown. Serjeant at Arms, make Proclamation.

Serjeant at Arms. O yes, O yes, O yes, chief Governor of the Tower of London, bring forth the Body of Edward Earl of Warwick and Holland, your Prisoner, forthwith, on Pain and Peril will tall thereon.

[Then the Earl of Warwick was brought to the Bar by the Deputy-Governor of the Tower of London, having the Ax carried before him by the Gentleman Jaylor, who stood with it at the Bar, on the Right Hand of the Prisoner, turning the Edge from him; the Prisoner at his Approach to the Bar making three Bows, one to his Grace the Lord High Steward, the other to the Peers on each Hand; and his Grace and the Peers returned the Salute.]

Lord High Steward. My Lord of Warwick, your Lordship is brought before this great Judicature, in order to your Trial. You stand indicted by the grand Inquest for the County of Middlesex, as guilty of the Murder of one of the King's Subjects, for whose Blood Justice requires a strict Inquisition should be made.

Your Lordship is call'd to answer this Charge before the whole Body of the House of Peers assembled in Parliament. It is a great Misfortune to be accused of so heinous an Offence, and it is an Addition to that Misfortune, to be brought to answer as a Criminal before such an Assembly, in Defence of your Estate, your Life, and Honour. But it ought to be a Support to your Mind, sufficient to keep you from sinking under the Weight of such an Accusation, that you are to be try'd before so noble, discerning, and equal Judges, that nothing but your own Guilt can hurt you. No Evidence will be received, but what is warranted by Law; no Weight will be laid upon the Evidence, but what is agreeable to Justice; no Advantage will be taken of your Lordship's little Experience in Proceedings of this Nature; nor will it turn to your Prejudice, that you have not the Assistance of Counsel in your Defence, as to the Fact, (which cannot be allowed by Law) and their Lordships have already assigned you Counsel, if any Matters of Law should arise.

Your Lordship, throughout your whole Trial, may assuredly promise your self, to find all the Candor and Compassion which is consistent with impartial Justice; beyond that nothing is to be expected: Their Lordships can never so far forget themselves, as to depart from what is right, and to draw the Guilt of Blood upon their own Heads; but if your Lordship is innocent you are safe.

My Lord, It will be requisite for you to recollect yourself upon this Occasion, in the best manner you can. You ought to hear with Temper, what the King's Counsel have to say, without interrupting them, and to hearken carefully to the Witnesses produced against you, that you may be ready to cross-examine them if you find Cause, and to make your Observations upon the Evidence when the proper Time comes for your Lordship to make your Defence; of which I will not fail to give you Notice; and when that Time does come, your Lordship may be assured, your self and your Witnesses will be heard with great Patience and Attention; and when my Lords have heard and considered the whole Matter, the Judgment will unquestionably be according to the Rules of Justice, and such as will become the Honour of this high Court.

Read the Indictment to my Lord.

Earl of Warwick. My Lord, I beg I may have the Use of Pen, Ink, and Paper.

Lord High Steward. Will your Lordships please to allow my Lord Warwick Pen, Ink, and Paper?

Lords.

Lords. Ay, ay.

Lord High Steward. Carry Pen, Ink, and Paper to my Lord. (*Which was done by the Clerk.*)

Lord High Steward. My Lord, your Lordship will do well to give Attention while the Indictment is read to you. Read it to my Lord in English.

Clerk of the Crown. **Y**our Lordship stands indicted by the Name of Edward Earl of Warwick and Holland, late of the Parish of St. Martin in the Fields in the County of Middlesex; for that your Lordship, together with Charles Lord Mohun, Baron Mohun of Oakehampton in the County of Devon, late of the Parish aforesaid in the County of Middlesex aforesaid, Richard French, late of the Parish aforesaid in the County of Middlesex aforesaid, Gent. Roger James, of the Parish aforesaid in the County of Middlesex aforesaid, Gent. and George Dockwra, late of the Parish aforesaid in the County of Middlesex aforesaid, Gent. not having the Fear of God before your Eyes, but being moved and seduced by the Instigation of the Devil, the 30th Day of October, in the tenth Year of the Reign of our Sovereign Lord William the Third, by the Grace of God King of England, Scotland, France, and Ireland, Defender of the Faith, &c. with Force and Arms, &c. at the Parish aforesaid, in the County of Middlesex aforesaid, in and upon one Richard Coote, Esq; in the Peace of God, and of our said Sovereign Lord the King, then and there being, feloniously, voluntarily, and of your Malice afore-thought, did make an Assault; and that your Lordship, the said Edward Earl of Warwick and Holland, with a certain Sword made of Iron and Steel of the Value of Five Shillings, which you the said Edward Earl of Warwick and Holland, in your Right Hand then and there had and held drawn, the aforesaid Richard Coote, in and upon the left Part of the Breast of him the said Richard Coote, near the Collar Bone of him the said Richard Coote, then and there feloniously, voluntarily, and of your Malice afore-thought, did strike, stab, and thrust in, giving to the said Richard Coote, then and there with the Sword drawn aforesaid, in and upon the left Part of the Breast of him the said Richard Coote, near the Collar Bone of him the said Richard Coote, one mortal Wound of the Breadth of half an Inch, and of the Depth of five Inches, of which said mortal Wound the aforesaid Richard Coote then and there instantly died: And that the aforesaid Charles Lord Mohun, Richard French, Roger James, and George Dockwra, then and there feloniously, voluntarily, and of their Malice aforethought, were present, aiding, abetting, comforting, assisting, and maintaining you the said Edward Earl of Warwick and Holland, the said Richard Coote, in Manner and Form aforesaid, feloniously, wilfully, and of your Malice afore-thought, to kill and murder; and so you the said Edward Earl of Warwick and Holland, and the said Charles Lord Mohun, Richard French, Roger James, and George Dockwra, the aforesaid Richard Coote, in Manner and Form aforesaid, feloniously, voluntarily, and of your Malice aforethought, did kill and murder, against the Peace of our Sovereign Lord the King, that now is, his Crown and Dignity, &c.

How say you, Edward Earl of Warwick and Holland, are you guilty of this Felony and Murder whereof you stand indicted, or not guilty?

Earl of Warwick. Not guilty.

Clerk of the Crown. Culprit, How will your Lordship be tried?

Earl of Warwick. By God, and my Peers.

Clerk of the Crown. God send your Lordship a good Deliverance.

Then at the Motion of some Lords who sat towards the upper End of the House, and by Reason of the Distance could not distinctly hear the Clerk, the Indictment was read again, the Clerk standing near the upper End of the House.

C. of the Crown. Serjeant at Arms, make an O Yes.

Serjeant at Arms. O Yes, O Yes, O Yes, If any one will give Evidence on behalf of our Sovereign Lord the King, against Edward Earl of Warwick and Holland, of the Felony and Murder whereof he stands indicted, let them come forth, and they shall be heard; for now he stands at the Bar upon his Deliverance.

L. H. St. Will your Lordships give me leave to go down to the Wooll-pack, that I may hear the better.

Lords. Ay, ay.

Then his Grace removed to the Woolpack, and delivered the White Staff to be held by the Gentleman Usher of the Black Rod, who during the whole Trial always received and delivered back the White Staff upon his Knees.

L. H. St. Mr. Attorney, are you ready to proceed?

* Mr. Att. Gen. Yes, my Lord.

L. H. St. Then begin, Sir.

* Sir Thomas Trevor.

Mr. Serj. Wright. May it please your Lordships.

L. H. St. Pray, Mr. Serjeant, raise your Voice as much as possible you can, that my Lords towards the upper end of the House may hear.

Mr. Serj. Wright. May it please your Lordships, this noble Lord Edward Earl of Warwick and Holland, the Prisoner at the Bar, stands indicted for the felonious Killing and Murder of one Richard Coote, Esq; and the Indictment sets forth, That upon the 30th Day of October, in the tenth Year of his Majesty's Reign, at the Parish of St. Martin in the Fields, in the County of Middlesex, the Prisoner at the Bar, the Earl of Warwick, together with Charles Lord Mohun Baron of Oakehampton, Richard French, Roger James, and George Dockwra, Gent. feloniously, voluntarily, and of their Malice afore-thought, did make an Assault upon the said Richard Coote, in the Indictment named; and the Indictment chargeth, that the Earl of Warwick, at the same Time and Place, with a Sword, feloniously, voluntarily, and of his Malice afore-thought, did give unto the said Richard Coote, in or upon the left Part of the Breast of him the said Richard Coote, near his Collar Bone, one mortal Wound of the Breadth of half an Inch, and of the Depth of five Inches, of which said Wound the said Richard Coote then and there instantly died; and the Indictment further charges, that the said Charles Lord Mohun, Richard French, Roger James, and George Dockwra, the Earl of Warwick, to commit the Felony and Murder aforesaid, were then and there aiding, assisting, comforting, and abetting; and so the Jurors charge, that he the said Edward Earl of Warwick and Holland, Charles Lord Mohun, Richard French, Roger James, and George Dockwra, the said Richard Coote, feloniously, voluntarily, and of their Malice afore-thought, at the Parish aforesaid, in the County aforesaid,

aforesaid, did kill and murder, against the Peace of our sovereign Lord the King, his Crown and Dignity. To this Indictment this noble Lord the Prisoner at the Bar, *Edward Earl of Warwick and Holland*, has pleaded not guilty, and for his Trial hath put himself upon my noble Lords his Peers here present: We shall call our Evidence, and if we prove this Fact for the King, we do not doubt but your Lordships will give such Judgment for the same as shall be just.

Mr. Att. Gen. May it please your Lordships, I am of Counsel in this Cause for the King against this noble Lord *Edward Earl of Warwick and Holland*, the Prisoner at the Bar, who stands indicted by the grand Jury of the County of *Middlesex*, has been arraigned, and is now to be tried before your Lordships for the felonious killing and murdering of Mr. *Coote*, in the Indictment named; the Evidence to make good this Charge against this noble Lord, it comes to my turn to open to your Lordships.

My Lords, the Case, as to the Fact, according to my Instructions, is this: Upon *Saturday* the 29th of *October* last, at Night, my Lord of *Warwick*, my Lord *Mobun*, Mr. *French*, Mr. *Dockwra*, and Mr. *Coote*, the unfortunate Gentleman who was killed, met together at one *Locket's*, who kept the *Greyhound Tavern* in the *Strand*, and there they stayed till it was very late; about twelve of the Clock at Night, or thereabouts, a Messenger was sent by the Company to fetch another Gentleman, Mr. *James*; and Mr. *James* coming to them, in what Condition your Lordships will be told by the Witnesses; about one of the Clock in the Morning, on *Sunday* the 30th of *October*, they all came down out of the Room where they had been so late, to the Bar of the House, and there, as the Witnesses will tell your Lordships, Swords were drawn, and Chairs were called for, and two Chairs which were nearest at hand came, and two of the Company went into those Chairs; who they were, and what past at that Time, the Witnesses will tell your Lordships; those that got into those Chairs came out again, and more Chairs were called for. But I must acquaint your Lordships, that my Lord *Mobun*, when the two Gentlemen that went into the Chairs ordered the Chairmen to take them up, and carry them away, spoke to them to stop and go no further, for there should be no quarreling that Night, and that he would fend for the Guards and secure them; and after this they came out of the Chairs again; it will appear there were Swords drawn amongst all of them, and some Wounds given: More Chairs being called for, and brought, this noble Lord that is here at the Bar, my Lord of *Warwick*, my Lord *Mobun*, and the other four Gentlemen, went all into the Chairs, and gave the Chairmen Directions whither they should carry them, at leastwise the Foremost had Directions given them, and the rest were to follow them; it was a very dark Night, but at last they came all to *Leicester Square*; and they were set down a little on this Side the Rails of the Square, and when the Chairmen had set them down they went away; but immediately some of them heard my Lord of *Warwick* calling for a Chair again, who came towards the Rails, and there they found two of the Gentlemen that had been carried in some of the other Chairs, holding up Mr. *Coote* between them, and would have had the Chairmen carried him away to a Surgeon's, but they found he was dying, and so would not

meddle with him; afterwards my Lord of *Warwick* and Mr. *French* were carried by two of the Chairs to Mr. *Amy's*, the Surgeon at the *Bagnio* in *Long-acre*, where Mr. *French* being wounded, was taken care of particularly by the Recommendation of my Lord of *Warwick*, and the Master of the House was called up, it being very late, Mr. *Coote's* Sword was brought to that Place, but by whom it was brought we cannot exactly say. While my Lord of *Warwick* and Capt. *French* were there, and my Lord of *Warwick* had given Orders for the denying of himself, and forbid the opening of the Door; there came the other two Gentlemen, Mr. *James* and Mr. *Dockwra*, and upon their knocking at the Door they were let in by my Lord's Order, after he had discovered who they were, looking through the Wicket. Mr. *James* had his Sword drawn, but it was broken. - My Lord of *Warwick's* Hand was slightly wounded, and his Sword bloody up to the Hilt when he came in, as will be proved by the Testimony of the Servants in the House. There was a Discourse between my Lord, Mr. *James*, and Mr. *Dockwra*, about going into the Country; but before they went, the Swords were all called for to be brought to them, and upon Enquiry, there was no Blood found upon Mr. *French's* Sword, but a great deal upon my Lord of *Warwick's*, of which great notice was taken at that Time. Mr. *Coote*, who was killed, had received one Wound in the left Side of his Breast, half an Inch wide, and five deep, near the Collar Bone; he had likewise another Wound upon the left Side of his Body; both which your Lordships will hear, in the Judgment of the Surgeon, were mortal Wounds, and the Evidence will declare the Nature of them.

My Lords, the Evidence does chiefly consist of, and depend on Circumstances, the Fact being done in the Night, and none but the Parties concerned being present at it; we shall lay the Evidence before your Lordships, as it is, for your Judgment, and call what Witnesses we have on behalf of the King, against this noble Peer the Prisoner at the Bar, and take up your Lordships Time no further in opening; and we shall begin with *Samuel Cawthorne*; he is a Drawer at the Tavern where those Lords and Gentlemen were together, and he'll give you an Account of the Time they came there, how long they staid, what happen'd in the House during their being there, and what Time they went away.

L. H. St. Give him his Oath. (*Which the Clerk did.*)

Mr. Att. Gen. My Lords, I doubt the Witness is so far off, that it will be difficult for him to hear the Questions that we are to ask him, unless we could have him nearer to us.

L. H. St. Mr. Attorney, My Lords seem to be of Opinion, that it will be more for your Advantage and theirs, that the Witnesses stand at the Distance they do; which will oblige you to raise your Voice so loud, that they may hear the Witnesses and you too.

Mr. Att. Gen. Is your Name *Samuel Cawthorne*? *Cawthorne*. Yes, my Lord.

Mr. Att. Gen. Where do you live?

Cawthorne. With Mr. *Locket* at *Charing-Cross*.

Mr. Att. Gen. Did you live with him at the *Greyhound Tavern* in the *Strand* the latter End of *October* last?

Cawthorne. Yes, I did.

Mr. Att. Gen. Well, pray will you acquaint my Lords with the Time when my Lord of *Warwick*,
my

my Lord *Mobun* and Mr. *Coote* were at that House, how long they stayed, what happen'd while they were there, and when they went away?

Cawthorne. It was Saturday Night the 29th of October last.

Mr. *Att. Gen.* Pray tell my Lords the whole of your Knowledge in the Matter.

Cawthorne. There came my Lord of *Warwick*, my Lord *Mobun*, Capt. *Coote*, Capt. *French*, and Capt. *Dockwra*, the 29th of October last, in the Evening, to my Master's House at the Grey-bound Tavern in the Strand.

Mr. *Att. Gen.* How long were they there, and what time of Night came they in?

Cawthorne. About Eight a Clock at Night, my Lord *Warwick*, my Lord *Mobun*, Capt. *French*, and Capt. *Coote*, came in.

Mr. *Att. Gen.* What Day do you say it was?

Cawthorne. Saturday, the nine and twentieth Day of October last.

Mr. *Att. Gen.* How long did they continue there?

Cawthorne. It was between One and Two the next Morning before they went away.

Mr. *Att. Gen.* Was any Body sent for to come to them there?

Cawthorne. Yes, Mr. *James*.

Mr. *Att. Gen.* What Time was that?

Cawthorne. About Twelve of the Clock.

Mr. *Att. Gen.* Did he stay with them till they went away?

Cawthorne. Yes.

Mr. *Att. Gen.* What did you observe past in the Company while they were there?

Cawthorne. I did not observe any Thing of Quarrel, not so much as an angry Word amongst them, till they came down to the Bar and were going away; when they came down to the Bar they order'd me to call them Chairs, or Coaches, and there were no Coaches to be had, and so I went for Chairs, and two Chairs came; for the Porter that went to call the Coaches was a great while before he came back; and as I said, I going for Chairs, there came two, but that they said was not enough; so more Chairs were called for, and at length there were more Chairs gotten; in the first three Chairs, my Lord of *Warwick*, my Lord *Mobun*, and Capt. *Coote* went away in; and my Lord *Warwick* and my Lord *Mobun* bid the Chairmen carry them home.

Mr. *Att. Gen.* Were there then any other Chairs at the Door?

Cawthorne. There were two more Chairs at the Door, and another was called for.

Mr. *Att. Gen.* Did you hear any Directions given where they should carry them?

Cawthorne. My Lord *Warwick* and my Lord *Mobun* bid them carry them home.

Mr. *Att. Gen.* Did you hear my Lord *Warwick* or my Lord *Mobun* particularly, and which, say whither they would be carried?

Cawthorne. I did hear my Lord *Mobun* say Capt. *Coote* should go and lie with him, or he would go and lie with Capt. *Coote* that Night, for there should be no quarrelling.

Mr. *Att. Gen.* Did they upon that go away?

Cawthorne. Mr. *French* and Mr. *Coote* were in Chairs before my Lord *Mobun* or my Lord *Warwick*, or any of the rest.

Mr. *Att. Gen.* What then happen'd upon their going into the Chairs?

Cawthorne. My Lord *Mobun* came out to them

and swore there should be no Quarrel that Night, but he would send for the Guards and secure them.

Mr. *Att. Gen.* What happen'd then?

Cawthorne. Upon that, both of them came out of their Chairs and came into the House, and there they came to the Bar, three of them in the Passage by the Bar, and three of them behind that Passage.

Mr. *Att. Gen.* Pray will you tell what did really pass throughout the whole Transaction? What was done after they came in again into the House?

Cawthorne. After that, I was bid to call for six Chairs, if I could get no Coaches, and so I did, and when I had brought what Chairs I could get, and returned to the Bar, I heard the Swords clath; when the Swords were drawn, I cannot say, nor by whom, it might be by all the six, for ought I know, because I was in the Street to call the Chairs, and when I came back to the House, I was in hopes all had been quieted, for their Swords were putting up: And when they went away in the Chairs, I did hope they went away friendly.

Mr. *Att. Gen.* Pray how did they go away, who went together?

Cawthorne. My Lord of *Warwick*, my Lord *Mobun*, and Capt. *Coote* went in the first three Chairs, them three together, and bid the Chair-men go home; the sixth Chair was not then come.

Mr. *Att. Gen.* When that Chair came, pray what Directions were given to it?

Cawthorne. I did not hear them give the Chair-men any Directions at all.

Mr. *Att. Gen.* Do you know any thing more that was done after this Time?

Cawthorne. No, my Lord, not after they went away; after I return'd with the Chairs, it was in two Minutes time that they went away.

Mr. *Att. Gen.* My Lords, I suppose he knows no more of the matter.

L. *H. St.* Will you then ask him no more Questions, Mr. Attorney?

Mr. *Att. Gen.* No, my Lords, unless this noble Lord shall ask him any Questions, upon which we shall have occasion to examine him.

L. *H. St.* My Lord, has your Lordship any Questions to ask this Witness? For now is your Time, the King's Counsel having done examining him.

E. of *War.* I desire to ask him whether I did not bid the Chair-men go home?

L. *H. St.* If your Lordship please to propose your Question to me, I will require an Answer to it from the Witness, and it will be the better heard by my Lords.

Earl of *Warwick*. My Lord, I desire to know of this Man, whether, when I went away in the Chair from his Master's House, I did not bid the Chair-men go home.

L. *H. St.* Witness, you hear my Lord's Question, What say you to it?

Cawthorne. Yes: My Lord of *Warwick* did bid the Chair-men go home.

E. of *Warwick*. My Lord, I have another Question to ask him, Whether he knows of any Quarrel there was between me and Mr. *Coote* at that Time, or any other Time, because we both used to frequent that House?

Cawthorne. No, my Lords, I never heard any angry Words between my Lord *Warwick* and Mr. *Coote* in my Life.

[Then the Lords towards the upper End of the House complaining that they did not hear his Grace, the Lord High Steward was pleased to repeat the Question thus:]

L. H. St. When my Lord of *Warwick* bid the Chairmen go home, or at any other time, did you observe that there had been any Quarrel between his Lordship and Mr. *Coote*?

E. of Warwick. My Lord, I desire he may be asked, since we both used that House, Whether that Night when I went away, or before or after, I had any Quarrel with Mr. *Coote*?

L. H. St. The Question my Lord desires you that are the Witnesses to answer, is, Whether you did hear any quarrelling or angry Words to pass between my Lord *Warwick* and Mr. *Coote* that Night before or after they came down, or when they went away, or at any other time?

Cawthorne. No, my Lord, I never heard any angry Words pass between them then, nor ever at any time before in all my Life, but I always looked upon them to be very good Friends.

E. of Warwick. I desire he may be asked, Whether Mr. *Coote* did not come to that House in my Company, and whether he did not frequently come to that House?

Cawthorne. Yes, they used to be there every Day almost, and they came that Night together in Company.

E. of Warwick. I desire he may be asked, Whether I have not been frequently in his Company there?

Cawthorne. Yes, I say very frequently, every Day almost, sometimes twice a Day.

L. H. St. Would your Lordship ask him any other Question?

E. of Warwick. My Lord, I desire he may be asked this Question, Whether he knows of any particular Kindness between Mr. *Coote* and me?

L. H. St. Do you know of any particular Kindness between my Lord *Warwick* and Mr. *Coote*, the Gentleman that was killed?

Cawthorne. Yes, my Lord, there was always a great Kindness between them as I observed, it ever was so, and I never heard angry Words pass between them, but they were very good Friends constantly; I waited upon them generally when they were at my Master's House, which was every Day almost.

E. of Warwick. I desire to know of this Witness, Whether he does not remember, or can name some particular Kindnesses that passed between Mr. *Coote* and me?

L. H. St. Can you specify any particular Instances of Kindness that passed between my Lord *Warwick* and Mr. *Coote*?

Cawthorne. Yes, my Lord of *Warwick* used generally to pay the Reckoning for Mr. *Coote*, and he did so at this Time.

E. of Warwick. My Lord, I desire he may be asked, between whom he apprehended the Quarrel to be at this Time.

L. H. St. You say, Friend, there were Swords drawn, and a Quarrelling at the Bar; Can you tell between whom the Quarrel was?

Cawthorne. My Lord *Warwick*, my Lord *Mobun*, and Capt. *Coote*, were all on one Side, and the other three were on the other Side.

E. of Warwick. Who were the two Persons that it was apprehended the Quarrel was between? I desire he may be asked.

L. H. St. You say, there were Three on the one Side, and Three on the other; pray, between whom did you apprehend the Quarrel to be?

Cawthorne. I believe the Quarrel was between Mr. *Coote* and Mr. *French*.

E. of Warwick. My Lord, I desire to know of this Witness, what Words he heard Mr. *Coote* say, after he and Mr. *French* returned into the House and came out of the Chairs.

L. H. St. What do you say to the Question my Lord proposes?

Cawthorne. I heard Mr. *Coote* say, He would laugh when he pleased, and he would frown when he pleased, God damn him.

E. of Warwick. My Lord, I desire to know who he thinks those Words were addressed to.

L. H. St. To whom did Mr. *Coote* speak these Words?

Cawthorne. Whether he spoke them particularly to Mr. *French*, or to the other two Gentlemen who were on the other Side of the Bar, I cannot directly tell.

E. of Warwick. I desire to know of him, Whether Mr. *Coote* was not One of the Three that was on the outside of the Bar?

Cawthorne. Yes, my Lord of *Warwick*, my Lord *Mobun*, and Capt. *Coote*, were of the outside of the Bar.

E. of Warwick. Was Capt. *Coote* with me in the beginning of the Night at that House?

Cawthorne. Yes, he came at the beginning of the Night with my Lord of *Warwick*.

E. of Peterb. My Lords, I desire to ask this Witness one Question.

L. H. St. I think it is proper, my Lords, in Point of Method, to let both Sides have done before any Questions be asked by any of my noble Lords.

E. of Peterb. I did apprehend my Lord of *Warwick* had done.

L. H. St. No, my Lord, not as yet? pray, my Lord *Warwick*, what other Questions has your Lordship to ask of this Witness?

E. of Warwick. My Lord, I desire he may be asked particularly this Question, Whether he perceived any Quarrel particularly between me and Capt. *Coote* when we went out of the House?

L. H. St. You hear the Question, Did you perceive any Quarrel between my Lord *Warwick* and Mr. *Coote* before they went out of the House?

Cawthorne. No, I did not, nor ever saw any Quarrel between them in my Life.

E. of Warwick. I desire to know who paid the Reckoning that Night?

Cawthorne. The Reckoning was called for before I came in to take it; and tho' I think my Lord of *Warwick* paid for Mr. *Coote*, yet I cannot so directly tell, because it was collected before I came into the Room to receive it.

L. H. St. My Lord, have you any Thing more to ask this Witness?

E. of Warwick. No, my Lord, at present, that I think of.

L. H. St. My Lord *Peterborough*, your Lordship desired to ask a Question, will you please to propose it now?

E. of Peterb. My Lord, this Witness seems to take notice of two Sides, who were on the one Side, and who were on the other, and that Mr. *Coote* and my Lord of *Warwick* were on one Side; I desire to know one Thing of him, what reason he had to apprehend that they two were of a Side?

L. H. St. Friend, you hear that noble Lord's Question; you seem to say, there were three and three of a Side. What reason had you to apprehend, that my Lord *Warwick* and Mr. *Coote* were of one Side? You must explain to my Lords how you come to make that Judgment, what Reason you had to think so.

Cawthorne. They three my Lord *Mobun*, my Lord *Warwick*, and Mr. *Coote*, were on the one Side of the Bar; and Capt. *James*, Capt. *French*, and Capt. *Dockwra*, were on the other Side of the Bar.

L. H. St. So you said before; but the Question which my noble Lord desires to be satisfied in, is this, How you come to speak as if there was a Quarrel between three and three? What Reason had you to think, that three were on one Side, and three on the other?

Cawthorne. Their Swords were all drawn, and they stood three on one Side of the Bar, and three on the other.

E. of Rochester. My Lords, I desire to ask this Witness one Question; I think he told your Lordships at first, that he did not perceive any angry Words among them; afterwards he comes to talk of Swords drawn amongst them all, three on the outside, and three on the inside of the Bar; I desire to know what was the Occasion of those Swords being drawn on the one Side or the other?

Cawthorne. Whatsoever Quarrel there was, was amongst themselves above Stairs, and I know no angry Words that passed between them when they came down to the Bar.

L. H. St. See what you say? How consistent one Part of it is with another! You said at first, you did not hear of any angry Words that passed between them, and yet you say, all their Swords were drawn, and three were on the one Side and three on the other: And when you were examined upon the Motion of that noble Lord, what you meant by three on the one Side, and three on the other, you said, my Lord *Mobun*, my Lord *Warwick*, and Mr. *Coote*, were on the one Side; Mr. *James*, Mr. *French*, and Mr. *Dockwra*, were on the other Side: How could there be two Sides, unless there was a Quarrel?

Cawthorne. I said, I did not hear any angry Words pass between them before they came to the Bar, or while they were above Stairs; but there were three on the one Side of the Bar, and three on the other.

L. H. St. But you have not given a satisfactory Answer to that Question which the noble Lord, my Lord *Peterborough*, asked you, What Reason you had to apprehend, that the noble Lord, the Prisoner at the Bar, and Capt. *Coote* were of a Side?

Cawthorne. My Lord *Mobun* came to the Chair side, when Capt. *Coote* and Capt. *French* were got into the two first Chairs, and told Capt. *Coote*, that there should be no Quarrel that Night, but that they three, my Lord *Warwick*, my Lord *Mobun*, and he, should go home together; and I took them three to be of a Side, because they were on the outside of the Bar together, and when they all went away, their three Chairs went away first, all three together.

L. H. St. Is that all the Reason you can give why you say, they were three and three of a Side?

Cawthorne. Yes, my Lord, I did apprehend it so.

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Mr. Att. Gen. If my noble Lords have done with their Questions, I desire to ask this Witness another Question; my Lords, I think this Person says, That there was a Quarrel at the Bar of the House, and Swords drawn, and as he apprehended, three were on the one Side, and three on the other; but if I take him right, I do not see that he has given your Lordships any Manner of Satisfaction, what Reason he had to apprehend there were three and three of a Side, or, which will be very material in this Case, if your Lordships can get to the Knowledge of it, which three were on the one Side, and which three were on the other; or indeed, whether there were three and three of a Side, as your Lordships will have reason by and by to enquire a little further into that Matter. My Lords I desire he may be asked this plain Question, What Words or other Passages he did perceive, that made him apprehend there was a Quarrel between them, and they were three and three of a Side?

Cawthorne. I apprehended it from the Words that Mr. *Coote* said, That he would laugh when he pleased, and frown when he pleased.

Mr. Att. Gen. Pray, my Lord, I desire he may be asked, Who those Words were spoke to, and who they were applied to?

Cawthorne. They were spoke to Mr. *James*, Mr. *French*, and Mr. *Dockwra*, who were within side of the Bar.

Mr. Att. Gen. Did he apply those Words to all those particular Persons?

Cawthorne. Yes, as I thought, for they three were within the Bar; my Lord *Warwick*, my Lord *Mobun*, and Mr. *Coote*, were without the Bar.

Mr. Att. Gen. Pray, my Lord, I desire he may be asked this Question, Was that before the Swords were drawn, or afterwards?

Cawthorne. It was before.

Mr. Att. Gen. Then I desire he may be asked, Whether the Swords were drawn upon those Words?

Cawthorne. No, my Lord, the Time of drawing the Swords was when I went out to call Chairs and Coaches; and I know not who drew the Swords first, or when they were drawn; but when I came back I found them all drawn, and I heard them clashing.

Mr. Att. Gen. Upon the Oath you have taken, Was those Words that you speak of Mr. *Coote's*, That he would laugh when he pleased, and frown when he pleased, before the Swords were drawn, or after the Swords were drawn?

Cawthorne. Before the Swords were drawn; for I did not see the Swords drawn till I came back.

L. H. St. Does either Side desire to ask this Witness any Questions; if not, then you may withdraw, and you may proceed, Mr. Attorney, to examine some other Witness.

Lord Wharton. My Lord, there was a Question asked at the Bar about the Hindring of the Quarrel, and my Lord *Mobun's* Desire to part them, and make them Friends; I desire the Witness, before he goes away, may be asked what he knows of that Matter.

L. H. St. It has been observed by my Lord, that you said, when they came down to the Bar, and the Quarrel happened, some Body would have prevented it; pray repeat that Matter again, Did you observe any of the Company were disposed to take up the Quarrel, and make them Friends, and who they were?

Cawthorne. My Lord *Mobun* and my Lord *Warwick* said they would send for a File of Musqueteers, and my Lord *Mobun* did all he could to quiet and pacify them till the Quarrel was over; and my Lord *Mobun* particularly had his Finger prick'd with endeavouring to cross their Swords, and keeping them from fighting; which was all he got by it.

L. H. St. Do you know that of your own Knowledge?

Cawthorne. His Hand was bloody and he said so at the Bar; but I was just coming in again when I heard him say so; but I cannot say that I saw him hurt, for I was without the House at the Time when that was done.

Lord Godolphin. My Lords, I desire to ask this Witness on Question; I observe he has told my Lords, there was not an angry Word pass'd between them before they came down to the Bar; I would fain ask him this Question, Whether he was in the Room all the Time till they did come down to the Bar?

Cawthorne. I received the Reckoning just before they came down to the Bar.

Lord Godolphin. And I desire he may be asked, How long he staid in the Room when he received the Reckoning?

Cawthorne. It was about two or three Minutes that I staid in the Room, and not longer.

Earl of Warwick. My Lord, this Witness that has been examined, told you, That when we first came down to the Bar there were two Chairs call'd for; and when they came, Mr. *Coote* and the other Gentleman, Mr. *French*, went into the Chairs, and afterwards they came out again, and Mr. *Coote* said some Words; I desire the Witness may be asked again, when it was Mr. *Coote* spoke those Words; whether it was before or after the Time that he came out of the Chair; for I take it to be very material.

Cawthorne. It was after Mr. *Coote* came out of the Chair, for the Chairmen heard the Words as I verily believe.

Mr. Att. Gen. My Lord, I desire he may be ask'd, Was there any Reply made to those Words by any of those Persons he says he apprehends were on the other Side?

Cawthorne. No, not one Word that I know of.

Earl of Warwick. My Lord, I must beg the Favour to have the Question asked again of him, Whether I did not at that Time endeavour to prevent any Quarrelling, and did not say I would call for the Guard if they did?

Cawthorne. Yes; my Lord of *Warwick* did say so, and so did my Lord *Mobun*, and so I think did Mr. *James*.

L. H. St. How came you not to say so when you were asked that Question particularly before? Then you said my Lord *Mobun* endeavoured to prevent the Quarrelling, and make them Friends.

Cawthorne. Yes, my Lord *Warwick* did so, and so did Mr. *James*.

L. H. St. I cannot tell whether any Body else desires to ask him any Questions.

Mr. Att. Gen. My Lord, he speaks of what this noble Lord, my Lord of *Warwick* said; but he does not tell you the particular Expressions, nor the Time when my Lord said them.

L. H. St. You say, my Lord the Prisoner at the Bar, endeavoured to pacify the Quarrel between them; but you do not tell my Lords who

the Quarrel was between, nor when the Endeavour was made by my Lord *Warwick* to pacify it.

Cawthorne. My Lord of *Warwick* did say he would have the Guards sent for.

L. H. St. What Time was that, before or after my Lord *Mobun* said so?

Cawthorne. Truly, my Lord, I do not know but that it was at the same Time.

L. H. St. Was it when the Swords were drawn, or before?

Cawthorne. They spoke it both before and after the Swords were drawn, as I remember; for the Swords were not drawn while I was in the House, till I came back.

L. H. St. Were the Swords drawn when my Lord *Warwick* spoke of sending for the Guards?

Cawthorne. Surely, my Lord, it was before the Swords were drawn, when I was sent for the Chairs.

L. H. St. You said there was no angry Words or Quarrel between them.

Cawthorne. Not above Stairs, my Lord: But I apprehended when they came down to the Bar, there were three on one Side, and three on the other.

Mr. Att. Gen. Pray, my Lord, let him be asked this Question, Was it after they were three on the one Side, and three on the other, that my Lord *Mobun* and my Lord *Warwick* spoke those Words?

Cawthorne. I apprehend the Words were spoke by Mr. *Coote*, That he would laugh when he pleased, and frown when he pleased, before the Swords were drawn.

L. H. St. But that which my Lords desire to know is, What the Time was when my Lord *Warwick* and my Lord *Mobun* declared their Desire to part them and make them Friends; whether before or after the Swords drawn?

Cawthorne. Before and after; for I was absent when the Swords were drawn.

Earl Rivers. He says, That after my Lord *Mobun* and my Lord *Warwick* threaten'd to send for the Musqueteers, they promised to be quiet: I desire to know who he means by they.

Cawthorne. Mr. *James* call'd to me and said, I need not go and call for the Guards, for the Quarrel was over. There is one Thing more that I forgot, my Lord: After my Lord *Mobun* and my Lord *Warwick* were gone away in their Chairs, and Mr. *Coote*, I heard Mr. *Dockwra* say to Captain *James* and Captain *French*, they did not care a Farthing for them, they would fight them at any Time.

L. H. St. Who were together then?

Cawthorne. Captain *James*, Mr. *French*, and Mr. *Dockwra*, after my Lord *Mobun* and my Lord *Warwick* were gone with Captain *Coote*.

L. H. St. Then Mr. *French* was with them, Mr. *Dockwra* said so?

Cawthorne. Yes, my Lord.

Lord Wharton. If I apprehend him aright, as to what he says now, my Lord of *Warwick*, my Lord *Mobun*, and Captain *Coote*, were gone away at that Time.

Cawthorne. Yes, they were gone away in the three first Chairs, which my Lord *Mobun* bid go home.

Lord Wharton. Who does he say spoke those Words?

L. H. St. You hear my noble Lord's Question, Who spoke those Words? Repeat them again.

Caw-

Cawthorne. When my Lord *Warwick*, my Lord *Mobun*, and Captain *Coote* were gone, I heard Mr. *Dockwra* say to Mr. *French* and Mr. *James*, we don't care a Farthing for them, we will fight them at any time.

Mr. *Att. Gen.* I desire to know whether this Witness testified any Thing of this Matter, when he was examined before the Coroner?

Cawthorne. No, I forgot those Words when I was examined before the Coroner.

Mr. *Att. Gen.* How soon after your Examination did you recollect yourself as to what you now speak?

Cawthorne. The next Day after.

Mr. *Att. Gen.* I pray my Lords, that he may be asked, Whether he did in general give the same Evidence before the Coroner that he now does?

Cawthorne. Yes, as to all but only those Words of Mr. *Dockwra's* declaring he did not care a Farthing for them, they would fight them at any time.

Mr. *Att. Gen.* My Lord, I beg he may be ask'd how long it was after the Fact was done, that he was examined before the Coroner.

Cawthorne. It was the next Day in the Afternoon.

Mr. *Att. Gen.* Then I have this Question further to ask, if your Lordships please, Was he at the Trial of Mr. *Dockwra*, Mr. *James*, and Mr. *French*?

Cawthorne. Yes, I was.

Mr. *Att. Gen.* Did he then give any Evidence of those Words of Mr. *Dockwra's*, after when my Lord *Warwick*, my Lord *Mobun*, and Captain *Coote* were gone?

Cawthorne. No, I did not.

Mr. *Att. Gen.* My Lord, I have one Question to ask him then more, How he came not to swear this Matter at that Trial?

Cawthorne. It was out of my Mind at that Time, and I had like to have forgot it now.

Mr. *Att. Gen.* My Lord we have done with this Witness: Is it your Lordships Pleasure that we go on to call our other Witnesses?

Lords. Ay, Ay.

Mr. *Att. Gen.* Then our next Witnesses, my Lords, will be the Chairmen that carried my Lord *Mobun*, my Lord of *Warwick*, and Captain *Coote*: We shall begin with *Thomas Browne* and *John Gibson*, one of them carried Mr. *Coote*, the other my Lord of *Warwick*.

[*Thomas Browne was sworn.*]

L. H. St. What Question do you ask this Witness, Mr. Attorney?

Mr. *Att. Gen.* That he would acquaint your Lordships, whether he carried Mr. *Richard Coote*, the Person that was slain, upon the 29th or 30th of October, from the *Greyhound Tavern* in the Strand, and to what Place he carried him?

L. H. St. You hear the Question; pray speak so loud that my Lords may all hear what you say.

Browne. My Lords, I was between the Hours of One and Two in the Morning, on Sunday the 30th of October last, with my Fellow and our Chair, at the *Butcher's-Head Tavern* at *Charing-Cross*, and I heard some People at *Locket's*, at the *Greyhound* in the Strand, calling Coach, Coach, a pretty while; but there were no Coaches in the Street, nor that came to them; when they could not get Coaches, then they called out for Chairs; and we coming to

the Door with our Chair, there were four other Chairs there, and six Gentlemen stood in the Passage; and then it was said, There was not Chairs enough, and there wanted one more, and they stood discoursing; and the first Man came into my Chair, who was Captain *Coote*; and my Lord of *Warwick* he got into another: When the Door of the Chair was shut up, we asked them whither we should go; but my Lord *Mobun* came and bid open the Chair again, and we did so, and he returned into the House, and there was some Discourse between them standing at the Bar in the Entry. Mr. *Coote* came out again and came into my Chair, and my Lord *Mobun* and my Lord of *Warwick* went into two others; Mr. *Coote* bid me carry him into *Leicester-fields*, and to make all the haste I could; my Lord of *Warwick* and my Lord *Mobun* being in the next Chairs, ask'd him, *Whither are you a going*, and called out twice, and he said, *To Leicester-fields; Pray do not*, says my Lord of *Warwick*, *but come along with us, and let it alone till To-morrow*; but he bid us go on; and as we were turning up *St. Martin's-lane*, by the *Cross-Keys Tavern*, my Lord *Mobun*, and my Lord *Warwick* called out to us to stop, and their Chairs came up to the Back-door of the *Cross-Keys Tavern*, and there all the three Chairs were set on a-brest in *St. Martin's-lane*, and while they were talking together, there came by three Chairs of the other Side of the Way; and Mr. *Coote* bid us take up and make all the haste we could before them into *Leicester-fields*; so taking up the Chair again, Mr. *Coote* bid us make haste, and if we could go no faster, he swore, Damn him, he would run his Sword in one of our Bodies: There were two Chairs before me, and my Lord *Mobun* and my Lord *Warwick* followed in two Chairs after me; and when we came to the Corner of *Leicester-fields* at *Green-street* end, all the three Chairs were set down a-brest again, and Mr. *Coote* put his Hand in his Pocket, and took out half a Guinea to pay, and said he had no Silver; and my Lord of *Warwick* spoke to my Lord *Mobun*, who took out three Shillings out of his Pocket, who said there was for my Lord *Warwick*, Capt. *Coote*, and himself; and when they were gone out, I took my Box and my Pipe, and filled my Pipe, and took the Lanthorn and lighted it, and by that time I had lighted my Pipe, I heard a calling out, Chair, Chair, again, towards the upper End of the Square; so I took my Chair, and there was one of the Chairs that was not gone; and so we came up to the upper End of the Fields, and they called to us to bring the Chairs over the Rails; we told them we did not know how to do that, for we should not be able to get them back again; at last we did get over the Rails, and made up close to the Place where we heard the Noise, for we could see nothing, it being a very dark Night; and when we came up close to them, by our Lanthorn there were two Gentlemen holding up Mr. *Coote* under their Arms, and crying out, *My dear Coote, My dear Coote!*

Mr. *Att. Gen.* Pray who were those two Gentlemen?

Browne. I did not know them, one was in Red Cloaths, and the other had Gold Lace, and they would have had me have taken Mr. *Coote* into my Chair; but seeing him bloody, and not able to help himself, I said I would not spoil my Chair, and so would not meddle with him; but they said they would make me any Satisfaction for my Chair, and desired me to take him in, but he gave himself a spring from them, and we found he was too heavy

heavy for us to lift over the Rails, and all we could do could not make him sit in the Chair, but the Chair was broken with endeavouring to place him there; and they said, if we would carry him to a Surgeon's, they would give us a Hundred Pound Security; but we finding it impossible, the Watch was called for, but no Body would come near, for they said it was out of their Ward, and so they would not come anigh me; and I staid about half an Hour with my Chair broken, and afterwards I was laid hold upon, both I and my Partner, and we were kept till next Night Eleven a Clock; and that is all the Satisfaction that I have had for my Chair and every Thing.

Mr. Att. Gen. Pray, my Lord, I desire he may recollect himself; for we do apprehend it is very material, who it was that desired to take Mr. Coote into the Chair.

Browne. I cannot tell who they were, it was so very dark I could only see their Cloaths.

Mr. Att. Gen. Did you see the Earl of Warwick there?

Browne. No, Sir, he was not there; one of them, I tell you, had Officers Cloaths on, Red lined with Blue, and the other had Gold Lace on; there was no Body there that held him up but them two.

M. of Norm. He says he saw two Persons holding up Mr. Coote; it would be very well to have that Matter very well settled, who those two Persons were; I desire to know how he is sure my Lord of Warwick was not one of them two?

Browne. I know my Lord of Warwick very well, and I am sure he was neither of the two.

D. of Leeds. I would know what Light he had to discern it so well by, that he can be sure my Lord of Warwick was not there; for he says, it was a very dark Night, and yet he describes the particular Persons that held Mr. Coote up.

Browne. Yes, my Lord, I am sure my Lord of Warwick was none of them.

D. of Leeds. How could you distinguish in so dark a Night, the Colours of People's Cloaths?

Browne. With the Candle that I had lighted in my Lanthorn.

D. of Leeds. He could not know any of the Persons unless he held a Lanthorn to their Faces, or knew them very well before.

L. H. St. My Lord Warwick, Will your Lordship ask this Witness any Questions?

E. of Warwick. My Lord, I desire he may be ask'd, Whether I did not bid him stop at *St. Martins-lane* end, and do all that I could to hinder Mr. Coote from going any further, but to go home?

Browne. The Earl of Warwick, and my Lord Mobun, as they turned up the Lane, asked Mr. Coote, Whither he was going? and when he said to *Leicester-fields*, they desired him to let it alone till To-morrow; and my Lord Mobun said he should go home with him; but the other bid us go on, and said he would not go to his Lodgings, but that they would make an End of it that Night; still they called to him again, dear Coote, let's speak a Word with you; and as the Chairs came to the Back-door of the *Cross-keys* Tavern, there they stood all of a-breast, and they both of them spoke to him, and stood a pretty while there, and in the mean time three Chairs passed by on the other Side; he commanded us to take up, and carry him away to *Leicester-fields* immediately, and overtake the other Chairs, or he would run one of us into the Body.

L. H. St. Would your Lordship ask him any more Questions?

E. of Warwick. No, my Lord.

Mr. Att. Gen. My Lord, I observe, he says they discoursed some Time together while they stopped in *St. Martins-lane*; I desire that he may be asked, whether he can tell what that Discourse was.

Browne. I could not well hear, they whispered together, but I could hear my Lord Mobun, and my Lord of Warwick, desire Captain Coote to go home and let the Business alone till another Time.

Mr. Att. Gen. I desire he may explain himself, what that Business was that they would have put off till To-morrow.

Browne. I know not what it was, I heard of no Anger betwixt them, but they were as good Friends for any Thing I know to the contrary, as ever they were in their Lives, or as ever I see any Men.

L. Jefferys. He says there were Two went into Chairs at the Door of the House, and afterwards went out again, and went into the House, and there was Discourse at the Bar of the House, I would desire to know what that was?

Browne. I did not hear the Discourse that was in the House, I was at the Door of the House.

Mr. Att. Gen. Our next Witness is *William Crippes*. (who was sworn.)

L. H. St. What do you ask this Man, Mr. Attorney?

Mr. Att. Gen. Pray will you give my Lords here an Account who you carried to *Leicester-fields* the 29th or 30th of *October*, and what happened in your Knowledge at that Time?

Crippes. Captain Coote was the first Man that went into the Chair when we came to the *Greyhound* Tavern, afterwards he came out again, and when we took him up the second Time, he was the first Man that set out; and he bid us carry him to *Leicester-fields*; and when he came to the Corner of *St. Martins-lane*, we turned up that Way; and my Lord of Warwick, and my Lord Mobun, called to us, being in Chairs behind, to know whither we were going, and desired to speak with Captain Coote, and he said he was going to *Leicester-fields*; and when they ask'd, What to do? he said, to end the Business: They desired him to put it off till To-morrow; and while they were discoursing about it in *St. Martins-lane*, there pass'd by other three Chairs, which, when Captain Coote saw, he bid us take up and overtake them, and go faster, or he would run one of us into the Body: So we went on, and at the lower End of *Leicester-fields* we set him down; and the other two Gentlemen, my Lord Warwick, and my Lord Mobun, were there set down, and went lovingly together, for any thing that I saw, up the Pavement of the Square, towards the upper End; and in a little time we heard a Noise of calling for Chairs towards the upper End, and when we came there with the Chair, we were bid to lift over the Chair within the Rails; and when we said it was hard to be done, they insisted upon it, and we did come in; and when we came there we saw two Gentlemen holding up Captain Coote, and would have had us taken him into the Chair; we saw there was a great deal of Blood, but I never heard how it came, and they would have had us carried him to a *French Surgeon's*, and proffer'd any Money.

Mr.

Mr. Att. Gen. My Lord, I desire to know, who they were that desired him to be carried to the Surgeon.

L. H. St. You hear the Question, What say you?

Crippes. I cannot tell, my Lord; one of them had something of Lace upon him, but it was so dark that I could hardly see my Hand, and therefore I cannot tell who they were; and when there was an Objection made, that the Chairs would be spoiled, they said, We need not question our Chair, they would give us 100*l.* Security to answer any Damages, if we would but carry him; so we endeavoured to put him into the Chair, but could not; and so we called out to the Watch, to have had some help, but they said it was none of their Ward, and so they would not come to us; so the Gentlemen went away, and we left them, and went and called a Surgeon, who, when he came, said, he was a dead Man, and we were secured till the next Day.

Mr. Att. Gen. Pray, my Lord, I desire he may be asked, Were there not other Chairs in that Place at that Time?

Crippes. There was one in the Field besides, and no more that I could see, they all went away but us two.

Mr. Att. Gen. What Distance of Time was there between their setting down in *Leicester-fields*, and their calling the Chairs again?

Crippes. Not a quarter of an Hour.

Mr. Att. Gen. What became of the three Chairs that passed by you in *St. Martins-lane*?

Crippes. They got before us; but what became of them afterwards I cannot tell.

Mr. Att. Gen. Did they come from the same Place, the Tavern in the *Strand* that you were at?

Crippes. Yes, I believe they did, my Lord, for Captain Coote bid us follow them, and threatened us if we did not make greater haste.

Mr. Att. Gen. Do you know my Lord of *Warwick*?

Crippes. Yes, he had whitish Cloaths on, and none but he had such Cloaths on as those were.

L. H. St. Will your Lordship ask this Witness any Questions?

E. of *Warwick*. My Lord, I desire he may be asked, Whether I did not bid him stop? and, whether I did not say, they should not go to quarrel that Night?

Crippes. Yes, both he and my Lord Mobun would not have had Captain Coote gone any where, but home to his Lodgings.

Mr. Att. Gen. My Lord, I desire to know of him, directly and downright, Whether my Lord of *Warwick* was not one of them that held him when he was within the Rails in the Fields?

Crippes. No, he was not, he was neither of them, for the one of them was too big for him, and the other was too little for my Lord Mobun?

Mr. Att. Gen. Now we shall call the Chairman that carried the Earl of *Warwick* into *Leicester-fields*, James Crattle. (He was sworn.)

Mr. Att. Gen. Will you tell my Lords what you know of any Person that you carried the 29th or 30th of *October* last, from the *Greyhound* Tavern in the *Strand*, and who it was, and whither you carried him?

Crattle. I was going along *Charing-Cross*, between One and Two in the Morning the 30th of *October* last, and I heard a Chair called for at *Locket's* at the *Dog Tavern*, and thither I and my Partner went, and we took up the Gentleman, and carried him to *Leicester-fields*.

Mr. Att. Gen. Who was that Gentleman?

Crattle. It was my Lord of *Warwick*.

Mr. Att. Gen. What Time of Night do you say it was?

Crattle. It was about One or Two in the Morning.

Mr. Att. Gen. What Day of the Week was it?

Crattle. It was *Saturday* Night and *Sunday* Morning.

Mr. Att. Gen. Whither did you carry him?

Crattle. Into *Green-freet*, towards the lower end of *Leicester-square*.

Mr. Att. Gen. What Chairs were there more there?

Crattle. There was one that Captain Coote was in, and another that my Lord Mobun was in, and we went away all together.

Mr. Att. Gen. Were there no other Chairs?

Crattle. I did not know who went in the other Chairs, but there were three other Chairs that passed by us at *St. Martins-lane*, and we followed after them to *Leicester-fields*.

Mr. Att. Gen. Pray what became of you after you had set down your Fare?

Crattle. We were discharged and paid; the other three went up towards my Lord of *Leicester's*, but we were coming away, and in a little Time we heard the Noise of calling Chairs, Chairs, again, and there were two Chairs did come up, *Thomas Browne's* and ours; my Lord of *Warwick* called our Chair, and we took him into it, and he bid us carry him to the *Bagnio* in *Long-Acre*, and when we came there we knocked at the Door, and his Hand was bloody, and he asked us if we had any Handkerchief to bind up his Hand.

Mr. Att. Gen. Was there any other Chairs at the Door of the *Bagnio*, at the same Time when you came there?

Crattle. Yes, there was another Chair there at the Door at the same Time, and we set down both together.

Mr. Att. Gen. Pray whence came that Chair?

Crattle. Indeed I do not know.

Mr. Att. Gen. Who were the Chair-men that carried that Chair?

Crattle. Indeed my Lord Mobun, and my Lord *Warwick*, were the only Persons that I knew of all the Company.

Mr. Att. Gen. What Sort of Gentleman was the other that went out of the other Chair into the House?

Crattle. He was a pretty tall Man; when he was in we went away; I only can say I saw my Lord of *Warwick* go into the House.

Mr. Att. Gen. Did you take any Notice of any Sword that my Lord of *Warwick* had in his Hand at that Time?

Crattle. No, I cannot say I did take any Notice of any Sword, only that there was a Handkerchief desired.

Mr. Att. Gen. Pray, did you hear no Noise at all in the Field, till you heard Chairs called for again?

Crattle. No, I cannot say I heard any Noise in the Field.

Mr. Att. Gen. Did you apprehend there was any Fighting?

Crattle. No, I knew nothing at all of it, but upon the calling of Chairs again, and my Lord *Warwick* coming along, we took him in, and he bid us go to the *Bagnio*, and thither we went.

Mr. Att. Gen. My Lord, we have done with this Witness.

L. H. St. My Lord *Warwick*, will you ask this Witness any Questions?

Earl of *Warwick*. No, my Lord.

Mr. Att. Gen. Then, my Lord, our next Witness is *John Gibson*, he was another of those Chairmen that carried my Lord of *Warwick* to the *Bagnio* afterwards. Pray will you give my Lords an Account what you know, who you carried the 29th and 30th of *October* last, and whither you carried them? (*who was sworn.*)

Gibson. My Lord, I was at *Charing-Cross* with my Partner the 29th of *October* last, at Night, and about One or Two a Clock in the Morning Chairs were called for to the *Greyhound Tavern* in the *Strand*; and when we came there, my Lord of *Warwick*, my Lord *Mobun*, and *Mr. Coote*, got into the three first Chairs, and we got my Lord *Warwick* into our Chair; and when we had him there, we were bid to go towards *Leicester-fields*, as I apprehended, for thither the Chairs that went first was to go; and indeed my Lord *Mobun*, and my Lord *Warwick*, did call to stop at the End of *St. Martins-lane*, and asked *Mr. Coote* whither he was going? and he said he was going to make an End of the Business, and they said it should not be To-night; but presently after three other Chairs coming along, and passing before us, the Chair that *Captain Coote* was in, was bid to go on, and we were ordered to follow, which was done accordingly; just at the Turning of *Green-street* we set down our three Chairs, and, I think, just about the Turning of *Green-street* End we stayed till there came another Chair again, and we and the other Chair, upon my Lord *Warwick's* coming into us, went away from thence, and carried him to the *Bagnio* in *Long-acre*.

Mr. Att. Gen. You talk of another Chair, pray, Whose Chair was that?

Gibson. There was another Chair that was got there just before us, but indeed I do not know whose it was, nor indeed can I say who it was that was in it; but this I am sure, we went to the same Place, and we met and lit just at the same Time, and my Lord of *Warwick* asked for a Handkerchief to bind about his Hand, which was bloody, which was given him.

Mr. Att. Gen. Did you not know who was in the other Chair at that time?

Gibson. No, indeed, I did not know, I will assure you.

Mr. Att. Gen. Pray did you not know where that other Chair took the other Gentleman up?

Gibson. No, indeed, Sir, I did not.

Mr. Att. Gen. Pray, What Time of the Night was it?

Gibson. It was between One and Two of the Clock in the Morning.

Mr. Att. Gen. You talk of his Hand being hurt, and that he called for a Handkerchief. Did you see his Hand bleed? and, pray, in what Nature was his Wound?

Gibson. My Lord, all I can say is, there was Blood, and he wanted a Handkerchief, and had one, for he said his Hand was hurt, but in truth I did not take any Notice what that Hurt was, I did not see it, if my Partner took Notice of it, so, but else I can say nothing to it, but the Handkerchief was afterwards asked again, and could not be had.

L. H. St. Would my Lord of *Warwick* ask this Witness any Questions?

Earl of *Warwick*. No, my Lord.

Mr. Att. Gen. Then, my Lord, our next Witnesses are *Robert Applegate*, and *Peter Catro*, who will give your Lordship an Account who they carried at this Time.

L. H. St. Whom do you call first?

Mr. Att. Gen. *Robert Applegate*. (*who was sworn.*)

L. H. St. What Questions do you ask him, *Mr. Attorney*?

Mr. Att. Gen. I desire that he would acquaint your Lordship, what he knows of what passed at the *Greyhound Tavern* in the *Strand* the 29th of *October* last, whom he carried, and whither he carried them?

Applegate. My Lord, about One or Two a Clock in the Morning, a *Sunday Morning*, the 29th or 30th of *October* last, I was going home with my Partner and my Chair, and I heard them calling at the *Greyhound Tavern* in the *Strand*, *Mr. Locket's*, for Coaches and Chairs; there was no Coach to be had that could be heard of, but coming up to the Door, they said they wanted six Chairs, and when we were there at the Door, there came out first my Lord *Warwick*, *Captain Coote*, and my Lord *Mobun*; *Captain Coote* got into the first Chair, and what Directions he gave them I cannot tell; my Lord of *Warwick* got into the next; and into ours, which was the Third, my Lord *Mobun* came in, and bid us take him up and carry him towards *Westminster*, and he ordered us to follow the Chairs before: Just as they turned at *St. Martins-lane*, my Lord *Mobun* called out, and desired to stop, and at the *Cross-Keys-Tavern* Back-door, all the three Chairs came up together, and then my Lord of *Warwick*, and *Captain Coote*, and my Lord *Mobun* talked together, and I could hear my Lord *Mobun* and my Lord of *Warwick* desire *Captain Coote* to defer it, and put it by till another Day; what it was, indeed I cannot tell: But while they were talking there, three Chairs more came up on the other Side of the Way, and *Captain Coote* would needs go forward, and my Lord *Mobun* and my Lord of *Warwick* went with him, and so they were all set down at the lower End of *Leicester-fields* at *Green-street* End. But in Truth I did not see where the other three Chairs set down those they carried.

Mr. Att. Gen. What then happened afterwards, can you tell?

Applegate. I cannot tell whether I had lighted my Pipe, or just lighting it, when I heard Chairs called again; upon which we run up with our Chair towards the upper End of the Fields, and there I did see my Lord of *Warwick* within the Rails, who bid us put over our Chair into the Fields; but we told him, if we did, we could not get it over again, and so we went with our Chair to the Corner of the Fields, and when we came there, there came out *Captain French*, who bid us open our Chair, and let him in, for he did believe he was a dead Man; and upon that we did take him in, and he bid us carry him with all the Speed we could to the *Bagnio* in *Long-acre*, and my Lord of *Warwick* got into another Chair behind; so we went to *Long-acre*, and when we came to the Door of the *Bagnio*, and *Captain French* came out of the Chair, he was so weak that he fell down upon his Knees; and when he came out, I asked who should pay me, and desired to be discharged; and the Earl of *Warwick* said, *Damn ye, call for your Money to Morrow*; so they both went in at the *Bagnio* Door together.

Mr.

Mr. *Att. Gen.* Pray, who called for the Chair first, Captain *French*, or my Lord of *Warwick*, in the Fields?

Applegate. I cannot tell, but when I brought up my Chair, I first saw my Lord of *Warwick*, and he would have had me lifted the Chair over the Rails, and I told him we could not get it over again, and so went up to the upper End of the Fields.

Mr. *Att. Gen.* If you first spoke with my Lord of *Warwick*, why did you not carry my Lord of *Warwick*?

Applegate. Indeed I cannot tell, but I suppose it was because he did not come so soon out of the Fields as Captain *French*, or did not come the same Way.

Mr. *Att. Gen.* Pray, do you remember any Thing that happened just at their carrying Capt. *French* away?

Applegate. Before he went into the Chair, he stopped, and would have pulled off his Cloaths, but we would not let him.

Mr. *Att. Gen.* Did you see any Sword Captain *French* had?

Applegate. I did see no Sword that I can say directly was a Sword; but Captain *French* had something in his Hand, but what it was I cannot tell.

Mr. *Att. Gen.* What was it that he said to you, when he first went into the Chair?

Applegate. He desired to be carried to the *Bagnio*; for he said he believ'd he was a dead Man.

Mr. *Att. Gen.* Pray, Friend, recollect yourself, if you heard him say any Thing at all when he first went into the Chair at the *Greyhound Tavern*?

Applegate. I did not hear him mention any Thing at all.

Mr. *Att. Gen.* Pray what did you hear my Lord of *Warwick* say at that Time?

Applegate. Truly, I cannot say I heard him mention any Thing at all neither; but I did hear my Lord *Mobun* say, when he could not prevail, in *St. Martins-lane*, with Captain *Coote* to go home, that if they did go he would go and see it.

Mr. *Att. Gen.* If they did go; who did he mean by they?

Applegate. My Lord *Warwick* and Captain *Coote* that were in the other Chairs; there was no Body else to speak to.

Mr. *Att. Gen.* Was there any talk of Fighting or Quarrelling?

Applegate. No indeed, I do not know of any Difference there was between them.

L. *H. St.* My Lord *Warwick*, Will your Lordship ask this Witness any Questions?

Earl of *Warwick.* My Lord, I desire he may be asked, Whether I did not endeavour to put off the going into *Leicester-fields*, and to have all Things let alone till To-morrow.

Applegate. My Lord, I cannot say any Thing of that; but I did hear my Lord *Mobun* beg heartily of Captain *Coote* to go home, and let the Business alone till another Time; and indeed I think, I never heard a Man beg more heartily for an Alms at a Door, than he did, that they might not go into the Fields then; but I cannot say that I heard any Thing that my Lord of *Warwick* said about it.

L. *H. St.* Will your Lordship ask him any other Questions?

Earl of *Warwick.* No, my Lord.

L. *H. St.* Did my Lord of *Warwick* express any Inclination to go on?

Applegate. Indeed I know not any Thing one Way or other.

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L. *Jeffreys.* My Lords, if I am not mistaken, he did say, that he did not see any Thing of Inclination in my Lord of *Warwick* to go on; but I desire, if your Lordships please, that he may be asked this Question, Whether he did see any Thing in my Lord of *Warwick* that shewed any Inclination to the contrary.

Applegate. All that I can say is, I heard my Lord *Mobun* say, Pray let's go home and lie all together, and let us put off this Business to another Time; but indeed I do not remember that my Lord of *Warwick* said one Word of going any Way backward or forward.

Mr. *Att. Gen.* Pray, who did my Lord *Mobun* speak these Words to?

Applegate. My Lord *Mobun* spoke them to my Lord of *Warwick* and Captain *Coote*, both.

L. *H. St.* Mr. Attorney, who is your next Witness?

Mr. *Att. Gen.* *Peter Catro.* (*Who was sworn.*)

L. *H. St.* What do you ask him, Sir?

Mr. *Att. Gen.* He was the other Chair-man that carried my Lord *Mobun*; Pray, will you give my Lords an Account what you know passed at the Time when you carried my Lord *Mobun* to *Leicester-fields*?

Catro. I and my Fellow carried my Lord *Mobun* from the *Greyhound Tavern* in the *Strand*, till we came to the Turning up of *St. Martins-lane*, where my Lord *Mobun* desired that our three Chairs might stop, and that they might go down to *Westminster*, and that my Lord *Warwick* and Capt. *Coote* would go thither, and he would wait upon them to their Lodging; Capt. *Coote* made Answer again something, but what I cannot tell, and his Chair went on; and my Lord *Mobun* did say, if they went forward, he would follow them, and see what would come of it.

Mr. *Att. Gen.* What did you see happen while you were in *St. Martins-lane*?

Catro. There were other three Chairs that went by while we stood at the *Cross-Keys Tavern Door*, and Captain *Coote's* Chair going forward, we followed and went to the End of *Leicester-fields*, at *Green-street End*; and there all three went out of their Chairs and walked up the paved Stones of the Square; my Lord of *Warwick* asked my Lord *Mobun* if he had any Silver, and three Shillings were given for the three Chairs, and they went from us, and bid us go about our Business; and in a little while after we heard a Noise from the upper End of the Fields, calling Chairs, again.

Mr. *Att. Gen.* Did you observe any Thing of Quarrel or Difference between them, or any clashing of Swords?

Catro. Indeed I heard nothing of any Quarrel, for we were at the lower End of the Square, at *Green-street End*; and when we heard them call for Chairs again, we went up towards the upper End of the Fields; and when we came there, we heard one bid us bring up the Chair over the Rails.

Mr. *Att. Gen.* Who was that?

Catro. Indeed, my Lord, I cannot tell, for I was behind the Chair, and could not see who it was; but we saying that we could not get it over again if we did, we went up to the upper End of the Fields, and there was Captain *French*, I think it was, for I did not perfectly see him, being at the hind-part of the Chair; and we went on to the *Bagnio* in *Long-Acre*; and I did see my Lord *Warwick* come out of his Chair at the *Bagnio Door*, for there they were set down.

X

Mr.

Mr. Att. Gen. You say you saw my Lord of *Warwick* at the *Bagnio* Door; Did you see any Sword as my Lord of *Warwick* had, or Captain *French*?

Castro. No, I did not see any Sword at all of either of them.

Mr. Att. Gen. What do you know of Captain *French* his declaring he was wounded?

Castro. I think it was either when he went into the Chair, or in *Newport-street* End, he called out to have the Chair opened; for, says he, I think I am a dead Man, and would have pulled off his Cloaths; and when we were at the *Bagnio* Door, we tarried a pretty while till they got them up to let them in; and asking if we should wait, my Lord of *Warwick* bid us come to that House To-morrow Morning for our Money; and they went in together into the House, but I never heard any one Word of Quarrel or Dissatisfaction passed between them.

Mr. Att. Gen. This Witness speaks to the same Purpose as the other did; and I think we need not trouble your Lordship any further as to that.

L. H. St. Would my Lord of *Warwick* ask him any Questions?

E. of *Warwick*. No, my Lord.

Mr. Att. Gen. Then our next Witness is one *John Palmer*. (*Who was sworn.*)

Mr. Att. Gen. Pray, will you give my Lords an Account, who it was you did carry in your Chair the 29th or 30th of *October* last, and whither you carried him?

Palmer. About one a Clock in the Morning, the 30th of *October*, we were called to the *Greyhound Tavern* in the *Strand* to Mr. *Locket's*, and there we took up a Gentleman, one Captain *French*.

Mr. Att. Gen. Whither did you carry him?

Palmer. He bid us go to *Leicester-fields*.

Mr. Att. Gen. What did he particularly say to you?

Palmer. There were three other Chairs that were just gone before from the same Door, and he bid us get before all those Chairs; and just as we came to *St. Martins-lane* End, we saw there were three other Chairs set down before us over-against the *Cross-keys* Tavern Back-door.

Mr. Att. Gen. Well, what did you do then?

Palmer. So we went before, according as we were bid, unto *Leicester-fields*, and at the upper End of the Fields, by *Leicester-house*, we opened the Door, and Captain *French* came out, and he gave us a Shilling, and we went away about our Business.

Mr. Att. Gen. Were there any more Chairs there that went with you?

Palmer. There were two more Chairs that set down two other Gentlemen by *Leicester-house*, and we came away when we were paid; that is all I know.

Mr. Att. Gen. Did you see any other Chairs besides your three when you came down again, or any other Gentlemen?

Palmer. We did see some Gentlemen walking up about the Middle of the Square when we came down, but we made what Haste we could away home, it being late, on *Sunday* Morning.

Mr. Att. Gen. Did you observe any Fighting when you were in the Field?

Palmer. I did not hear or discern any Fighting while I was there.

Mr. Att. Gen. Did you hear of any Quarrel, or any Thing between any of them, and whom before?

Palmer. No, I did not know of any Quarrel, or hear of any Thing at all, I do assure you.

Mr. Att. Gen. All that he says then, my Lord, is, That he carried Captain *French* to the upper End of *Leicester-fields*, and there he left him.

L. H. St. Would my Lord *Warwick* ask this Witness any Questions?

E. of *Warwick*. I desire he may be asked, whether he knows who were in the Chairs that were in *St. Martins-lane*, when they passed by?

L. H. St. You hear the Questions, What say you to it?

Palmer. There were three Chairs, but who they were that were in them I cannot tell directly; but as they said, when they set them down at *Leicester-fields*, they were my Lord *Warwick*, my Lord *Mobun*, and Mr. *Coote*.

Mr. Att. Gen. Who was it that said so?

Palmer. Some of the other Chair-men when I came by.

L. H. St. Mr. Attorney, who is your next Witness?

Mr. Att. Gen. We shall call next the Chair-men that carried Mr. *Dockwra* and Mr. *James*: Call *Jackson* the Chair-man. (*Who was sworn.*)

Mr. Att. Gen. This Man carried Cap. *James*: Pray acquaint my Lords, who you did take up at *Locket's* in the *Strand* on the 29th or 30th of *October* last, and whither you carried him.

Jackson. I carried Captain *James* from *Locket's* in the *Strand* into *Leicester-fields*.

Mr. Att. Gen. How many Chairs were you that went?

Jackson. There were two more that went when I went, there were six in all that took up Gentlemen there, and we were the last but one.

Mr. Att. Gen. Can you tell who were in the other three first Chairs?

Jackson. I do not know who were in the other Chairs, but I heard my Lord *Mobun* at the Door of the House desire, That the Business might be deferred till To-morrow Morning: There were six Gentlemen at the Door, but truly who they all were I cannot tell.

Mr. Att. Gen. Who did my Lord *Mobun* spake that to?

Jackson. Indeed, I do not know who he spoke it to.

Mr. Att. Gen. What Answer was made to my Lord *Mobun*?

Jackson. Truly, there was no Answer that I heard, but we all went away soon after that, and we were bid to go to *Leicester-fields* to follow the other Chairs, and when we came to the other End of *Leicester-fields*, we set down Captain *James* by the *Standard* Tavern, and he gave us a Shilling, and bid us go our Ways; so we went our Way, and I heard nothing afterwards, but came away down the Fields, and there were three Chairs that stood at the Bottom of the Fields; and we asked them, what they stayed there for? And they said, To fill a Pipe of Tobacco: And presently after, we heard call Chairs again; but it was late, and it was *Sunday* Morning, and my Partner said, Let us go away home, and we did so, we went directly home.

Mr. Att. Gen. Did you carry no Body back?

Jackson. No, we carried no Body back.

Mr. Att. Gen. My Lord, we have done with this Witness, our next Witness is one *Richard Edwards*, and he was one of the Chairmen that carried Mr. *Dockwra*. (*He was sworn.*)

Mr.

Mr. Att. Gen. Pray will you acquaint my Lords, Whether you carried any Body from *Lockett's* the 29th of *October*, and who it was, and whither you carried him?

Edwards. I do not know who I carried, but they were calling Coaches at the *Greybound Tavern* in the *Strand*, and no Coaches coming, they called for Chairs, and so our Chair was brought up.

Mr. Att. Gen. When you came there, who did you see there?

Edwards. Indeed I did not know my Lord of *Warwick*, nor my Lord *Mobun*, nor any of them.

Mr. Att. Gen. Well, What do you know? Tell my Lords what happened.

Edwards. When we were there, there went two into two Chairs; and my Lord *Mobun* said, or another Gentleman, I cannot tell which, that the Chairs should not go away, that they would kill any Man that should go away; and they went out of the Chairs, and went into the House again.

Mr. Att. Gen. And what happened after they went into the House again?

Edwards. After they went out of the Chairs into the House again, as I was told, my Lord of *Warwick*, my Lord *Mobun*, and Mr. *Coote*, went into three Chairs, and went away from the Door; and there were three Chairs of us that went last.

Mr. Att. Gen. Whither did you go with your Chair?

Edwards. We went to the *Standard Tavern* at the End of *Leicester-fields*, and when we came to the Tavern Door, we asked him if we should knock at the Door; he said no, but he gave us a Shilling, and bid us go about our Business; and so we did, for we went sheer away to *Charing-Cross*.

Mr. Att. Gen. Pray can you tell who were in the other Chairs?

Edwards. Truly I cannot tell any Man that was in our three Chairs, for I was the hind-Chairman, and did not know any of them.

Mr. Att. Gen. My Lord, I desire to know what he means by hind-Chairman.

Edwards. My Lord, ours was the last Chair that went to *Leicester-fields*, and I was behind the Chair, and never could see any of them, it being so very dark after they took the Chairs, till we came to *Charing-Cross*, at *St. Martins-lane*; and then I could not see who the particular Persons were that were in the Chairs; nor indeed, whose the Chairs were that carried them.

Mr. Att. Gen. What Hour was it?

Edwards. It was very late, between one and two in the Morning; it was past one before we were called out.

Mr. Att. Gen. You say you went to the upper End of *Leicester-fields*, with two other Chairs; Pray did you see any other Chairs afterwards, and where?

Edwards. We saw three Chairs at the lower End of the Square, as we came down by *Green-street* End, and we asked them, What they stay'd there for, and they said, to light a Pipe of Tobacco.

Mr. Att. Gen. Pray, Who had been carried in those Chairs, Can you tell?

Edwards. I did not see them set down any Body, and I cannot tell who they carried; and as for the Person that we carried, I did not so much as see him to know him, nor know who he was; but we went away as soon as ever we were paid.

Mr. Att. Gen. I have one Question more to ask

you; you say, That my Lord of *Warwick* at the Tavern Door bid you stay, and that none should go away, and swore he would run any Man thro' that should go away?

Edwards. It was my Lord *Mobun*; and then two that had gone into the Chairs, went into the House again.

Mr. Att. Gen. Did not you say, that there was some Talk of going to *Westminster*?

Edwards. My Lord *Mobun* did talk of going to *Westminster*, when they went into the Chairs the second time; and I think I heard Mr. *Coote* say, he would make an end of it then, and he would kill any Man that would not go forwards to *Leicester-fields*.

L. H. St. My Lord *Warwick*, will you ask this Witness any more Questions?

Earl of *Warwick.* No, my Lord.

L. H. St. Mr. Attorney, have you any more Evidence to call?

Mr. Att. Gen. My Lord, the next Piece of Evidence that we should apply our selves to, will be to what happened at the *Bagnio* in *Long-acre*, after my Lord *Warwick* and Captain *French* came there: And the Witness that we shall call is *Pomfret*, and he is a Servant at the *Bagnio* in *Long-acre*, and he will acquaint your Lordships who came thither the 30th of *October* last, and what happened there.

L. H. St. What is his Name?

Mr. Att. Gen. *Henry Pomfret*.

L. H. St. Is he sworn?

Mr. Att. Gen. Yes, my Lord.

L. H. St. What is it that you examine him about? What Questions do you ask him, Mr. Attorney?

Mr. Att. Gen. Who came to his Master's House; and at what Time they came.

Pomfret. My Lord, on *Sunday* the 30th of *October* last, between Two and Three in the Morning, there came to my Master's Door the Earl of *Warwick*, and knocked at the Door, and there was Captain *French* with him; and when they were let in, my Lord of *Warwick* told me that Captain *French* was wounded, and he himself had a Wound, and he desired that my Master might be called up for to dress the Wounds; especially, because Captain *French* was very much wounded, which accordingly was done in about a quarter of an Hour after they were brought in.

Mr. Att. Gen. Did he desire to be concealed when he was come in?

L. H. St. Of whom do you speak, Mr. Attorney?

Mr. Att. Gen. My Lord of *Warwick*.

Pomfret. He did desire, that if any Body asked for him, it should be said he was not there.

Mr. Att. Gen. Pray in what Condition did my Lord of *Warwick* seem to be in at that Time?

Pomfret. He seemed to be very much concerned at that Time, and his Right Hand, in which he had his Sword, and which was drawn, was very much bloody.

Mr. Att. Gen. Was the Sword bloody that he had in his Hand?

Pomfret. The Blade was bloody; but whether it was all over bloody, I cannot tell; there was besides some Blood upon the Shell; it was very near all over bloody, as I remember.

Mr. Att. Gen. Pray, Friend, consider what you swore at the Coroner's Inquest about the Blood upon the Sword.

Pomfret. Indeed I cannot say it was bloody all along the Blade; but there was Blood upon the Shell, and there was Blood upon the Inside, it was so to the best of my Remembrance.

Mr. Att. Gen. What Condition was Mr. French's Sword in?

Pomfret. He had a drawn Sword in his Hand, but I did not perceive it had any Blood upon it: it was a large Blade.

Mr. Att. Gen. How do you know what Sort of Sword Mr. French's was, and in what Condition it was?

Pomfret. He desired me to take Notice of it next Morning, and I did so; and there was no Blood upon it.

Mr. Att. Gen. How came you to be desired to take Notice of what passed there about the Swords?

Pomfret. My Lord, there was three of them the next Day, and one, it was said, was Mr. Coote's, and another of them was my Lord of Warwick's, which I do believe was bloody from the Point upwards, very near; but I cannot directly say but that was afterwards.

Mr. Att. Gen. Who brought in that Sword that you say was Mr. Coote's?

Pomfret. To the best of my Remembrance Captain Dockwra brought it in; it was almost half an Hour after my Lord Warwick and Captain French came into the House, when they came thither.

Mr. Att. Gen. They, Who do you mean?

Pomfret. Captain James and he.

Mr. Att. Gen. Were they let in presently?

Pomfret. No, My Lord of Warwick had desired that they might be private there; but when they knocked at the Door, my Lord of Warwick desired to know who they were; and when it was understood that they were Mr. James and Mr. Dockwra, they were let in by my Lord's Order.

Mr. Att. Gen. Pray, which of all the Four brought in any Sword in a Scabbard?

Pomfret. It was Captain Dockwra.

Mr. Att. Gen. Pray did they appear to be all of a Party?

Pomfret. They were glad to see one another; and they talked a pretty while together, but indeed I cannot say I heard what they talked.

Mr. Att. Gen. Pray, do you remember my Lord of Warwick's Sword, and what there was upon it?

Pomfret. It was a Steel Sword, Water-gilt, and as near as I can remember, there was Blood upon it for the most Part from the Point upward.

Mr. Att. Gen. And what did appear upon Mr. French's Sword?

Pomfret. There was Water and Dirt, but there was no Blood at all.

Mr. Att. Gen. How long did they stay there?

Pomfret. They all continued about half an Hour, and then went away, all but Mr. French, who staid there.

Mr. Att. Gen. What then became of the others?

Pomfret. Mr. James, Mr. Dockwra, and my Lord of Warwick, went away; and my Lord of Warwick desired particularly, that we would all take care of Mr. French, for he was his particular Friend; and Mr. French continued there till Sunday about One of the Clock.

Mr. Att. Gen. Was there any Discourse at that Time about Mr. Coote?

Pomfret. Not, that I heard of, one Word.

Mr. Att. Gen. Was there any Notice taken of

any Quarrel that happened between any Body, and who?

Pomfret. No, indeed, I did not hear them take Notice of any Quarrel at all between any Body.

Mr. Att. Gen. You say Mr. French, when he came into your House, was wounded, and there was Care particularly taken of him because he was wounded.

Pomfret. Yes, my Lord of Warwick desired to take care of him.

Mr. Att. Gen. Then pray, was there no Discourse how he came to be wounded?

Pomfret. Indeed I do not know how he came to be wounded; nor did I hear one Word of Discourse about it; indeed I cannot say any thing who wounded him.

Mr. Att. Gen. Pray will you recollect yourself, and tell my Lords what sort of Handle had my Lord of Warwick's Sword when you saw it.

Pomfret. It had a Steel Handle.

Mr. Att. Gen. Pray can you tell whether the Shell was open or close?

Pomfret. I cannot tell justly; I saw it, and that was all.

Mr. Att. Gen. If I apprehend you, you say my Lord had a Wound in his Hand.

Pomfret. Yes, my Lord, he had so.

Mr. Att. Gen. Pray, in what Hand was it that he was wounded?

Pomfret. To the best of my Remembrance, it was in his Right Hand.

Mr. Att. Gen. Pray did there appear much Blood there?

Pomfret. Yes, my Lord, indeed there did.

Mr. Serj. Wright. You talk of Mr. James and Mr. Dockwra's Swords; pray in what Condition were they?

Pomfret. Mr. Dockwra's Sword was by his Side, and not drawn.

Mr. Serj. Wright. What did you observe of Captain James's Sword?

Pomfret. His Sword was naked, and he had lost his Scabbard; but how that came I cannot tell; and there was Dirt on one Side of the Sword; and he said he had left his Scabbard behind him.

Mr. Att. Gen. Was there any Blood upon his Sword?

Pomfret. No, there was no Blood that I did see upon it.

Mr. Att. Gen. Pray did you see any Blood upon Mr. Dockwra's Sword?

Pomfret. No, indeed, I did not see Mr. Dockwra's Sword, it was in the Scabbard by his Side.

D. of Leeds. My Lords, there has been Notice here taken of several Swords that this Witness saw; and he takes so far Notice of my Lord of Warwick's Sword, that he tells you what Sort of Hilt it had, and how it was bloody from the Point to the Hilt; I desire he would give you an Account of the Length and Breadth of the other Mens Swords, Mr. French, Mr. James, and Mr. Dockwra's.

L. H. St. You said just now, that you took Notice of my Lord of Warwick's Sword, that it was bloody from the Point to the Hilt; What sort of Sword was it?

Pomfret. It was a pretty broad Sword.

L. H. St. Did you take Notice of the other Swords, what Breadth or Length they were of?

Pomfret. No, my Lord, I did not.

Mr. Att. Gen. Which was that Sword that was dirty, as you say?

Pomfret. That was Captain French's.

Mr. Att. Gen. Was that a broad Sword or not?

Pomfret. No, it was not.

Mr. Att. Gen. Pray was it over Night or next Morning that you saw the Swords?

Pomfret. It was in the Morning about Three a Clock.

Mr. Att. Gen. What time did my Lord of Warwick, and Mr. James, and Mr. Dockwra go away?

Pomfret. My Lord of Warwick and they were gone several Hours before Mr. French; and to the best of my Remembrance, Mr. James broke his Sword upon the Floor after he came in.

Mr. Att. Gen. Pray, what Swords were there in all that you saw there?

Pomfret. There was Captain French's, Captain James's, my Lord of Warwick's, and one Mr. Coote's, as Mr. French said when it was brought in.

L. H. St. Have you done with this Witness, Mr. Attorney?

Mr. Att. Gen. Yes, my Lord, we have.

L. H. St. My Lord Warwick, Will you ask him any Questions?

E. of Warwick. No, my Lord.

L. H. St. Then, Mr. Attorney, call your next Witness.

Mr. Att. Gen. Our next Witness is Thomas Goodall, who is a Servant at the Bagnio in Long-Acre, as well as this Man that was last. (He was sworn.)

L. H. St. What Questions do you ask him, Mr. Attorney?

Mr. Att. Gen. My Lord, I desire he would acquaint your Lordships, what Time it was my Lord of Warwick and Capt. French came to his Master's House?

Goodall. It was between One and Two of the Clock in the Morning.

Mr. Att. Gen. My Lord, I desire he would acquaint your Lordships what he saw and knows, that passed at that Time?

Goodall. All that I can say is, That I did see my Lord of Warwick's Sword bloody, and it was naked in his Hand, and I did see a Wound on his Hand: Indeed I did not see him when he first came in, for he had been there a pretty while before I saw him.

Mr. Att. Gen. Pray, in what Condition was my Lord when you saw him?

Goodall. He had his Sword in one Hand, and it was bloody at the Blade, and at the Hilt; but whether it was bloody all over, indeed I did not take notice of it, and so cannot give an Account.

Mr. Att. Gen. Pray, what sort of Sword was it?

Goodall. Indeed I cannot give an Account what sort of Sword it was, but it was either Steel or Silver gilt, as I remember; but I did take notice that there was Blood upon the Hilt, that is, upon the Shell.

Mr. Att. Gen. Was it an open Shell, or a close one?

Goodall. I think it was a close one.

Mr. Att. Gen. Pray, did my Lord of Warwick give any Order to be denied in the House, or for any Concealment there?

Goodall. Indeed I did not hear of any Orders given for Concealing of any Body there; but my Lord walk'd up and down very much concerned.

Mr. Att. Gen. Did not Mr. French come in with him?

Goodall. I do believe he might: But I cannot say I saw him when he came in.

Mr. Att. Gen. Can you tell when Mr. James and Mr. Dockwra came in? How long was that after my Lord of Warwick was there, and Mr. French?

Goodall, to the best of my Remembrance and Knowledge, it was half an Hour after my Lord of Warwick and Mr. French came, that Mr. James and Mr. Dockwra came: I am sure it was so before I saw them in the House; but indeed I cannot say directly when they came in, or when they went out.

Mr. Att. Gen. Pray, which Hand of my Lord of Warwick was it that was hurt, the Right or the Left?

Goodall. Indeed, I cannot positively say; but I think it was the Right Hand.

Mr. Att. Gen. You talk of my Lord of Warwick's Sword; Did you take any notice of Mr. French's Sword?

Goodall. No, indeed; I was busy about the Affairs of the House; I did see my Lord of Warwick's Sword, but that was by Chance, and it was bloody at the Hilt, and upon the Blade; but whether it were all over bloody, indeed I cannot tell.

Mr. Att. Gen. I desire to ask him, Whether he can tell who brought in Mr. Coote's Sword thither?

Goodall. Indeed I cannot.

L. H. St. Mr. Attorney General, Have you any more Questions to ask him?

Mr. Att. Gen. No, my Lord, not I.

L. H. St. My Lord of Warwick, Will you ask him any Questions?

Earl of Warwick. No, my Lord.

L. H. St. Mr. Attorney, Who is your next Witness?

Mr. Att. Gen. My Lord, our next Witness is Mrs. A. Goodall, this Man's Wife, (Who was sworn)

L. H. St. What Questions do you ask this Gentlewoman?

Mr. Att. Gen. I desire that she would acquaint your Lordships, Whether she was at the Bagnio in Long-acre when my Lord of Warwick and Captain French came in?

A. Goodall. I was there when my Lord of Warwick came in.

Mr. Att. Gen. Was Captain French with him?

A. Goodall. Yes, Captain French was with him.

Mr. Att. Gen. About what a Clock was it that they came there?

A. Goodall. It was about Two a Clock, as near as I can remember.

Mr. Att. Gen. In what Condition were they when they came in, pray?

A. Goodall. Mr. French was very much wounded.

Mr. Att. Gen. Pray, how was my Lord of Warwick?

A. Goodall. My Lord had his Sword in his Hand, and it was very bloody, both at the Hilt, and upon the Blade.

Mr. Att. Gen. Did you observe any Wound that my Lord had?

A. Goodall. I think, to the best of my Remembrance, my Lord had his Hand wrapped up in a Handkerchief, which was bloody; but I was busy

up and down in the House, and I cannot so well tell what Hand it was; I was indeed up and down there while they were there.

Mr. Att. Gen. Do you know of any Orders that were given by my Lord of *Warwick* to be concealed while he was there?

A. Goodall. He did desire the Door might not be opened to any Body that asked for him, and that it might not be said that he was there; and when the other two Gentlemen came to the Door, he went to the Door himself, and when he saw who they were, he ordered them to be let in.

Mr. Att. Gen. What was the Occasion of his going to the Door himself?

A. Goodall. There was a knocking at the Door, and he had a mind to know who it was; and when it did appear it was Mr. *James* and Mr. *Dockwra*, he himself ordered them to be let in.

Mr. Att. Gen. How came the Door to be open to them?

A. Goodall. Indeed I think he opened it himself.

Mr. Att. Gen. How long was that after he and Capt. *French* came in?

A. Goodall. It was about half an Hour.

Mr. Att. Gen. When they first came in, what Posture were they in? Had they any Swords in their Hands?

A. Goodall. I did not positively take notice, whether they had any Swords in their Hands, nor what they had when they came in.

Mr. Att. Gen. What became of them afterwards?

A. Goodall. My Lord of *Warwick*, Mr. *James*, and Mr. *Dockwra*, went away within a little while, and my Lord of *Warwick* ordered particular Care to be taken of Mr. *French*, as his Friend, and he was put to Bed after his Wounds were dressed; but I cannot tell what afterwards became of my Lord *Warwick*, and the other Gentlemen.

Mr. Att. Gen. I think you were saying, that my Lord of *Warwick* was wounded in the Hand; which Hand was it?

A. Goodall. I cannot positively say, whether it was the Right or the Left.

L. H. St. Will you who are of the King's Counsel, ask this Witness any further Questions?

Mr. Att. Gen. No, my Lord, we shall ask her no other Questions.

E. of *Warwick*. No, my Lord, nor I.

Mr. Att. Gen. Then our next Witness is *Henry Amy*, who is a Surgeon, and lives at the *Bagnio in Long-acre*; and he will give your Lordship an Account what passed within his Knowledge at this time within his House, and who came thither wounded, and what particular Care was ordered to be taken of Mr. *French*, and by whom.

(Mr. Amy was sworn.)

Mr. Att. Gen. I desire you will give an Account to my Lords what happened at your House early in the Morning, the 30th of *October* last.

Amy. The 30th of *October* last, about Two of the Clock, I was knock'd up out of my Bed to attend two Gentlemen, my Lord *Warwick* and Captain *French*, who came then into my House.

Mr. Att. Gen. In what Condition were they?

Amy. They were both wounded; Mr. *French* very much, and my Lord of *Warwick* in his Hand.

Mr. Att. Gen. Did you see any Swords?

Amy. Yes; they had both Swords in their Hands, and my Lord of *Warwick*'s Sword was very bloody.

Mr. Att. Gen. Well, Sir, when they came into your House, what Directions was given by my Lord *Warwick*?

Amy. He gave Directions, if any Body should ask for him, they should say he was not there.

Mr. Att. Gen. Did any Body come and ask for him?

Amy. While we were taking care of Mr. *French*, and dressing his Wound, there were some Persons came and knocked at the Door, and my Lord of *Warwick* did order, that no Body should be let in; but he himself went to the Door, and when he found that it was Mr. *Dockwra* and Mr. *James*, my Lord *Warwick* ordered that they should be let in.

Mr. Att. Gen. Pray tell my Lords what followed after that?

Amy. After we had dressed Mr. *French*—

Mr. Att. Gen. By the Way, was there any particular Directions, and by whom, to take care of Mr. *French*?

Amy. Yes, my Lord *Warwick* desired me to take care of him, as his particular Friend.

Mr. Att. Gen. Well then, after you had dressed Mr. *French*'s Wound, what happened?

Amy. I dressed my Lord *Warwick*'s Wound.

Mr. Att. Gen. Pray, whereabouts was my Lord of *Warwick*'s Wound?

Amy. It was near the first Joint of his Forefinger.

Mr. Att. Gen. Pray how long did they stay there?

Amy. After Mr. *Dockwra* and Mr. *James* came in, and my Lord's Hand was dressed, they stayed a little while, and they Three went away.

Mr. Att. Gen. What was said when they went away?

Amy. My Lord of *Warwick* desired to have great care taken of Mr. *French*; and they said, Now let us go away, and they went away.

Mr. Att. Gen. Pray, what Time did they stay in your House?

Amy. When they went away, I think it was about half an Hour after they first came in.

Mr. Att. Gen. Did you take notice of no Sword but my Lord of *Warwick*'s?

Amy. No, not then.

Mr. Att. Gen. Did you afterwards?

Amy. Afterwards in the Morning, Mr. *French* called for his Sword, and I looked upon it.

Mr. Att. Gen. Pray, in what Condition was his Sword? Was it bloody?

Amy. It was without Blood, only a little dirty.

Mr. Att. Gen. Pray, did you observe that they talked of any Quarrel that had been between Captain *French* and my Lord, when they came in?

Amy. No.

Mr. Att. Gen. Did you ask them any Questions about it, the one or the other of them?

Amy. No, I did not.

Mr. Att. Gen. Did you hear them say, how they came by their Wounds?

Amy. No, I did not.

Mr. Att. Gen. Did you hear them talk of any Body being killed, particularly Mr. *Coote*?

Amy. I did not know of any Body being killed till next Day.

Mr. Att. Gen. Did you take any notice of *James's* and *Dockwra's* Swords?

Amy. Truly, I took no notice of any Swords but my Lord *Warwick's*, while my Lord *Warwick* was there in the House; but the next Morning *Mr. French* gave me his Sword, and there was another Sword there, which *Mr. French* told me was *Capt. Coote's* Sword.

Mr. Att. Gen. When was that; how long after my Lord of *Warwick*, and *James*, and *Dockwra*, were gone away?

Amy. It was some Hours after.

Mr. Att. Gen. When did you hear of *Mr. Coote's* being killed?

Amy. About Nine a Clock next Morning I heard of *Mr. Coote's* being killed.

Mr. Att. Gen. Whom did you hear it from?

Amy. From *Pomfret* my Servant.

Mr. Att. Gen. Did you hear no Discourse between my Lord of *Warwick*, *Capt. French*, *Mr. James*, and *Mr. Dockwra* about it?

Amy. No, I did not.

Mr. Att. Gen. Did they not talk how those Wounds came they had, nor did not you ask who gave them?

Amy. No, I did ask no Question of either of them: And in half an Hour after they came in, my Lord of *Warwick* and the other two Gentlemen went away.

Mr. Att. Gen. When they left *French* there, what Orders were left about him?

Amy. Only to take care of him, my Lord of *Warwick* desired that.

Mr. Att. Gen. What Reason did my Lord give for that?

Amy. I heard nothing of Reason, only that he was his particular Friend.

Mr. Att. Gen. Did you hear them talk any Thing, whither they would go, when they went away.

Amy. I did hear some Talk about going into the Country.

Mr. Att. Gen. Do you know whither they went, when they went away from your House?

Amy. No, indeed I did not.

Mr. Att. Gen. My Lord, we have done with him.

L. H. St. My Lord *Warwick*, Will your Lordship ask this Witness any Questions?

Earl of Warwick. I desire to have him asked, Whether I was not wounded in the Hand.

Amy. His Hand was very bloody, the Handkerchief that was about it was wet with the Blood.

Earl of Warwick. I desire to ask him, when it was that he saw *Capt. French's* Sword?

Amy. It was not before the Morning; it was about Nine a Clock, as I remember.

M. of Norm. Before this Witness goes away, I desire he may be asked one Question, Whether he can tell the Size of *Mr. French's* Sword?

L. H. St. Here is a noble Lord that desires to know, if you can tell about *Capt. French's* Sword, what sort of Sword it was?

Amy. As to the Blade, it was a middle-fiz'd Sword.

M. of Norm. Was it a broad Blade or no?

Amy. No, my Lord, it was not a broad Blade.

L. H. St. *Mr. Attorney*, Who is your next Witness?

Mr. Att. Gen. *Capt. Loftus Duckinfield.* (Who was sworn.)

Mr. Att. Gen. This Gentleman will acquaint your Lordships what Discourse past between these Gentlemen the next Day; pray Sir, acquaint my Lords what you heard about *Mr. Coote's* Death, and when, and where.

Capt. Duck. Early in the Morning I was told of this Accident.

Mr. Att. Gen. By whom?

Capt. Duck. One of the Company, I cannot tell who, I think they were all together then, my Lord of *Warwick*, *Captain James*, *Captain Dockwra*, and no Body else.

Mr. Att. Gen. What was their Discourse?

Capt. Duck. They said, they believed *Captain Coote* was killed.

Mr. Att. Gen. Did they tell you by whom?

Capt. Duck. By *Mr. French*, every Body did say he was his Adversary.

Mr. Att. Gen. What Account was given of the Action?

Capt. Duck. They said it was done in the Dark, and *Capt. French* was his Adversary.

Mr. Att. Gen. Was there any notice taken of any Duel?

Capt. Duck. Yes, there was, between those two, and the other Persons on both Sides; and it was said my Lord of *Warwick* was Friend to *Mr. Coote*, and my Lord *Mobun*.

Mr. Att. Gen. Who were on the other Side?

Capt. Duck. *Mr. Dockwra* and *Mr. James*.

Mr. Att. Gen. Was there any Discourse, who actually fought?

Capt. Duck. It was said, that *Captain French* fought with *Captain Coote*, as they believed, and *Mr. James* with my Lord of *Warwick*.

Mr. Att. Gen. Did you see my Lord of *Warwick's* Sword?

Capt. Duck. Some Time of the Day I did, but I cannot tell whether it was in the Morning, or no.

Mr. Att. Gen. In what Condition was it, was it bloody or not?

Capt. Duck. It was a Steel Sword.

Mr. Att. Gen. How long did they stay with you?

Capt. Duck. About half an Hour.

Mr. Att. Gen. Did they come publickly?

Capt. Duck. We went away in a Hackney Coach together.

Mr. Att. Gen. Pray, what Discourse was there about consulting to go into the Country together?

Capt. Duck. That might be discoursed, but by whom I cannot tell.

Mr. Att. Gen. Did my Lord of *Warwick* talk of going into the Country?

Capt. Duck. Whether the Company talked of it, or my Lord of *Warwick* in particular, and the rest assented to it, I cannot well tell.

Mr. Att. Gen. Whither did they go?

Capt. Duck. I cannot directly tell.

Mr. Att. Gen. What Time of the Day was it?

Capt. Duck. It was about six of the Clock.

Mr. Att. Gen. Cannot you tell whither they went?

Capt. Duck. *Capt. James*, and *Capt. Dockwra* went to the *Ship and Castle* in *Cornhill* about five a Clock or six, as near as I can remember.

Mr. Att. Gen. Can you tell what Time my Lord of *Warwick* went away?

Capt. Duck. No, I cannot tell what Time he went away, not directly.

Mr.

Mr. Att. Gen. Can you tell of any Agreement amongst them, whither they were to go?

Capt. Duck. No, I cannot.

Mr. Att. Gen. What Discourse or Concern did you observe past between them, concerning Captain Coote?

Capt. Duck. My Lord of *Warwick* shewed a great deal of Concern for his Friend Mr. Coote.

Mr. Att. Gen. Had you any Notice of Mr. Coote's Death amongst you?

Capt. Duck. We had Notice before we went away, but I cannot tell whether it was before my Lord of *Warwick* was gone.

Mr. Att. Gen. Was it after the Discourse of going into the Country, or before?

Capt. Duck. Indeed, I cannot directly say when it was.

Mr. Att. Gen. Pray, what Reason was there for their going into the Country before he was dead?

Capt. Duck. They believed he was dead.

Mr. Att. Gen. Cannot you tell the Reason why they would go into the Country?

Capt. Duck. No, indeed, I cannot tell the Reason.

Mr. Att. Gen. Did you observe my Lord of *Warwick's* Sword? Was there any Blood upon it?

Capt. Duck. I cannot say his Sword was bloody at the Point; the whole Blade and Shell was bloody to the best of my Remembrance.

Mr. Att. Gen. What Sort of Sword was it?

Capt. Duck. It was a pretty broad Blade, a hollow Blade, and a hollow open Shell.

Mr. Att. Gen. Was there any Discourse concerning Captain French?

Capt. Duck. Yes, they thought he was very ill wounded.

Mr. Att. Gen. Was there any, and what Discourse, who should give my Lord of *Warwick* his Wound?

Capt. Duck. It was said, they believed Capt. James gave my Lord his Wound.

Mr. Att. Gen. Pray, was there any Blood upon Mr. James's Sword, or was he wounded?

Capt. Duck. I saw no Wound upon Capt. James, that I know of.

L. H. St. Do you believe that my Lord *Warwick's* Sword was bloodied with the Hurt of his own Hand, or any otherwife?

Capt. Duck. I cannot tell; it was a Cut-shell, and the Outside bloody as well as the In.

L. H. St. My Lord *Warwick*, Will your Lordship ask this Witness any Questions?

Earl of *Warwick*. No, my Lord.

L. H. St. Mr. Attorney, if you have any other Witnesses, pray call them.

Another Witness was produced, that belonged to the Ship and Castle in Cornhill.

Mr. Att. Gen. This Man will give you an Account what passed at his House at that Time, and between whom; Pray will you tell my Lords who was at your House the 30th of *October* last, and what past there then?

Witness. My Lord of *Warwick*, Capt. James, and Captain *Dockwra*; and when my Lord of *Warwick* came in, I thought my Lord was in a very great Concern, and called for Pen, Ink, and Paper, and I feared there was some Quarrel in hand, but they said no, the Quarrel was over, and says my Lord of *Warwick*, I am afraid poor Coote is killed.

Mr. Att. Gen. Did you observe any Desire to be private?

Witness. No indeed, I cannot tell that.

Mr. Att. Gen. How long did they continue there?

Witness. About six a Clock my Lord of *Warwick*, and Capt. James, and Capt. *Dockwra*, and Captain *Duckinfield* went away.

Mr. Att. Gen. Can you tell who went with my Lord *Warwick*?

Witness. No indeed, I cannot tell who went with my Lord *Warwick*; there came in a Gentleman in black, whom I knew to be my Lord of *Warwick's* Steward, and he came and spoke some Words to my Lord of *Warwick*, about a Quarter of an Hour after they came in, and then they went away, for after that I did not hear any farther Discourse.

Mr. Att. Gen. What became of the rest of the Company?

Witness. They went away; I do not know what became of them, nor whither they went; some of them went in and out of one Room into another several Times, two or three Times, and came out again.

Mr. Att. Gen. My Lord, we have done with this Witness.

L. H. St. My Lord *Warwick*, Will you ask him any Questions?

E. of *Warw*. No, my Lord.

L. H. St. Mr. Attorney, who is your next Witness?

Mr. Att. Gen. Mr. Salmon the Surgeon, who by the Coroner's Order searched the Wound. (*Who was sworn.*)

Mr. Att. Gen. Pray, Sir, was you ordered by the Coroner to view the Body of Mr. Coote?

Salm. Yes, I was ordered by the Coroner to inspect the Body of Capt. Coote, and to give the Jury an Account of the Nature of the Wounds.

Mr. Att. Gen. Pray, upon the View of the Body, what Wounds had he?

Salm. There was two Wounds; one on the Breast near the Collar-bone, running downwards very Deep.

Mr. Att. Gen. Pray, what Part of the Breast was it, and how deep was it?

Salm. It was on the left Part of the Breast near the Collar-bone, and it penetrated four or five Inches.

Mr. Att. Gen. Can you guess at what Sort of Sword it was that made the Wound?

Salm. No indeed, Sir, I cannot.

Mr. Att. Gen. Was it a broad Sword, or a little Sword?

Salm. The Orifice was about the length of half an Inch, and about the depth of five Inches.

Mr. Att. Gen. Was that made with a broad Sword, or with a narrow Sword?

Salm. Indeed, I cannot tell.

Mr. Att. Gen. You say he had another Wound; where was that?

Salm. That was on his left Side too, near unto the short Ribs, under the last Rib; which was about the length of an Inch, and of the depth of six Inches, and it run through the Diaphragma.

Mr. Att. Gen. Did you take one of those Wounds, or both of them to be mortal?

Salm. I did look upon either of them to be mortal, and to be the Occasion of his Death.

Mr. Att. Gen. Can you tell, whether they were both made with one and the same Sword?

Salm.

Salm. Indeed I cannot tell that, whether they were made with one Sword, or two.

Mr. Att. Gen. Cannot you tell how they appeared to be? I suppose you probed them.

Salm. Yes, I probed them both; one was quite through the Diaphragma.

Mr. Att. Gen. What Time was it that you viewed the Body by the Order of the Coroner?

Salm. I saw the Body at Seven a-Clock on Sunday Night.

Mr. Att. Gen. If my Lord of Warwick desire to ask him any Questions, he may.

E. of Warw. My Lord, I desire to ask him, whether any of the Wounds were large enough to be made by a Sword run up to the Hilt?

Salm. No, my Lord, sure they were not.

E. of Warw. My Lord, I desire to know of him, whether both these Wounds were given before or behind?

Salm. I can only tell you the Length and Depth by following of the Probe: the one was downwards, and the other upwards.

Mr. Att. Gen. Do you suppose both those Wounds were given when the Person was standing, backward or forward?

Salm. 'Tis impossible to tell how they were given, because of the Variety of the Postures of the Body in the divers Capacities thereby of receiving the Wounds?

Mr. Att. Gen. Pray, can you tell whether they were given by one and the same Sword or no?

Salm. Indeed I cannot tell.

Mr. Att. Gen. Do you know any Thing to the contrary?

Salm. I cannot say any Thing for it, or against it.

E. of Kingston. My Lords, this Witness, if I apprehend him right, says, the Wound on his Side was a large Wound.

Salm. Yes, a very large Wound, of the Length of about three quarters of an Inch at the Orifice, and five or six Inches deep.

E. of Kingston. I desire he may tell whether that Wound could be given by any other than a broad Sword?

Salm. I cannot tell that.

E. of Rochester. Indeed, my Lords, I would have him asked this Question again; I know not whether he can answer it or no; but I cannot but think it is proper to have some Account of this Matter. In all Enquiries before the Coroner, there is a Judgment to be made of the Nature of the Wound, in order to form the Indictments, and that the Jury may know with what sort of Weapon it was made; and it is his Profession, as a Surgeon, to know such Matters.

L. H. St. Mr. Salmon, you hear what is required of you by my noble Lords, and the Observation which is made. You are the Surgeon sent for by the Coroner on Purpose to inspect this Body; and when you did so, it was incumbent upon you to consider and give Information, as well with what sort of Instrument the Wound was given, as the Length and Depth of the Wound, that the Jury might consider upon all the Circumstances of the Occasion, and Manner of the Party's Death: And my Lords would know, whether by the Orifices of the Wounds, when you inspected them, you can make a Judgment, if they were made by several Swords, or the same Sword.

Salm. I cannot say that I saw any Difference between the Orifices, as to the Nature of the In-

strument they were given with, nor whether they were made by one and the same Sword or no; only the one Orifice was bigger than the other; that of the Side was bigger than that at the Collar-bone.

L. H. St. Then so far we have Light (if I apprehend you rightly) the Orifice of the upper Wound was not near so wide as that of the lower; but it seems to be much, in one of your Profession, not to be able to judge whether the Wounds were given with the same sort of Sword, when there was such a Difference in the Orifices.

Salm. That below was a deeper Wound; and there was a considerable Difference between the Largeness of one and the other.

Lord Audley. My Lords, I desire he may tell your Lordships how far backward the Wound in the Side lay.

Salm. It was directly on the left Side, immediately under the two last Ribs, and past through the Diaphragma.

M. of Normanby. Pray, my Lords, let him point with his Finger whereabouts it was.

L. H. St. My Lords would have you shew them with your Finger whereabouts it was. (*Which he did.*)

E. of Warw. It is a very material Question for me, that he should answer, whether he did believe that one and the same Sword might not give both Wounds.

Salm. I cannot say any Thing of it one Way or other; but one Wound went much further than the other, because it was in a fleshy Part; and in such a Case, the further the Sword goes in, it makes the Wound larger.

Mr. Att. Gen. Then our next Witness is Stephen Turner, who was Mr. Coote's Man; and he will give you an Account what Sword his Master had, and where he found it.

[*He was sworn, a Sword was shewn him.*]

Turner. This was my Master's Sword, Mr. Coote's, and I never saw it after he went out in the Morning, till I saw it in the Hands of the Constable, and afterwards before the Coroner.

Mr. Att. Gen. What Time did you hear of your Master's Death?

Turner. It was about nine a Clock next Morning that I heard he was dead.

Mr. Att. Gen. Where was your Master's Body?

Turner. It was in St. Martin's-Lane.

Earl of Tankerville. I would desire he might be asked one Question, Whether his Master used his Left-hand or his Right?

Turner. I do believe he was a right-handed Man. I did never see him fence. It was on the Sunday Morning that I went to the Round-house, where I found my Master dead.

Earl of Warwick. I desire he may be asked, Whether he has not observed a particular Kindness and Friendship between his Master and me?

Turner. Yes, my Lord: I have several Times waited upon my Master, when my Lord and he was together, and they were always very civil and kind one to another; and I never heard one Word of any Unkindness between them.

Earl of Warwick. Whether he knows of any Quarrel that was between us?

Turner. No, I never did.

Earl of *Warwick*. I desire he may be asked, Whether he did not use to lie at my Lodgings sometimes?

L. H. St. You hear my Lord's Question; What say you, Did your Master use to lie at my Lord of *Warwick's* Lodgings at any Time?

Turner. Yes; very often.

Mr. Att. Gen. Pray call *Pomfret* again, and let him see the Sword.

[*Then he came in, and two Swords were shewn him.*]

Mr. Att. Gen. I desire he may acquaint your Lordships what he knows of those two Swords.

Pomfret. These two Swords were brought in by some of the Company that came to my Master's House, and when they were shewn to Captain *French* in the Morning, he owned this to be his, and the other to be Mr. *Coote's*; and he desired that Notice might be taken that his Sword was dirty, but not bloody; and there was some Blood upon the other.

Mr. Att. Gen. Who brought in Mr. *Coote's* Sword?

Pomfret. Indeed I cannot tell.

Mr. Att. Gen. Then our last Piece of Evidence, my Lord, will be that of Mr. *White* the Coroner.

(*Who was sworn.*)

L. H. St. What do you ask him, Mr. Attorney?

Mr. Att. Gen. From whom had he these Swords?

(*The Swords were shewn him.*)

White. May it please your Grace, these Swords were delivered to me by the Constable.

Mr. Att. Gen. My Lords, I desire he may be asked, Whether, upon his View of the Body, he looked upon the Wounds; and, Whether he did apprehend they were given by one and the same Sword.

White. May it please your Grace, when I had sworn my Inquest, I sent for the Surgeon that was here before, and gave him Order to probe the Wounds, that the Jury might know the Nature of them, in order to the drawing up the Inquisition; and I did expressly ask him, Whether he found any such Distinction between them, that they were given by one and the same Weapon, or different Weapons: He said, as he says now, That he could not tell, Whether the Wounds were given by two Swords, or by one; but he did apprehend there was a great Difference between them, and so did I; but generally the Orifice of a Wound does close up when the Body is cold: One of the Wounds were nearer the Left Side than the other; to the best of my Remembrance, it was almost behind him.

Mr. Att. Gen. We have done with our Evidence, until we hear what my Lord of *Warwick* says to it.

L. H. St. My Lord of *Warwick*, will you ask this Witness any Questions?

Earl of *Warwick*. No, my Lord.

L. H. St. Make Proclamation for Silence.

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Serj. at Arms. O yes, O yes, O yes, His Grace, my Lord High Steward of England, does strictly

charge and command all Manner of Persons here present, to keep Silence, upon Pain of Imprisonment.

L. H. St. My Lord of *Warwick*, the King's Counsel have made an End of giving Evidence for the King; now is the proper Time for you to enter upon your Defence.

E. of Warwick. May it please your Grace, and you my noble Lords, my Peers,

I stand here before your Lordships, accused of the Murder of Mr. *Coote*, of which I am so innocent, that I came and voluntarily surrender'd my self, so soon as I heard your Lordships might be at leisure to try me; and had sooner done it, but that the King was not then here, nor your Lordships sitting, and had no Mind to undergo a long Confinement; and now I think I might well submit it to your Lordships Judgment, even on the Evidence that has been offered against me, whether there hath been any Thing proved of Malice propensity, or my being any Actor therein, so as to adjudge me guilty. And I think I may with humble Submission to your Lordships say, that my Innocence appeareth even from several of the Witnesses who have been examined against me, which I will not trouble your Lordships to repeat, but submit to your Memory and Observation.

But, my Lords, the Safety of my Life does not so much concern me in this Case, as the Vindication of my Honour and Reputation, from the false Reflections to which the Prosecutor has endeavoured to expose me; and I shall therefore beg your Lordships Patience to give a fair and full Account of this Matter; In which the Duty I owe to your Lordships, and to Justice in general, and the Right I owe to my own Cause in particular, do so oblige me, that I will not in the least prevaricate, neither will I conceal or deny any Thing that is true.

My Lords, I must confess I was there when this unfortunate Accident happen'd, which must be a great Misfortune in any Case, but was more so to me in this, because Mr. *Coote* was my particular Friend, and I did all I could to hinder it, as your Lordships may observe by the whole Proceedings.

It was on the *Saturday* Night when my Lord *Mobun* and I, and several other Gentlemen, met at *Locket's*, where the same Company used often to meet; and in some Time after several of us had been there, Mr. *Coote* came unexpectedly, and for some time he and we were very friendly, and in good Humour, as we used to be with each other; But then there happen'd some reflecting Expressions from Mr. *Coote* to Mr. *French*, who thereupon called for the Reckoning; and it being paid, we left the upper Room, and I propos'd to send three Bottles of Wine to my own Lodging, and to carry him thither to prevent the Quarrel. But while the Company stop'd to call for a Glass of Ale at the Bar below, Mr. *Coote* (whose unfortunate Humour was sometimes to be quarrellsome) did again provoke Mr. *French* to such Degree, that they there drew their Swords, but we then prevented them of doing any Mischief; then Mr. *Coote* still insisting to quarrel further with Mr. *French*, my Lord *Mobun* and I propos'd to send for the Guards to prevent them: But they had got Chairs to go towards *Leicester-fields*, and my Lord *Mobun* and I, as Friends to Mr. *Coote*, and intending to prevent any hurt to him, did follow him in two other Chairs, and as he was going up *St. Martins Lane*, stop'd

stop'd him, and I extreamly there pressed him to return and be Friends with Mr. French, or at least defer it, for that the Night was very dark and wet; and while we were so perswading of him, Mr. French in one Chair, and Mr. James and Mr. Dockwra in two other Chairs past by us, (which we guess'd to be them) on which Mr. Coote made his Chairmen take him up again, and because the Chairmen would not follow Mr. French faster, threaten'd to prick him behind, and when we were got to *Green-street*, and got out of our Chairs, Mr. Coote offered half a Guinea to be changed to pay for all our three Chairs, but they not having Change, he desired Lord *Mobun* to pay the three Shillings, which he did. And in a few Minutes after, Mr. Coote and Mr. French engaged in the Fields, whither I went for the Assistance and in Defence of Mr. Coote, and received a very ill Wound in my right Hand; and there this fatal Accident befel Mr. Coote from Mr. French, whom Mr. Coote had dangerously wounded, and I must account it a great Unhappinefs to us all who were there: But so far was I from encouraging of it, that I will prove to your Lordships that I did my utmost Endeavours to prevent it; so far from any Design upon him, that I expos'd my own Life to save his; so far from propense Malice, that I will by many Witnesses of good Quality and Credit, prove to your Lordships a constant good and uninterrupted Friendship, from the first of our Acquaintance to the Time of his Death; which will appear by many Instances of my frequent Company and Correspondence with him, often lending him Money, and paying his Reckonings, and about two Months before his Death lent him an hundred Guineas towards buying him an Ensign's Place in the Guards, and often, and even two Nights before this, he lodged with me, and that very Night I paid his Reckoning.

And when I have proved these Things, and answered what has been said about the Sword, and what other Objections they have made, I doubt not but that I shall be acquitted to the entire Satisfaction of your Lordships, and all the World that hear it.

Before I go upon my Evidence, I will crave leave further to observe to your Lordships, that at the *Old Baily*, when I was absent, Mr. French, James and Dockwra, have been all tried on the same Indictment now before your Lordships, and it was then opened and attempted, as now it is, to prove it upon me also; and by most of them the same Witnesses who have now appeared; and they were thereupon convicted only of Manslaughter, which could not have been, if I had been guilty of Murder. And on that Trial it plainly appeared that Mr. French was the Person with whom he quarrelled, and who killed him. And now I will call my Witnesses.

L. H. St. Will your Lordship please to go on to call your Witnesses, for the Proof of what you have said; that is the Method, and then you are to make such Observations as you please.

E. of War. My first Witness is Captain Edmund Keeting, who was with me at *Locket's*, but went away before Captain Coote or any of them came; and he will tell you I was with him a while.

Then Captain Keeting stood up.

L. H. St. Captain Keeting, you are not upon your Oath, because the Law will not allow it. In Cases

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of this Nature the Witnesses for the Prisoner are not to be upon Oath; but you are to consider that you speak in God's Presence, who does require the Truth should be testified in all Causes before Courts of Judicature, and their Lordships do expect that in what Evidence you give here, you should speak with the same Regard to Truth as if you were upon Oath; you hear to what it is my Lord of *Warwick* desires to have you examined, what say you to it?

Captain Keeting. My Lord, I will-tell your Lordship all the Matter I know of it. I met with my Lord of *Warwick* that Evening at *Tom's Coffee-House*, and we continued there till about eight at Night; I went away to see for a Gentleman that owed me Money, and afterwards I went to *Locket's*, and while I was there, the Drawer came up and told me my Lord of *Warwick* desired to speak with me, and when he came up into the Room, he said he was to meet with my Lord *Mobun* there and Captain Coote, and he asked me if I knew where Captain French and Capt. James were; I told him I dined with Capt. Coote at *Shuttleworth's*; and in a while after Capt. Coote came in, and about an Hour and an half, I think, I continued there, and Capt. French came in; Captain Dockwra and we drank together for an Hour and an half, and they admired about ten a-Clock that my Lord *Mobun* was not come, and I payed my Reckoning, not being very well, and away I went home; Mr. James came in just before I went away, but there was no Quarrelling, nor any Thing like it before I went away.

E. of Warw. My Lord, I desire he may be asked, Whether we did not usually meet there as Friends, especially Capt. Coote and I.

Capt. Keeting. Captain Coote and my Lord of *Warwick* used to be almost every Day together at that Place.

E. of Warw. Pray, did he ever know or observe any Difference or Quarrel between Captain Coote and me?

Capt. Keeting. No, my Lord, I never saw any Thing but the greatest Friendship between my Lord of *Warwick* and Captain Coote that could be; I was with them and saw them together almost every Day.

L. H. St. Have you any Thing further to examine this Witness to?

E. of War. No, my Lord, I have no other Question to ask him.

L. H. St. Who is your next Witness, my Lord?

E. of War. My Lord, I suppose I shall not need to trouble you to examine the Chairmen over again; your Lordships have heard what they can say: I desire Colonel Stanhope may be called.

Who it seems stood by the Chair of State, and it was some while before he could get round to come to the Place where the Witnesses were to stand.

L. H. St. While this Witness gets round, if your Lordship has any other Witness ready to stand up, pray let him be called.

E. of Warwick. To prove the Kindness between Captain Coote and me, I desire Colonel Blisset may be called.

Who stood up.

L. H. St. What is it your Lordship asks this Witness, or calls him to?

E. of Warw. To testify what he knows of any Kindness or Unkindness between Captain *Coote* and me; whether he has not been often in our Company?

L. H. St. Have you been often in Company with my Lord of *Warwick* and Captain *Coote*?

Col. Blisset. Yes, my Lord, I was very well acquainted with both of them for a Twelve-month past before this Accident, and I have often been in their Company, and I always observed that there was a great deal of Friendship and Kindness between them.

E. of Warwick. My Lord, I desire he may tell any particular Instance that he knows or can remember.

Col. Blisset. I remember when Captain *Coote* had his Commission in the Regiment of Guards, he was complaining of the Streightness of his Circumstances; he was to pay for his Commission 400 Guineas, and said he had but 300 for to pay for it, and my Lord of *Warwick* did then say to him, do not trouble your self about that; or let not that disturb you, for I'll take care you shall have 100 Guineas, and he said he would give Order to his Steward to pay him so much; and I was told afterwards that he did so.

E. of War. I desire he may tell, if he knows of any other particular Instances of my Friendship to Mr. *Coote*.

Col. Blisset. Once when he was arrested by his Taylor for 13*l.* my Lord lent him five Guineas, and used very frequently to pay his Reckoning for him.

E. of Warw. I desire he may tell, if he knows any Thing else; and whether he has not lain at my Lodgings, and particularly but some small Time before this Accident happened.

Col. Blisset. About ten Days before this unhappy Accident happened, I was at my Lord of *Warwick's* Lodgings, and when I came there I found Captain *Coote* there a dressing himself; and I asked him how that came to pass, and he told me they had been up late together, and that he had sent home for his Man to dress himself there; upon which I did observe that they had been a rambling together over Night; and there was a very great Familiarity between them.

E. of Warw. Did you observe any Quarrel between us?

Col. Blisset. No; None at all; I never knew of any Quarrel between my Lord of *Warwick* and Captain *Coote*, but I observed there was a particular Kindness between them, and a great deal of Friendship I know my Lord of *Warwick* shewed to him, in paying of Reckonings for him, and lending him Money when he wanted.

E. of War. My Lord, I desire he may be asked whether he does not know that Captain *Coote* was straitened for Money.

Col. Blisset. I did hear Captain *Coote* say, That he had not received any Thing from his Father for thirteen Months, and his Father was angry with him, and would not send him any Supply, because he would not consent to cut off the Entail, and settle two or three hundred Pounds upon a Whore he had.

Mr. Att. Gen. Pray, Sir, will you consider with

your self, and though you are not upon your Oath, answer the Questions truly, for you are obliged to speak the Truth, though you are not sworn, whenever you come to give your Testimony in a Court of Judicature; Pray acquaint my noble Lords here, Whether you did never hear my Lord *Warwick* complain of Capt. *Coote*?

Col. Blisset. No, I never did hear him complain of him.

Mr. Att. Gen. Did you never hear the least Word of any Quarrel between them.

Col. Blisset. No, indeed, I did never hear of any Quarrel between them.

Mr. Att. Gen. Did you never hear of any Unkindness at all?

Col. Blisset. No, indeed, my Lord, not I: I never so much as heard of the least Unkindness whatsoever.

L. H. St. Well then, my Lord, who do you call next?

Earl of Warwick. Now Colonel *Stanhope* is here, I desire he may be asked the same Question, Whether he does not know the particular Friendship that was between Captain *Coote* and me, and what Instances he can give of it?

L. H. St. You are to consider, Sir, though you are not upon your Oath, you are in a great Court, and under no less strict Obligation to testify the Truth, and nothing but the Truth: You hear what my noble Lord asks you.

Col. Stanhope. My Lord, I have known my Lord of *Warwick* and Captain *Coote* for about a Twelvemonth, and I did perceive that they did always profess a great Kindness for one another.

Earl of Warwick. I desire to know of him, Whether he observed any particular Friendship between Capt. *Coote* and me, much about the Time of this Business.

Col. Stanhope. About eight or ten Days before this unhappy Accident, I went to wait upon my Lord of *Warwick* twice at his Lodgings: Once I found Captain *Coote* there, one of them was in Bed, and the other was dressing of himself; I thought they were very good Friends that were so familiar, and I had good Reason to think so, because of that Familiarity: Both the Times that I was there, when I found them together, was within eight Days before the Accident happened.

Earl of Warwick. The next Witness I shall call will be Mr. *Disney*.

Mr. Att. Gen. But before Colonel *Stanhope* goes, I desire to ask him this Question, Whether he did never hear or know of any Unkindness between my Lord of *Warwick* and Capt. *Coote*?

Col. Stanhope. No, indeed I did not, I always thought them to be very good Friends.

L. H. St. Will your Lordship go on to your next Witness.

Earl of Warwick. Yes, my Lord, there he is, Mr. *Disney*; I desire he may be asked what he knows of any Expressions of Kindness and Friendship between me and Capt. *Coote*.

Mr. Disney. About the Time that Captain *Coote* was to have his Commission in the Guards, my Lord of *Warwick* received a Letter from him, wherein he desired him to lend him the 100 Guineas, according to his Offer, for he had but 300 by him, and he said his Father was unkind to him, and he could have no Money from him, and he would be honest to him, and pay it again as soon as he could; my Lord sent for his Steward, and ordered him to provide 100 Guineas for Captain *Coote*.

Coote while I was there; and all the Times that ever I saw them together, which was very frequently, there was the greatest Kindness between them that could be; and several Times I have seen my Lord of Warwick pay Captain Coote's Reckoning for him, and lent him Money when he wanted Money.

Mr. Att. Gen. I desire to ask you, Sir, this Question, though you are not upon Oath, yet you are obliged to speak the Truth in a Court of Justice as much as if you were upon Oath: Did you not know or hear any Thing of a Misunderstanding or Quarrel about the Time that this Business happen'd?

Mr. Disney. No, indeed: I was with them together but the Day before, and frequently, and I heard nothing of any Unkindness between them in my Life, nor never knew of any Quarrel between them, or any Reason for it.

L. H. St. My Lord, who is it you call next.

Earl of Warwick. Colonel Whiteman. (*Who stood up.*)

L. H. St. What do you call this Gentleman for?

Earl of Warwick. It is to the same Effect, to acquaint your Lordships with what he knows of the Conversation between Captain Coote and me.

Col. Whiteman. My Lord, I know my Lord of Warwick and Captain Coote were constant Companions together; they dined together almost every Day for half a Year's Time almost; and as to this Time, when this Business had happened, I went to my Lord of Warwick, being sent for by him, and found him at a private Lodging, where he expressed a great deal of Concern for the Death of his dear Friend Mr. Coote, and he shewed me the Wound he had received in his Hand, and he desired he might be private, and he told me he believed People would make worse of it than it was, because he did not appear; but he did but intend to keep himself out of the Way till he could be tried; and I took what Care I could to get him a Convenience to go to France.

Mr. Att. Gen. Pray, What Reason did he give for his going away?

Col. Whiteman. The King being at that Time out of England, and so the Parliament not Sitting, he said he did not love Confinement, and had rather be in France till the Parliament should meet, and he might have a fair Trial, which he thought he should best have in this House.

Mr. Att. Gen. But pray, Sir, consider, You are bound to tell Truth, and the whole Truth, in such a Case as this: Are you sure there was no Unkindness or Quarrel, between my Lord Warwick and Captain Coote about this Time?

Col. Whiteman. No, I never knew of any Quarrel or Unkindness between them in all my Life.

L. H. St. My Lord, Have you any more Witnesses?

Earl of Warwick. I have a great many Witnesses more to the same Purpose, but I think I need not trouble your Lordship with them; only I would call a Person that has been mentioned, that is my Steward.

L. H. St. What is his Name?

Earl of Warwick. Edmund Raymund. (*Who stood up.*)

L. H. St. What Questions do you ask him?

Earl of Warwick. I desire he may tell what he knows of any Friendship between Captain Coote and me, and what particular Instances he can give of it.

Raymund. My Lord, I know that my Lord sent for me, and said Captain Coote had Occasion for 100 Guineas to pay for a Commission in the Guards, which he had not Money to make up, and I know that they were constant Companions every Day, did eat together, and often did lie together, and I did provide the 100 Guineas for him; and I always did observe that there was a very great Friendship between them.

Earl of Warwick. My Lord, the next Witness I shall call will be Mr. French, who, I hope, having been tried, and had his Clergy allowed him, will be a good Witness; I should be sorry to interpose any thing that would be a Hindrance to your Lordships giving Judgment in this Case presently; he is able to give your Lordships an Account of the whole Matter; and though, I hope, I have no need of calling him as a Witness, yet I humbly offer it to your Lordships.

L. H. St. What say the Counsel on the other Side?

Earl of Warwick. My Lord, I do not insist upon it; I think I have no need of it.

L. H. St. Your Lordship must judge for your self how far it is for your Advantage, to desire that this Matter should be debated.

Earl of Warwick. I do not desire to take up your Lordship's Time, though I am very well advised, that he is a good Witness in Law.

Earl of Roch. I apprehended it the Duty of the King's Counsel to make Objection against any Witness that should be produced by the Prisoner; I am loth to give your Lordships any unnecessary Trouble, yet I own, that I am not satisfied that a Witness should be offered and rejected, though the Objection be not made and argued, by my Lord, the Prisoner at the Bar: If a Witness be offered, and they think they have an Objection against him, if they do insist upon it, it will occasion a Debate, and then we must adjourn into the House of Lords.

L. H. St. It is not insisted upon by my Lord, as I apprehend. My Lord of Warwick, Have you any other Witness you would have called?

Earl of Warwick. I desire to ask Mrs. Amy a Question or two.

Then she stood up.

L. H. St. What does your Lordship ask her?

Earl of Warwick. What she remembers passed at her House about my Sword, or any Thing.

Mrs. Amy. My Lord, when I came into the Room where my Lord of Warwick and Captain French were, in our House, I stood by Capt. French while his Wounds was dressing, and I saw my Lord of Warwick's Sword, and looked upon it, and the Hilt and all the Shell was full of Blood, and it ran down to the Bottom of the Sword Blade.

Earl of Warwick. I desire she may be asked, how soon that was after my coming in?

Mrs. Amy. It was a Quarter of an Hour after my Lord came in.

Earl of Warwick. I desire she may speak what Sort of Sword it was at the Hilt, whether it were open or close?

Mrs. Amy. Indeed, I cannot say; but the Hilt was full of Blood, the Shell of it, and it ran down to the Bottom of the Blade.

L. H. St. Has your Lordship done?

Earl of Warwick. My Lord, I will only take notice, that the three Gentlemen that were on the other

other Side, were tried at the *Old-Baily*, and found guilty only of Manſlaughter; but now I being on his Side, and not having any Malice to him, but always a great deal of Friendſhip, I ſubmit it to your Lordſhips, whether I can be thought any Ways guilty of his Death; and I humbly hope your Lordſhips will hear my Counſel, if you make any doubt of that.

L. H. St. What is it your Lordſhip would have Counſel heard to?

E. of War. To this Caſe, my Lord, Whether there being ſix Perſons, Three of a Side, one is killed, and I being engaged on the Side of him that was killed, the three on the other Side have been tried for the Death of that Man; whether I, who was of his Side be equally guilty with them, who were on the other Side, eſpecially, I engaging particularly with another of the three, that were of the other Side: That Queſtion I deſire my Counſel may argue, whether I be equally guilty with them that were on the other Side, and who, notwithstanding Death happened in the Caſe, yet were found gaily only of Manſlaughter.

L. Godolphin. My Lords, it has been moved by my noble Lord at the Bar, that his Counſel ſhould be heard about Mr. *French's* being Witneſs, whether he ſhould be a Witneſs or no; I think it would be much for the clearing of the Fact one Way or other, if the Evidence of that Witneſs could be heard; but whether he can be heard, or not, according to Law, is a Queſtion that muſt be debated amongſt your Lordſhips, after your Lordſhips have heard the Counſel on both Sides, and perhaps the Opinion of the Judges upon their Arguments; and therefore I think we muſt adjourn, to conſider whether this Matter ſhall be argued or no.

L. H. St. What ſay you to this Matter, Mr. Attorney?

Mr. Att. Gen. My Lords, I ſhould agree with the Motion that is made, if there were any Thing inſiſted upon by the Priſoner at the Bar, that would bear a Queſtion or Argument; but my Lord of *Warwick* himſelf has waved the Objection, and ſo I think there is no need for any Argument on our Side.

L. Godol. I would agree with the Motion that was made for adjourning, in order to debate, but I deſire to be thus underſtood, if he thinks it for his Advantage, that this Witneſs ſhould be heard for him, which he knows beſt, whether it be or be not; then I do ſuppoſe your Lordſhips will adjourn, to conſider of it in your own Houſe amongſt your ſelves; it will not be proper to enter into the Debate here, nor there neither, till you know what Objection the Counſel for the King make againſt this Man's being an Evidence, and therefore we would know, it is fit to be known, whether my Lord's waving, or not inſiſting upon this Man's Teſtimony, be free and voluntary, and abſolute; or whether it be only in reſpect to the Trouble it may put the Houſe to for the Debate.

L. H. St. My Lord *Warwick*, ſome of my noble Lords obſerve you have deſired Mr. *French* ſhould be examined, and that your Counſel may be heard to that Point, whether he be by law a Witneſs, or not; ſeveral of my Lords think it reaſonable, Counſel ſhould be heard, Whether he be a Witneſs or not; or at leaſt, that that Queſtion ſhould be conſidered amongſt themſelves, if inſiſted upon; therefore your Lordſhip is to declare, whe-

ther you do inſiſt upon it, or deſire to wave it.

E. of War. I wholly ſubmit my ſelf to your Lordſhips; but as I am adviſed by my Counſel, I hope he is a good Witneſs, and I deſire my Counſel may be heard to that Point.

Mr. Att. Gen. My Lords, in Truth I acknowledge, according to the Method of Law, the Objection ought to come of our Side, for I think we have very good Reaſon to oppoſe that Gentleman's being a Witneſs in this Caſe, even upon that Objection which my Lord has made himſelf, upon the Conſideration, that he has been found guilty of Manſlaughter, for the Death of this very Perſon. It is true, upon his Prayer, Clergy was allow'd him, but the burning of the Hand was reſpited, and he was not burnt in the Hand, and he is not pardoned; and how far can he be a Witneſs in this Caſe, is the Objection; If a Man convicted of Felony, that is within Clergy, prays his Clergy, and it is allowed him, but he is not burned in the Hand, nor pardoned, we apprehend he is no Witneſs; and that is the Objection we make againſt his Teſtimony to your Lordſhips.

L. H. St. My Lord of *Warwick*, you hear what is ſaid by way of Objection againſt this Man's being a Witneſs. What ſay you to it?

E. of Warw. For Matter of Law, my Lords, I am not capable of ſpeaking to it, but I deſire my Counſel may.

L. H. St. That which Mr. Attorney propoſes by way of Objection is Matter of Fact, and the Matter of Law does not ariſe till the Fact be ſettled, which muſt fall within your Lordſhip's own Knowledge, who produce him as a Witneſs, and therefore you muſt answer to that Fact your ſelf.

E. of Warw. I deſire to know of your Lordſhips, if a Man be convicted of Felony that is within Clergy, and prays his Clergy, and it is allowed him, but the burning of the Hand is reſpited, and there is a Warrant for his Pardon; whether he cannot be a good Witneſs: That his Clergy was allowed, and the burning of the Hand reſpited, I have the Record here to ſhew.

L. H. St. My Lords, my noble Lord at the Bar, inſiſting upon a Warrant for a Pardon, I muſt acquaint you with ſomething that happened during your Lordſhips ſitting here this Day; ſince I came hither a privy Seal was delivered to me, in order to paſs a Pardon for the burning in the Hand of Mr. *French*, for the Manſlaughter for which he was convicted at the *Old-Baily*; ſo far I can acquaint your Lordſhips as to Matter of Fact.

Earl of Warwick. My Lord I am adviſed by my Counſel, that he is a good Witneſs without a Pardon, or without burning in the Hand.

L. H. St. What ſay you, Mr. Attorney, to the Law? Now you underſtand what the Fact truly is.

Mr. Att. Gen. Yes, my Lord; and I do apprehend, with Submiſſion to your Lordſhips Judgment, That a Man convicted of Felony, who he prays his Clergy, and has it allowed him, but is not burnt in the Hand, nor has any Pardon, can be no Witneſs.

L. H. St. That is the Caſe upon which you are to form your Objections: Here is a Man produced as a Witneſs, who has been convicted of Felony, within the Benefit of Clergy, has craved his Clergy, has had it allowed, but has not been burnt in the Hand, nor pardoned.

Mr.

Mr. Att. Gen. Then, my Lords, with humble Submission, upon the Matter of Fact so stated, I make this Objection, That he is no Witness in Point of Law: He has been convicted, in one respect, for the very Offence for which the noble Lord, the Prisoner at the Bar, stands indicted: Tho' not in the same Degree as the Indictment sets it forth, yet it is for the same Fact. Upon this Indictment Mr. French was indicted at the Sessions at the Old-Baily, and there he was found guilty of Man-slaughter, upon which, he pray'd the Benefit of his Clergy, which was allow'd him, but he was not burnt in the Hand: Thus stands the Case in Fact. Now, my Lords, the Allowance of Clergy of it self, does not discharge the Party from the Offence, so far as to set him *Reſtus in Curia*, and make him in all respects a Person fit to have the Benefit and Privileges of a *Probus & legalis Homo*, till he has passed through those Methods of setting himself Right in the Eye of the Law, that the Law hath prescribed; and in order to set this Matter in its true Light before your Lordships, it will be necessary for me to open to your Lordships, as far as I can, the Nature of this Benefit of Clergy, and what Advantage did accrue to the Party, by having that Benefit allow'd him, and likewise what Benefit he had by the Act that enacted the Burning in the Hand, which was the Statute of the 4th of H. VII. And by that Act the Burning in the Hand was to be of no more Effect, but only to shew that he had had his Clergy allowed him; and that unless he were within Orders he should have it no more than once. Before that Act of Parliament, a Person might have had the Benefit of Clergy several Times, but that Act limits it as to Time, that it shall be but once: And therefore, in order to the having of it known, whether a Man once had his Clergy allow'd him, that did not produce his Orders, that Act provides there shall be a Mark set upon him at the Time of the Allowance of this Clergy, as a Token that it was allowed him, and he was never to have it allowed afterwards, but even at that Time he was to be delivered over to the Ordinary to make his Purgation; but since that Act, several Statutes have been made about this Matter. I shall mention one that relates to your Lordships, and that is the Statute of Edward the VIth, which indeed does Enact, That in case where a Peer is convicted of Felony within the Benefit of Clergy, he shall be discharged without being burnt in the Hand, but then and thus the Law stood till the Statute of 18 Eliz. cap. 7. by which 'tis Enacted, That after the Burning in the Hand the Prisoner shall be delivered to the Ordinary, but he shall be discharged; by Virtue of which Act, after burning in the Hand, the Prisoner hath made full Satisfaction to the Law, without that Sort of Purgation which was before requisite to be made, but till he be burnt in the Hand, or has his Pardon, he is not to be discharged; it may be he may be bailed out by the Judge, in order to get a Pardon, but still he remains in *statu quo*, as to his being a Witness, or any Thing of that Nature; his Credit is gone till it be restored by the King's Pardon, or his undergoing the Punishment that the Law requires; and no Man would say, that where one lies under a Conviction of Felony undischarged by burning in the Hand, or Pardon, that he can be a Witness; he remains just as he was before, the Conviction remains upon him, which disabled him to be a Witness; and that we sub-

mit to your Lordships as the Case of this Person, Captain French.

Mr. Sol. Gen. My Lords, if your Lordships please to spare me one Word of the same Side: Sure at common Law there would be no difficulty at all, that a Person convicted of Felony within the Benefit of Clergy, unpardoned, and undischarged, could be no Witness; and since those several Statutes that have been mentioned by Mr. Attorney, unless there be an actual Burning in the Hand, or a Pardon for that Burning in the Hand, sure it cannot be pretended, that one convicted of Felony can be admitted as a Witness. If my Lord of Warwick does insist upon his Evidence as Matter of Right, we, for the King, do insist upon it, that there is no Right at all in the Case; for French must be taken to be one convicted of Felony, and not discharged without either Burning in the Hand, or pardon, and then we are sure it cannot be pretended in Law that he can be a Witness.

L. H. St. My Lords, the King's Counsel have stated their Objection, what is your Pleasure to have done it?

Earl of Rivers. I suppose, my Lords, that it will be necessary to hear what Answer my Lord of Warwick gives to this Objection.

L. H. St. Is it your Lordships Pleasure then, that the Counsel assigned for my Lord Warwick be heard what they have to say to this Matter?

Lords. Ay, ay, ay.

[Then Sir Thomas Powys came to the Bar, and stood by the Earl of Warwick, and spoke thus.]

Sir T. Powys. May it please your Lordships, I am by the Order of this Honourable House, assigned of Counsel for this noble Lord at the Bar, in point of Law; and, my Lords, as to the present Question that has been spoken to by the King's Counsel, I am a little surprized to hear it should be wondered at, that my Lord of Warwick should insist upon it, that this Gentleman should be examined for him as a Witness, because, with humble Submission to your Lordships, I think the Authorities of Law will make for the Opinion on the other Side. Mr. Attorney General says true, the first Statute that was made for Burning in the Hand, was that in 4 H. VII. before that Time the Benefit of Clergy, even for Murder, was used to be allowed upon the Prayer of the Party, and he was thereupon delivered over to the Ordinary to make his Purgation, and that not only once, but *toties quoties*, let him demand it as often as he would, and as often as he offended it was allowed: This was thought such a Privilege as ought to be restrained; that Statute of the 4th of Hen. VII. takes notice that an ill Use was made of it, and therefore does Ordain, That it should be allow'd no more than once, unless to Persons within Orders: And as a Means to know, Whether it had been before allowed, or not, the Act does direct, That the Party convicted shall be burnt in the Hand, that is all the Act does appoint, it does no otherwise alter the Case; it does not impose it upon the Party as a Punishment for the Offence, but only as a Mark of Distinction, that if ever he came again before the Court, and being convicted of the like Offence, should pray the Benefit of Clergy, then upon Inspection it might be known whether before he had been allowed his Clergy or not; and so stood the Law without Alteration as to the Manner of Delivery of the Cri-

Criminal over to the Ordinary to make his Purgation, with which the temporal Law, in the Manner of doing thereof, did not intermeddle; and therein consisted, with respect to this Matter, the Benefit of Clergy. Afterwards, by the Statute of *Edward* the VIth, the Peers were exempted from the Burning in the Hand; and then comes the Act that we rely upon, which is, that of the 18th of *Eliz.* that takes notice of the former Act of the 4th of *H. VII.* which only ordered the Burning of the Hand for the Purposes aforesaid, but left the Party to be delivered over to the Ordinary to make his Purgation; which was found to be a Matter attended with many Abuses, and upon the Reformation thought fit to be abolished, and taken away, because it was only an outward Appearance and Shew of Purgation, and was often the Occasion of very great Perjuries, therefore it is taken totally away, and by this Act the Party shall have the Benefit of Clergy without making Purgation, as fully as if he had actually made it. But, say they, There is still left something that the Law requires, which is, that he should be first burnt in the Hand, and if he be not burnt in the Hand, or at least pardoned, he is not in that Condition that the Law calls for in such a Case, to set him *Reatus in Curia*: If he be burnt in the Hand, or pardoned by the King, they agree on the other Side, that he may be a very good Witness. My Lords, that Act of Parliament of Queen *Eliz.* does impower the Court that tries the Criminal, and before whom he is convicted, not only to burn him in the Hand, pursuant to the Act of *Hen. VII.* but also to detain him in Prison for a Year after; but yet I think that doth not signify any Thing one Way or other to restore him, or not restore him to his Credit; for I think the Burning in the Hand, which is a Mark of Infamy, was never intended as a Means, any more than Imprisonment for a Year, of restoring a Man to his Credit; it was only to shew he had his Clergy once, and should have it no more. The Allowance of Clergy by the Statute of *Eliz.* operates as a Pardon; only, saith the Statue, he shall not be delivered out of Prison before he is burnt in the Hand, according to the Statute of *Hen. VII.* No body can say, that the Continuing in Prison for a Year, which the Court may order, though burnt in the Hand, would, as to restoring of Credit, have operated one Way or other: But that we insist upon is, That the Allowance of Clergy sets him right in Court, since Purgation is abolished, and is the same Thing as if he had undergone the ceremonial Parts of a formal Purgation. It is the Allowance of Clergy that makes the Alteration or Operation in this Case, by Virtue of this last Act of the 18th of *Eliz.* for we take it, that he is to have the same Benefit of his Clergy, as if he had been delivered to the Ordinary, and Purgation had been made; and now the Allowance of Clergy by this Act, gives the same Benefit to the Party, as Purgation would have done before the Act, and he is in the same State and Condition as he would have been in Case of a Purgation, or of a Pardon by the King. The Authorities are all with us. There is a Case that is very well known among the Men of the Law in the fourth Report of my Lord *Coke*, *Holcroft's* Case, who was indicted and convicted of Manslaughter, and he prayed the Benefit of his Clergy; the Judges thought fit to respite their Judgment therein, but

his Prayer was enter'd upon Record; and then an Appeal being brought against him, it came to be a Question, How far he had had his Clergy: For by the Statute of the 3d of *Hen. VII.* an Appeal will lie notwithstanding a Conviction, if the Party have not had his Clergy; and in this Case it was adjudged, That the Party having prayed his Clergy, he should have the same Benefit as if the Court had ordered every Thing to be actually executed, which ought thereupon to be done: And surely then it can be no Question, Whether a Man shall be a Witness or no, who has had his Clergy allowed. It is so entred upon Record, That the Book was administered to him, and that he read as a Clerk; for the Party has done as much as he can, prayed the Benefit of his Clergy, and had it allowed, and so it is enter'd upon Record. The Respite of the Burning of the Hand till the King's Pardon be obtained, shall not, sure, put him in a worse Condition than he would have been, if he had actually been burnt in the Hand. My Lords, I have in my Hand a Book which is of very great Esteem, and that is, *The Reports of my Lord Chief Justice Hobbart*, wherein he declares his Opinion in this Point, and for whose Opinion every one of our Gown ever hath testified a very great Veneration and Respect; the Case is that of *Searle and Williams*, wherein my Lord *Hobbart* has spoken so fully to this Matter, that I think it ought to put an End to the Question: He says, the Statute of *Eliz.* appointing the Burning in the Hand without Purgation, does operate as a Statute-Pardon to all Intents and Purposes, and the Party having now the Benefit of his Clergy allowed, is in all Respects in the same Condition as if he had been acquitted: That is the Opinion that he holds throughout that Case: I need not trouble your Lordships with reading all the particular Words that he uses, but only those which relate to the Thing now in Question, immediately before your Lordships. He delivers his Opinion, *That whosoever speaks Words of Accusation, reflecting upon a Man for any Offence for which he was indicted and convicted, and had had his Clergy allowed, an Action lies as if he had been totally acquitted from it; 'tis not the Burning in the Hand, but the Allowance of Clergy, that sets him right in his Credit in the Eye of the Law, and he is thereby in the same Condition in that Respect, that he would have been, if he never had had any Conviction upon him.* Towards the End of the Case his very Words are these, *Though the Statute saith, after burning in the Hand according to the Statute in that behalf made, he shall be discharged, and there is no Burning in the Hand, that makes nothing; for though it be a Case where the Hand ought to be burnt, yet it is not so essential but a Man may have the Benefit of the Statute, tho' he be not burnt; the King may pardon the Burning, for the Burning, even in an Appeal, is no part of the Judgment, nor so much as in the Nature of Punishment, but rather a Mark to notify that he may have his Clergy but once.* These are his very Words in this Case; so that the Statute of Queen *Elizabeth* doth abolish Purgation, but gives the Party all the Benefit thereof, as if he had gone through it, and instead of delivering the Party to the Ordinary to make his Purgation, it says, he shall be deliver'd out of Prison; but lest it might seem to repeal the Statute of *Hen. VII.* as to Burning in the Hand, it adds, *Being burnt in the Hand, according to the Statute in that behalf provided*: By the Statute of *Hen. VII.* he was first to
be

be burnt in the Hand, and then delivered to the Ordinary to make his Purgation; but by the Statute of *Eliz.* he is first pardoned his Crime by being allowed the Benefit of his Clergy, without making his Purgation, and afterwards to be burnt in the Hand before he be delivered out of Prison; so that the Burning in the Hand is only a Condition precedent to his getting out of Prison, not to his being restored to his Credit: The King may pardon the Burning in the Hand undoubtedly, and he has gone a great Way in this Case, for he hath given a Pardon as far as the Privy-Seal, and that is sufficient to shew his gracious Intention of pardoning it throughout; and if there be need, we hope it may pass yet forward. What we insist on, is not only the Opinion of my Lord Chief Justice *Hobart*, but he is followed therein by the Opinion of a Man of very great Authority, one no less eminent than he in his Profession, and that is my Lord Chief Justice *Hale*, in a Book of his that is intituled, *His Pleas of the Crown*, which is but an Abridgment of what he intended upon that Subject under the Title of Clergy: When he comes to treat of the Consequences of the Allowance of Clergy, and what the several Effects of Clergy allow'd, shall be, he says, it gives him a Capacity to purchase Goods, and retain the Profits of his Lands, and restores him to his Credit, according to the Case I have mentioned before in *Hobart*, of *Searle and Williams*; for that Case is particularly in that Book mentioned and referred to: Therefore I hope your Lordships will make no Difficulty of hearing this Witness; for we think the having his Clergy allow'd him, is that which restores him to his Credit. If they have any other Objections against him, I hope we shall hear it from the King's Counsel: But if this be stood upon in Point of Law as an Objection, That though Clergy was allowed, he was not burnt in the Hand, nor pardoned; I would have observed to your Lordships, That my Lord High Steward has told you it is so far gone towards the Pardon, that the King has shewn his Intention to pardon by the Privy-Seal; and we hope your Lordships will not let this noble Lord at the Bar suffer any Prejudice, by the not perfecting of the Pardon by actual passing of the Great Seal.

L. H. St. Mr. Attorney General, what say you to the Matters which have been urged?

Mr. Att. Gen. My Lord, we have stated our Objection; we think there is nothing given as an Answer to it, and we submit it to your Lordship's Judgment.

Marq. of Hallifax. My Lords, I desire that the Question that is to be decided before your Lordships, may be settled truly, what it is.

L. H. St. If there be six in Company, and one of them is killed, the other five are afterwards indicted, and three are tried, and found guilty of Manslaughter, and upon their Prayers have their Clergy allowed, and the Burning in the Hand is respited, but not pardoned; Whether any of the three can be a Witness upon the Trial of either of the other two.

Sir T. Powis. My Lords, with Submission, though he were convicted of the Felony, yet upon Prayer of his Clergy, that being allowed him, that restores him to all the Capacities, we say, that he had before the Conviction, and particularly to his Credit; and for that we submit ourselves to your Lordships Judgment.

Marq. of Hallifax. I suppose your Lordships will have the Opinion of the Judges upon this Point; and that must be in the Presence of the Prisoner.

L. H. St. It must certainly be in the Presence of the Prisoner, if you ask the Judges Opinions.

Marq. of Hallifax. But in these Cases, my Lords, it is usual to hear the King's Counsel to make a Reply: I desire to hear what they would say to what has been offered by the Counsel for the noble Lord the Prisoner at the Bar.

Mr. Serj. Wright. My Lords, I did apprehend that the very stating of the Objection would have set this Matter in its true Light: For in the first Place, it is agreed on all hands, That this *Mr. French*, that is desired to be a Witness, does stand convicted of Felony, and by the Law of *England*, while that Conviction remains upon him, till he be either purged or pardoned, he cannot be a Witness: By the Conviction his Credit is lost; and till he be restored to his first Condition, he stands not so clear in the Eye of the Law that he can be an Evidence. The Counsel for the Prisoner have objected, That if he either be pardoned, or Clergy allowed, he is put in the same Condition as if he had been acquitted.

My Lords, I must admit a Pardon restores to Credit; and I must likewise admit, That Allowance of the Benefit of Clergy, and Burning in the Hand upon it, amounts in Law to a Pardon, or is equivalent to a Pardon in this Matter: But the Fact here is not so; for here is neither actual Pardon, nor any Burning in the Hand: the Benefit of Clergy was prayed, and allowed; but that alone is not sufficient; there must be an actual Burning in the Hand, or a Pardon of that Burning in the Hand, otherwise it cannot be a Satisfaction in Law, such as should put him in the same Condition as if he were acquitted. Your Lordships have heard what was said by his Grace my Lord High Steward, That as to the Burning in the Hand, the King has been pleased to proceed so far as to grant a Privy Seal for the Pardon of the Burning in the Hand: But your Lordships very well know, and it cannot be insisted on to the contrary, by the Counsel on the other Side, That it is no Pardon until it be past under the Great Seal of *England*: So that here is no actual Pardon; nor is the bare Allowance of Clergy, without Burning in the Hand, equivalent to a Pardon. My Lords, it must be agreed, That at the Common Law, Persons that were convicted of Felony, were not restored to their Credit merely by allowing the Benefit of Clergy to them; there was something further to be done to regain Credit; the Party convicted must undergo another Trial before the Ordinary, which was commonly called Purgation; when any Man was convicted of Felony, he was, upon his Prayer of the Benefit of Clergy, to have it allowed to him, and if he could read as a Clerk, his Life was saved. He was not discharged of the Felony, and therefore was delivered over to the Ordinary to be kept in Prison until he had, by a Sort of Trial before the Ordinary, made his Innocence appear, and purged himself of the Fact charged upon him; and if he could not make his Purgation, he was to lie perpetually in Prison; and notwithstanding the Allowance of Clergy, and Delivery over to the Ordinary, yet was not the Credit restored, nor his former Capacities; he was not a legal Witness until he had purged himself of the Crime: It was the clearing themselves

of the Guilt, that restored such Persons to their Reputation and Credit, not the bare Allowance of Clergy: Some Criminals were delivered to the Ordinary generally; those might make their Purgation: Others were specially delivered, or delivered with a special Charge to the Ordinary, not to admit them to Purgation, *Absque purgatione facienda*: These latter could never be restored to Credit, except by the King's Pardon; for the Liberty of Purgation, which was the Means of regaining their Credit, was taken from them; their Guilt occasioned their loss of Credit; taking away that Guilt doth consequentially restore Credit again; and this Benefit of Clergy was to be allowed as often as any Man had Occasion for it.

Thus the Matter of Benefit of Clergy stood in Common Law, in respect of Purgation and restoring of Credit, till the Statute of 18 Eliz. c. 7. which was cited on the other Side by Sir Thomas Povey; by which Statute Purgation is absolutely taken away and set aside: and the Party being burnt in the Hand, according to the Statute of 4 H. VII. is appointed by this Statute 18 Eliz. to be discharged, and not to be delivered over to the Ordinary, as was before that time used. The delivering over to the Ordinary was in Order to Purgation, and that by the last Statute is quite taken away, and the Party is to have the same Benefit by the having the Benefit of his Clergy and Burning in the Hand, as if he had made his Purgation; he shall be discharged: It is not his reading as a Clerk, and that pronounced by the Ordinary, that gives him the Benefit of a Discharge, as if he had been purged of the Crime; but there must be the Burning in the Hand, that is the very Terms of the Statute upon which he is to be discharged; that must actually be done before he can be put into the same Condition that he was in before the Conviction, and consequently make him capable of being a Witness. As for the Case of *Searle and Williams*, that was cited by Sir Thomas Povey, that Case doth not oppose in this Matter; there it was not needful to burn the Person convicted; he was a Clerk in holy Orders, and by Law exempt from Burning in the Hand: so it was not needful to burn him, the Statute of 18 Eliz. not requiring any Person to be burned in the Hand that were not so liable before then. The most that is said in that Case by the Chief Justice *Hobart* is, That in Case where the Hand ought to be burnt, it is not essential; but the Party may have the Benefit of the Statute, *i. e.* be discharged with out Burning, and the King may pardon the Burning; and no doubt if the King pardons the Burning, it is as good and effectual as if the Hand had been actually burnt. The King might pardon the whole, and consequently any Part; the Pardon of the Punishment supplies the Effect of it; no Question but a Pardon may supply the want of Burning in the Hand. Chief Justice *Hales* in his Book of *Pleas of the Crown*, Fol. 240. which I have here, says expressly, That Burning in the Hand is now, since the Statute, 18 Eliz. the Consequent upon the Allowance of Clergy, which hath this Effect: First, It enables the Judges to deliver him. Secondly, It restores him to former Capacities. Thirdly, It restores him to his Credit, and so it puts him in the same Condition as if he were acquitted. What is it that hath this Effect? The Allowance of Clergy, and Burning in the Hand: There is not to be a Delivery of the Criminal till all be done which is required by Law: The Law requires that the Party

be burnt in the Hand, or that the King do pardon the Burning in the Hand, before the Party be discharged; and, with humble Submission, it was never yet pretended, that any Person could have the full Advantage of the Benefit of Clergy, since the Statute of 4 H. VII. till he was burnt in the Hand, or the Burning in the Hand was pardoned. Now, my Lords to apply this to the Case in Question; it is on all Hands admitted, That Mr. French was convicted of Felony and Manslaughter, and is neither burnt in the Hand, nor pardoned; but he has prayed the Benefit of the Clergy, and has had the Book given to him, to try if he can read, and he certify'd he can read; this is all that is done. I think it cannot be pretended he ought to be discharged until he is burned in the Hand, or that Burning pardoned, as the Act requires; and if the Reading as a Clerk without Burning in the Hand, or Pardon of it, be not sufficient in Law to entitle him to be discharged, why should it be sufficient to restore his Credit? The whole together works the Discharge and restores the Party. In the Case of *Burroughs* and *Holcroft* that has been cited, there a Man was convicted of Manslaughter, and prayed his Clergy; the Court did not allow his Clergy, but did advise upon it. This was held sufficient to bar an Appeal; for if Clergy had been allowed, it had clearly been a good Bar; and the Act of the Court in advising upon the Prayer, and not allowing Clergy where it ought to be, shall not prejudice the Party convicted, but he shall be in the same State as if the Clergy had been actually allowed: But that has no likeness to the Case now before your Lordships; for here it is not pretended that Mr. French ever desired to be burnt in the Hand, but that was respite in Favour to him, which was done with Intention, it seems, to get the King's Pardon for the Burning of the Hand, which is not yet obtained, and consequently I take it he is not entitled to that Benefit which the Law would give him, if he was either pardoned or burned in the Hand; he is not fully discharged of the Conviction, and therefore I think he ought not to be admitted as a Witness.

L. H. St. What is the Resolution your Lordships please to take upon this Matter? Is it your Lordships Pleasure to have the Opinion of my Lords the Judges, who are here present, upon this Point?

Lords. Ay, ay, by all Means have the Judges Opinions.

L. C. J. Treby. Two Things have been mentioned at the Bar, which, I think, ought to be laid out of the Question.

1. The Consideration of a Peer, with respect to burning in the Hand.

I suppose it is not (I am sure it ought not to be) insinuated, that, if any of your Lordships Degree should have the Misfortune to fall into the like Condition as the Gentleman now produced, *viz.* to be once convicted of a clergyable Felony, there could be any Doubt of receiving such Peer, as a Witness, without his having been burnt in the Hand. Certainly there could not; For the Statute of 1 E. VI. exempts the Peers from such Penalty, and virtually repeals the Statute of 4 H. VII. as to so much. And the Statute of 18 Eliz. requires burning in the Hand only, according to the Statute in that Behalf (before) provided. And there being no Statute then or now in Force, to subject Peers to such Brand; there are, in such Case, upon

upon the allowing the Benefit of the said Statute of E. VI. which is as much as Clergy without reading or burning) freed from Discredit and other Penalties of the Felony, as much as Commons are by having Clergy formally allowed and being burnt.

2. Here hath been Mention of a Pardon of the burning this Gentleman in the Hand; and, it seems, the Proceeding hath been so far as to pass the Privy-Seal. I do not question the King's pardoning of the Burning's being as effectual as the Party's undergoing it. But, I say, Here is no Pardon (though great Preparation for one.) For, the Sign Manual, the Signet, the Privy Seal, are but Warrants in such Cases, and countermandable. But, it is the great Seal that speaks the King's last and irrevocable Intent, and passeth the Pardon (or other like Thing) to be granted. And that hath not been obtained here.

Now the Question is cleared, I take it to be this; Whether this Commoner, being convicted of Felony, and having his Clergy allowed, but being unburnt and unpardoned, shall be received and allowed to be a Witness?

I am of Opinion he ought not.

For (whatever Quality or Credit he might personally be of) he is, by being and remaining a Felon convicted, render'd infamous in the Eye of the Law. Upon the Conviction, he lost, by the Intendment of Law, that Credit which is necessary to a Witness; and is not restored to it by the bare allowing of Clergy; but is in the State as a Felon convicted would have been, before Purgation, at Common Law.

Clergy or (more properly called) Benefit of Clergy, is an antient Privilege, whereby a Clerk charged with Felony was dismissed from the Temporal Judge, and delivered in Custody to his Ordinary, before whom he was to purge himself, if he could, of the Offence; and if he failed in his Purgation, he was to remain in the Ordinary's Prison.

I mean generally; and I think it not proper to this Occasion, to discourse of the special Cases wherein the Delivery to the Ordinary was *absque Purgatione*.

This Privilege took its Root originally from a Constitution of the Pope, exempting the Persons of the Clergy from the secular Jurisdiction. This the Canon-Law is full in. But that Law was not thoroughly received here in England. And this Matter was moulded, ordered, and altered by our Common and Statute-Law.

For Instance. The Canon-Law gives the Privilege only to Men in holy Orders: Our Law, in favour to Learning, and the Desire of the English Bishop, extended it to Lay-Clerks, as an old Statute calls them, *i. e.* any Layman, that, by Reason of his Ability to read, was (other Circumstances concurring) in a Possibility of being made a Priest. On the other Side; That Law would not suffer the Clergy to be tried before secular Judges: But, ours hath, for several hundred Years, subjected them to such Trial.

But the Common Law was ever clear in this, That when a Man was convicted of Felony, though by the allowing of Clergy, his Life, Land, and Blood were saved, yet, That Conviction laid him under divers Penalties and Forfeitures, some absolute, others limited and determinable.

He forfeited all his Goods and Chattels, which

he had at the Time of his Conviction, Absolutely; not to be restored by Purgation or Pardon.

He also forfeited and lost, 1. His Liberty, being to continue a Prisoner. 2. His Capacity of purchasing more Goods or Chattels, and of taking and retaining the Issues and Profits of his Freehold Land to his own Use. 3. His Credit, so as not to be a Witness, Juror, &c. Under these three Penalties he remained till his Purgation: But, by that, they were determined. As soon as he had made his Purgation, he was restored to his Liberty, Capacities, and Credit.

Purgation was the Convict's clearing himself of the Crime, by his own Oath, and the Oaths or Verdict of an Inquest of twelve Clerks (as Compurgators.) The Proceeding was before the Ordinary. And, for the Manner of it, old Books speak of their making Proclamation for Persons to come in against his Purgation, and of their enquiring into his Life, Conversation, and Fame, and of other Formalities. In all which, several other Statutes say, there were great Abuses. But it is certain, that, upon his Acquittal, the Ordinary pronounced him innocent, and absolved from Infamy. And thereupon he was discharged from the Imprisonment, Incapacities, and Discredit incident to the Felony.

The Statute 4 H. VII. brings in a new Thing, appointing that every Person convicted of Felony, should be marked in the Hand by the Goaler in open Court, before he should be delivered to the Ordinary. And this was partly that they might taste of Corporal Punishment; but, principally, to notify that they had had their Clergy. For, the same Statute, taking notice that Men were emboldned to commit Murder, Rape, Robbery, and other Felonies, because they had the Benefit of Clergy *toties quoties*, ordains that no Person, who was once admitted to that Benefit, should ever have it again for a following Offence, unless he were within Orders, and produced his Letters of his Orders, or a Certificate of them.

For this Act, *Perkin Warbeck* in his Declaration against H. VII. brands him as an execrable Breaker of the Liberties and Franchises of holy Church.

Then comes the Statute 13 Eliz. c. VII. which, for so much as concerns this Question, I desire to read.

It is in these Words,

For the avoiding of sundry Perjuries and other Abuses in and about the Purgation of Clerks Convict, delivered to the Ordinaries, Be it enacted, that every Person which shall be admitted and allowed to have the Benefit or Privilege of his Clergy, shall not thereupon be delivered to the Ordinary, as hath been accustomed, but after such Clergy allowed, and burning in the Hand according to the Statute in that behalf provided [meaning that of 4 Hen. VII.] shall forthwith be enlarged and delivered out of Prison by the Justices before whom such Clergy shall be granted, that Clause notwithstanding.

Then there follows a Proviso to this Effect,

Provided nevertheless, and be it enacted, that the Justices before whom any such Allowance of Clergy shall be had, may for the further Correction of such Persons, detain and keep them in Prison for such convenient Time as the same Justices in their Discretions shall think convenient, so as the same do not exceed one Year's Imprisonment.

This Statute refers to that of *H. VII.* and follows the Order of it; As that appointed that the Convict should be burnt before he should be delivered to the Ordinary to have the Benefit of Purgation, So this of 18 *Eliz.* appoints that he should be burnt before he shall be discharged by the Justices, and have the Benefit thereby intended (instead of Purgation.)

The Counsel for the noble Lord at the Bar say, that the Allowance of Clergy by virtue of this Act, freeth this Man, and makes him *Reftus in Curia*; as if he had made his Purgation: and that by this Statute he is first pardoned his Crime, by being allowed the Benefit of Clergy, without making his Purgation; and afterwards to be burnt in the Hand before he be delivered out of Prison; and so the Burning is a Condition precedent to his getting out of Prison, not to his being restored to his Credit.

But I am to seek for any Ground for this Notion in this Statute. It doth not require Clergy to be allowed, nor give any new Virtue or Operation to it, when allowed. It supposeth such a Thing to be by virtue of the Common Law: But there it leaves it, if there be nothing more done. It is one Clause consisting of two Parts; 1. *Negative*; He that is allowed his Clergy, shall not be delivered to the Ordinary. 2. *Affirmative*; But after that, and burning in the Hand, shall be delivered by the Justices.

Now, If it had stopped at the first Part, it had been so far from pardoning or restoring any Clerk Convict, that it had put all into the same Condition that those were who were without Purgation, *viz.* to be perpetually imprisoned, and infamous. Indeed, it had not been reasonable to take away such a Privilege from the Subjects, without some Recompence; and therefore it did not stop there: But proceeds to the 2d Part, and provides that those who before were delivered to, and by the Ordinary, shall now be delivered by the Justices. But withal, it declares when, and upon what Terms, *viz.* After Clergy allowed, and burning in the Hand. And this is a Satisfaction to be given to the Law, before they shall have the Benefit of it.

I agree, if this Convict had made that Satisfaction to the Law, he might have been a Witness; for, in that Case, he would have been freed from his Discredit by virtue of the last Words of the said Clause. 'Tis true; the Words are only [*shall forthwith be enlarged and delivered out of Prison by the Justices*] which literally import nothing but restoring his Liberty. But under this prime Instance, are implied and intended all other Particulars which a Convict might be discharged of by means of Purgation. It was never the Intent of the Statute merely to set him at large, and leave him a Felon Convict. But when it is said *delivered*, 'tis meant delivered free, freed from all incident further Penalties, as he might have been if delivered upon Purgation. This is a reasonable Construction; to a Man that observes the Opposition in the Words, the Sense will appear to be as if the Law-makers had said, that instead of being discharged *a Culpa & Pena* by the Ordinary upon a tedious Proceeding to Purgation, he shall now be so discharged by the Justices, forthwith.

And this also is necessary to vindicate the Justice of this Law; for, since it takes from him the Means he had of regaining his Credit, it is but just it should restore to him by this Way.

'Tis objected, that it may as well be said that he shall not be restored to Credit till he have suffered Imprisonment, not exceeding a Year, as that he shall not be restored till burnt. But that receives an easy Answer; for, if it were so, it would not avail this Person. But, I take it to be otherwise. A Convict is discharged from Imprisonment and all other Penalties incident to the Conviction, forthwith upon the burning in the Hand: But if there be a Commitment made by virtue of the Proviso, it is a collateral and a new Thing, and the Party is not then in Prison by virtue of his Conviction, but by a fresh express Order of the Judges, made upon the Heinousness of the Circumstances appearing on the Evidence. They may, and generally do, forbear to commit at all: And when they do, it may be for a Month or two, at their Discretion. The Proviso calls it a further Correction.

As to the Manner in which this Statute works this full Discharge, it hath been disputed whether it be by Supply of Purgation, or rather by a kind of Statute-Pardon. But, I think, that by Force of the Statute the Party is purged and freed of the Felony, and all Penalties incident to it, in Nature of a Pardon.

In what Manner soever the Statute works it, 'tis manifest that it doth it not but upon a Condition precedent, *viz.* After Clergy allowed, and burning in the Hand. Now, this Person hath his Clergy allowed, but is not burnt in the Hand, (nor has any Pardon for it) and therefore is not yet intitled to the Benefit of this Statute. My Lord's Counsel say he is, because he hath his Clergy allowed. But, that is claiming the Advantage upon the performing of one Part of a joint Condition, which ought not to be had but upon performing both. They might as well have pretended to it before the Performance of either; The Statute says, after both Clergy and Burning. They say also, that this Burning is no Part of the Judgment, as hath been held in the Case of an Appeal. Be it so: But, I say, 'tis a Part of the Condition in this Statute.

There is no Case in our Books against this Opinion. (But, on the contrary, there are Authorities for it.)

Holcroft's Case is in no sort applicable to this Case; as was truly observed by the King's Serjeant.

The Opinion of my Lord Chief Justice *Hobart* in *Searl* and *Williams's* Case, rightly considered, confirms this. I have borrowed the Book from the Gent. at the Bar, and read it. He saith expressly, that where a Convict is liable to be burnt in the Hand, he is not discharged and restored without it; because the Statute says, After Burning: But from thenceforth the Statute frees him from all further Punishment. But, he saith, that where he is not liable to Burning, he shall have the same Benefit immediately upon the Allowance of Clergy only. So it was in the Case before him; which was that of a Clerk in Orders: For, *Searl* was a Clergyman, Parson of *Heydon German* in *Essex*, and convicted of Manslaughter. So it is, he says, in case where the King pardons the Burning. And the last Words in the Case clearly shew his Meaning, *viz.* where the Statute says, after Burning, it imports where Burning ought to be, &c.

To me the Law is evident. A Peer shall have this Benefit, without either Clergy or Burning.

A Clerk in Orders, upon Clergy alone without Burning. A Lay-Clerk, not without both.

As I remember, there hath been but one Authority more mentioned, and that is of my Lord Chief Justice Hale, in his *Summary of the Pleas of the Crown*; I have got hither that Book also. To my Understanding, he plainly declares the same Opinion, and cites the beforementioned Case of *Searl* for Proof of it. His Words (so far as they relate to this Matter) are these;

What the Effect of Clergy allowed?

In ancient Time the Consequent was Delivery to the Ordinary, either to make Purgation, or absque Purgatione, as the Case required.

But by Stat. 18 Eliz. c. 7. Now only burnt in the Hand, which hath these Effects,

1. It enables the Judge to deliver him out of Prison.
2. It gives him a Capacity to purchase Goods, and retain the Profits of his Lands. Foxley's Case, 5th Report.
3. It restores him to his Credit. Hob. Searl's Case.

The Word [which] used here (whatever else it do, or do not refer to) doth certainly refer to the next Antecedent, that is, Burning in the Hand; and the two Books which this most learned Judge cites, are full Authorities that 'tis this Burning which enables the Court to deliver him, and that that Delivering which is then due to him is, by good Construction, in lieu of a Pardon, which restores him to his said Capacity and Credit.

To conclude: This Condition precedent, upon which the Restitution of this Person's Credit depends, is not performed (by his undergoing the said Punishment) nor discharged (by the King's pardoning it;) and therefore he is not a legal Witness.

Earl of *Rochester*. If the rest of my Lords, the Judges, be of the same Opinion, so; and I hope you will not oblige them to deliver their Opinions at large, to take up your Lordships Time with Arguments of any length; for the Matter has been, I think, sufficiently debated.

Lord Chief Baron*. My Lords, I

* Sir Edward am of the same Opinion.

Ward.

Mr. Justice Nevill. And so am I.

L. H. St. My Lord of *Warwick*,

Have you any Thing more to say to this Question?

Earl of *Warwick*. No, my Lord.

L. H. St. Then what is your Lordships Pleasure? Is this Man to be admitted a Witness, or not?

Lords. No, no; we think, by Law, he can't be a Witness.

L. H. St. My Lord *Warwick*, my Lords are of Opinion, That this Person cannot be admitted as a Witness for you.

Earl of *Warwick*. My Lords, I submit to your Lordships Judgment in the Matter.

Earl of *Nottingham*. My Lords, I am very glad your Lordships have had this Matter debated by the Counsel, that so it might be settled: All my Lords the Judges that are here, it seems, are of Opinion, that this Man can be no Witness, and therefore his Testimony must be rejected. But there is another Proposal that I have to make to

your Lordships, of a Point that I think ought to be considered of: My noble Lord at the Bar did suppose that he had proved before your Lordships, that he went into the Field to fight on the Side of the Party that was killed, but not on the other Side; and indeed, that he went not to fight, but to prevent a Quarrel; and thereupon he did start a Question, Whether it should not be a Presumption in Point of Fact and Law, that he, being on the Side of the Party that was killed, should not be reputed innocent of his Death? Now, I confess, upon the Starting of this Objection, I doubted of it, Whether if any one were present at the Killing of a Man, where several People were engaged in fighting, on what Side soever such a Person were, either on the Side of the Party that was killed, or on the other Side, yet whatsoever Crime it was in those that killed him, it was the same Crime in those that were present at the Action. My Lord of *Warwick* did desire, that his Counsel might be heard upon that Point; if there be any Question with your Lordships in that Case, and my Lord desires his Counsel may be heard to that Matter, it may occasion a Matter of Debate, which cannot be in this Place openly, but must be between your Lordships among yourselves: Indeed, I think it reasonable, that Counsel should be heard upon the Case.

L. H. St. My Lords, I think you are not arrived at that Question yet; you are not to take for granted any Part of the Fact, but are to debate among yourselves, after the Proof is over, what that Proof does amount to.

Earl of *Rochester*. Indeed, my Lords, I hope you will not suppose any Thing, and so take it for granted, that may occasion any Debate, because that is not to be done here in this Place, but we must adjourn to another Place for it: The bare putting of a Case by a Prisoner at the Bar, does not make that to be the Case truly in Point of Fact; for as far as I heard and understood the noble Lord's Proposal at the Bar, what he desired to have his Counsel heard to, was, That he being One of Six that went into the Field, but going with a Design to part them, and not with any Intention to promote the Quarrel, could not be in equal Degree of Guilt with those that were on the other side, who killed the Party; but now my Lords, I take it, it is far from being granted on the other Side, that that is the State of the Fact; nay, my Lord himself owns that he was in the Field, and that he was engaged in the Combat with Mr. *James*; and then the Question must be that is to be debated, Whether a Party that is concerned in a Quarrel where a Person is killed, is in equal Degree guilty with those that were on the other Side against the Person that was killed? And then the Question would be far different from what it would be otherwise, and as his Lordship did propose it; and if there be a doubt in Matter of Fact, that ought to be settled here in this Place, that afterwards it may be considered in another.

Earl of *Nottingham*. My Lords, I cannot but agree with that noble Lord, That the Matter of Fact ought to be settled, and then if any Debate arises thereupon, your Lordships are to return to your own House, and there to debate what is your Judgment upon that Matter of Fact: But whatsoever Motion is made by the noble Lord at the Bar, wherein he desires to have his Counsel heard that I suppose may be considered here; and this

Point

Point having been started by my noble Lord at the Bar, as a Point of Law, and not of Fact, I desire to remind him of it, to know whether he does insist upon it; if he does not move to have the Matter argued, then there is an End.

L. H. St. My Lords, I do not think you will hear Counsel upon a Matter of Fact, and therefore it is not ripe (till the Fact be settled) for you to hear Counsel.

Earl of Warwick. My Lords, I humbly pray That you will hear my Counsel as to that Point.

L. H. St. My Lord, this is a Matter of Fact undetermin'd, and not a Matter of Law: What Opinion their Lordships will be of, when they have considered the Proofs as to the Fact, is one Step; when that is over, it will be the proper Time, if any Doubt be remaining with their Lordships, in Point of Law, to hear Counsel; but upon bare Matter of Fact Counsel is not to be allowed.

Earl of Rochester. My Lords, if there be any Debate among the Lords, Whether it be a Matter of Fact, or a Matter of Law, we must go up to our own House; but upon any Point of Law, where Counsel is to be heard, it must be in this Place, in the Presence of the Prisoner, and afterwards your Lordships will debate it among yourselves.

Earl of Nottingham. I hope, my Lords, the Counsel would not state the Case otherwise than as it is really in Point of Fact; nor can this noble Lord hope, that any Thing will make an Impression upon my Lords, but what from the Fact rightly stated, is supported from the Evidence; and that which my Lord proposes, is to have his Counsel heard to a Matter of Law, which your Lordships will be Judges of after you have heard it, whether there be any Weight in that which he supposes to be his Case, That a Person assisting in a Combat on the Side of him that is killed, is in equal Degree of Guilt with them that are on the other Side; that possibly, if the Fact be agreed, may be a Point fit to hear Counsel to, before your Lordships go to debate it among yourselves.

Duke of Devonshire. If I am not mistaken, my Lord of *Warwick* owns his being one of them that fought, for he has offered Witnesses to prove, That he received a Wound in his Hand by fighting: If my Lord of *Warwick* thinks, that there is a Difference between his being on Mr. *Coote's* Side, and theirs that were on the other Side, and would have his Counsel heard, how far it will difference his Guilt, and the Nature of the Crime, from what it was with them on the other Side, I cannot think that can be to any great Purpose to have that argued; but if your Lordships please, you may hear his Counsel what they have to say to that Matter; but otherwise, I cannot think, but that his Lordship will acknowledge the Matter of Fact, that he was engaged in the Quarrel.

Earl of Peterborough. My Lords, I desire, if this be a Point, that my Lords Counsel should be heard to, that it should be stated as a Point of Law, and then your Lordships will consider of it.

L. H. St. As well as I could apprehend it, as it was offered by my Lord of *Warwick*, this was what he desired to have his Counsel heard to: Tho' the Persons engaged in the Quarrel on the opposite Party to Mr. *Coote* have been tried, and found guilty of Manlaughter, yet he is not in equal degree of Guilt with them, he being engaged on Mr. *Coote's*

Side, and therefore his Lordship's Case differs from theirs who fought against Mr. *Coote*. This Point he would have argued by his Counsel before your Lordships, as a Matter of Law founded upon the Fact; now the Fact of the Case must arise from the Evidence as it has been given, which has not yet been debated or settled by your Lordships, and till that be agreed to be the Case, no Question of Law does properly arise.

Duke of Leeds. My Lords, if possible, I would put this Matter into its true Method; for indeed I think we have been all this while out of the Way. The noble Lord at the Bar has desired to have his Counsel heard; this House has allow'd him Counsel in Matters of Law; I would desire that the Counsel would state the Case so to your Lordships, that it may appear to be a Case fit to be argued, that so it may receive your Lordships Judgment thereupon. My Lords own bare proposing of such a Thing, will not be enough to encline your Lordships to be of Opinion, perhaps, one Way or other; but I would pray your Lordships, That you would direct the Counsel that are assign'd for my noble Lord at the Bar, to propose that to your Lordships as a Point of Law that he ought to insist upon. I think it is apparent to every Body, that no Point of Law can arise but upon Matter of Fact, which is agreed to be proved in any Case; now the Proofs of the Fact we have heard; now, that which I would propose to your Lordships is, That instead of hearing his Counsel to argue in point of Fact, what is not yet agreed upon to be the Fact, they should state such a Point of Law as they would argue upon; and then whether you would think it a Point of Law, or not a Point of Law, we must go into another Place, where it may be debated, whether it be such a Point of Law as that Counsel should be heard to it.

Earl of Peterborough. My Lords, I hope you will forgive me for interposing in this Matter, but that which I have to say to it is this: I am far from giving any Opinion as yet, as to the Matter of Fact, whether my Lord of *Warwick* was Mr. *Coote's* Friend or his Enemy; I know it is not a proper Place for that Matter to be debated in: But my noble Lord at the Bar desires to have his Counsel heard upon that Point, as if the Fact was agreed: Truly, till the Fact be agreed, I question whether we can give any Judgment or Opinion one way or other. If I observed aright, the Evidence for the King aimed at somewhat else: I shall not say what my Opinion now is, till we come to debate it among ourselves; but here is a Desire of having Counsel heard, but there is no Question of Law stated, but it depends upon a Matter of Fact which is not yet determined by your Lordships, before whom the Consideration of both Fact and Law doth lie, Whether a Person that is engaged on the Side of the Party that's kill'd in a Quarrel, where several Persons on both Sides are concerned, be as much guilty as those that are concerned on the other Side.

Marq. of Norm. My Lords, I do suppose that you may hear the Counsel to state the Question, without your determining any Thing upon it, as to your Opinion one Way or other; for your hearing of Counsel, is only in order to prepare your Lordships for the Debate among yourselves, if there remains any Doubt with you. It seems my noble Lord at the Bar has proposed that his Counsel should be heard: If the Counsel will state the Point to be argued upon, your Lordships may here con-

consider, Whether it be such a one as it is fit to hear Counsel to; then, no doubt, you will hear Counsel to it. This, I suppose, you will hear from them, or otherwise your Lordships will not think fit to give your selves the Trouble to go and debate that which is no settled Question to be debated of.

Earl of *Rocheſter*. My Lords, I am afraid, of Neceſſity, you muſt adjourn to your own Houſe, for I find my Lords are here arguing one with another; ſome are of Opinion, That the Counſel ſhould ſtate the Queſtion, that they ſhould be heard upon; others of my Lords are of Opinion, That it is only a Matter of Fact, not a Matter of Law, upon which Counſel ſhould be heard; then it muſt be debated between your Lordſhips, which is not proper for to do here; therefore I would humbly move your Lordſhips, that you would adjourn to your own Houſe.

Earl of *Peterborough*. I ſuppoſe your Lordſhips will be pleaſed to enquire of the Counſel, Whether they do inſiſt upon this Point.

L. H. St. My Lord *Warwick*, if your Lordſhip inſiſt that your Counſel ſhould be heard upon the Point which you have offered, it ſeems there is ſuch a Difference of Opinion among my Lords, that for the Debating of what ſhall be done in the Caſe, my Lords muſt adjourn; but if you do not inſiſt upon it, they will go in the ordinary Method, to conſider of the Evidence that has been given, after it is ſum'd up on both Sides; for if you have no more Evidence to offer, you are to make your Obſervations upon the Evidence that has been given.

Earl of *Warwick*. I ſubmit it, upon the whole Matter, to your Lordſhips, Whether my Counſel can be heard, or not, to that Point; how far, I being of Mr. Coote's Side, can be guilty of his Death.

L. H. St. That is a Matter of Fact which is not yet determin'd, and therefore the Queſtion which you ſuppoſe to ariſe upon it, is not yet ripe to be reſolved. If you have no other Witneſſes to produce, that which remains, for I think I may properly acquaint you with the Method of Proceeding, is, That you are now on your Part to ſum up the Evidence that has been given, which is your own Work, as not being allow'd Counſel as to Matter of Fact; you are at Liberty to make ſuch Obſervations as you may think for your Advantage upon the Evidence, and ſo to cloſe your Defence.

Earl of *Warwick*. My Lord, I ſubmit it upon the whole Matter to your Lordſhips.

L. H. St. Mr. Attorney General, my Lord of *Warwick* ſubmits the Matter, as it has been prov'd, to their Lordſhips, without any ſumming up of the Evidence; you who are of the King's Counſel, if you think fit, will ſum up the Evidence on yours, in order to their Lordſhips Conſideration of it: This you know is the Time for doing it. Make Proclamation for Silence.

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Serj. at Arms. O Yes, O Yes, O Yes, my Lord High Steward of *England*, his Grace, does ſtraitly charge and command all manner of Perſons here preſent, to keep ſilence, upon Pain of Imprifonment.

L. H. St. Gentlemen, you that are of the King's Counſel, now is your Time to ſum up the Evidence for the King.

Then Mr. Solicitor ^a began to ſum up the Evidence, but his Voice was ſo low, that he could not be heard by the Lords that ſat at the upper End of the Houſe. ^a Sir John Hawles.

D. of *Leeds*. My Lords, I think it of ſo great Importance to have a true State of the Fact and Evidence laid before us, and that we may hear what the King's Counſel do ſay at the Summing up of the Evidence, that if my Lords be of my Opinion, we ſhall be very defective to know what Judgment we give when we come to give Judgment, unleſs we are thoroughly apprized of the Matter of Fact and the Proofs. I confeſs I am going to move that, which is a Thing not according to the Orders of the Houſe, but much without the Rules of the Houſe, That the Counſel ſhould be heard in any other Place but where they are, at the Bar of the Houſe; this is contrary indeed, I acknowledge, to the Orders of the Houſe, and ſo my Motion is irregular; but yet, in order to our Satisfaction, that we may be enabled to hear what the King's Counſel do ſay to us, eſpecially in ſumming up the Evidence, I cannot but offer this to your Lordſhips; for we can no more hear the Counſel here, than if we were quite out of the Houſe: Whether therefore your Lordſhips will pleaſe to order, that any Perſon that has a ſtronger Voice ſhould ſum up the Evidence; or whether you will diſpenſe with the Orders of the Houſe ſo far, as that Mr. Solicitor may come to the Clerk's Table, or ſome other Place within the Houſe, with he may be heard by all, I muſt ſubmit it to your Lordſhips. It would be a great Satisfaction for us to hear him, in order to our Judgment; but I acknowledge in this I do make an irregular Motion, as to the Orders that are uſually obſerved by your Lordſhips: But I know not how to help it, in regard without hearing, it is impoſſible for us to form our Judgment.

E. of *Rocheſter*. My Lords, I have a very great Reſpect for every Motion that that noble Lord who ſpoke laſt does make, and I am of his Opinion, That it will mightily tend to the Satisfaction of my Lords who are to give their Judgment in this Caſe, to hear both the Evidence and the Counſel, and what Obſervations are made on both Sides; and that it is a great Diſadvantage that the Counſel ſhould have ſo low a Voice, that all my Lords ſhould not be able to hear him; but yet I hope that may be remedied ſome other Way than what is propoſed by that noble Lord; for if what he deſires were done, it will be obvious, that in Point of Precedent many Inconveniencies will occur upon breaking the Orders of the Houſe, to comply with a Motion which is acknowledged by the noble Lord himſelf to be irregular; for it would be impoſſible to hear any Body, if it be permitted to make ſuch a great Noiſe without; and it is that which renders the Difficulty of hearing the greater. If that were quieted, your Lordſhips might hear this Gentleman as well as thoſe of the other Counſel: Or, if this Gentleman's Voice will not ſo well reach your Hearing, then there are other Gentlemen of the King's Counſel that have ſtronger Voices; and if any of them would ſum up the Evidence, I believe it would be better heard and conſequently better apprehended by your Lordſhips; for I had rather any Expedient ſhould be found out to comply with the Orders of the Houſe, and preſerve them, than that any irregular Thing ſhould be done for the breaking the Orders

Orders of the House, upon any Account whatsoever.

L. H. St. Make another Proclamation for Silence.

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Serj. at Arms. O Yes, O Yes, O Yes, my Lord High Steward of *England*, his Grace, does straitly charge and command all manner of Persons here present to keep Silence, upon Pain of Imprisonment.

E. of Bridgewater. Truly, my Lords, the Noise about the Court is so great, that we who sit much nearer to the Bar, than the noble Lord who made the Motion for the Removal of the Counsel into another Place, cannot hear Mr. Solicitor what he says; and therefore I think some of the Guard should be sent out to clear all the Passages about the Court, that there may be no Noise; for it is the Noise of the People without, that makes it so difficult to hear the King's Counsel.

L. H. St. Let some of the Guard without take care that there be not that Noise made; and whoever does make a Noise, let him be taken into Custody.

Then another Proclamation was made for Silence; upon which there was a greater Quietness in the Hall.

L. H. St. Mr. Solicitor, There is hopes now, since there is not so great Noise as there was, that you may be heard by my Lords: You must use the best Endeavours you can, that you may be heard.

E. of Roch. If that Gentleman cannot speak out so well that he can be heard, those of the King's Counsel that have better Voices, must sum up the Evidence.

Mr. Sol. Gen. My Lord, I speak as loud as I can.

E. of Roch. There are others of the King's Counsel, pray let them do it then; Mr. Attorney, he being nearer and within the Bar.

L. H. St. I know not whether Mr. Attorney be prepared for the summing up of the Evidence, because he examined the Witnesses, and the King's Counsel usually allot to themselves the particular Parts which they intend to take.

E. of Roch. Then let Mr. Solicitor go on.

Mr. Sol. Gen. I would shortly observe to your Lordships what Evidence hath been given to you on Behalf of the King in this Case, against that noble Lord, the Prisoner at the Bar, for the Offence for which he stands indicted. The first Witness that was produced was the Drawer at the *Greyhound Tavern* in the *Strand*, where this Quarrel, that was the Occasion of the Death of this Person that was slain, happen'd; and he tells you, that that Night there was at his Master's House my Lord of *Warwick*, my Lord *Mobun*, Capt. *French*, Captain *Coote* the Person that was kill'd, and Mr. *Dockwra*; and after they had been there some time, that other Person, that was the Sixth concerned in the Scuffle, Mr. *James*, was sent for, and he came in when it was pretty late; there they continued till One or Two a Clock, and then they came down to the Bar, and Orders was given for to call Coaches, but it being so late, and Sunday Morning, they could not find Coaches, and then there was Orders for the getting of Chairs; when some Chairs were brought, Mr. *Coote* and Mr. *French*

went into two of the Chairs, but my Lord *Mobun* interposed, and said there should be nothing done that Night, and that if they went away he would call for a File of Musqueteers from the Guard, and secure them; and thereupon they came out of the Chairs, and went into the House, and there was the Noise of Swords clashing heard at the Bar; Captain *Coote* said he would laugh when he pleas'd, and frown when he pleas'd, and they parted; three were on one Side, and three on the other of the Bar; my Lord of *Warwick*, my Lord *Mobun*, and Captain *Coote*, were on one Side; Captain *French*, Captain *James*, and Mr. *Dockwra*, were on the other Side. Indeed he says my Lord *Mobun* and my Lord of *Warwick* did what they could to pacify them, and threaten'd to send for the Guards; but away they went. The next Witness was *Thomas Browne*, and he was the Chairman that carried Mr. *Coote*, and he says, that there was an Endeavour by my Lord of *Warwick* and my Lord *Mobun*, to put off the Business at that Time, and that they did what they could to have put it off, and that even after they were in their Chairs, when they were turned up *St. Martins Lane*, there they stop'd at the back Door of the *Cross-Keys Tavern*, and that while they stood there with their three Chairs, three other Chairs came by, and then Captain *Coote* bid them put up, and follow after those Chairs as fast as they could to *Leicester-Fields*.

The next Witness is *William Crippes*, who was the other Chairman that carried Captain *Coote*, and he gives your Lordships much the same Account that *Browne* gave before, and his Evidence was just to the same Purpose, That my Lord of *Warwick* and my Lord *Mobun* endeavoured to pacify the Matter, and that there should be an End of the Business for that Night, and let it alone till another Time; and that my Lord *Mobun* threaten'd to send for the Guards, and secure them, and would have had them gone home, that is, Mr. *Coote* either with him to his Lodging, or he would go to Mr. *Coote's*, but he could not prevail. Then my Lord *Mobun* said, If he would go on, his Lordship would go and see an End of the Business.

The next Witness was one *Crattle*, who was one of the Chairmen that carried my Lord of *Warwick*, and he says, That my Lord *Mobun* and my Lord of *Warwick* did endeavour what they could to put off the Matter till the next Morning, but that they could not prevail; that afterwards, when he carried my Lord from *Leicester-Fields* to the *Bagnio*, my Lord borrowed a Handkerchief of him to wrap his Hand in, for he said he was wounded, but by whom that Wound was given does not appear, nor how he came by that Wound any otherwise than as his Lordship himself says, that it was given him by Mr. *James*.

The next was the other Chairman that carried my Lord of *Warwick*, which was *John Gibson*, and his Testimony need not be repeated, because it did not differ from the others. The next Witness was *Robert Applegate*, who was the Chairman that carried my Lord *Mobun*; and he says, that there was an Endeavour used by my Lord upon his setting down in *St. Martins Lane*, to quiet Captain *Coote*, and prevent any Quarrel at that Time; but he says, when they would go on, my Lord *Mobun* said, he would go and see the End of it; and thereupon they went on towards *Leicester-fields* to the End of *Green-street*, which is at the lower End of the Square.

The next Witness was *Palmer*, who was one of the Chairmen that carried *Mr. French* to the *Bagnio* in *Long-Acre*; and he tells your Lordships what happen'd upon his carrying him thither, how immediately after his coming there, my Lord of *Warwick* came thither, and they knock'd at the Door at the same time, and that Captain *French* was very much wounded, and they went into the House together, and that *French* would have had them pull off his Cloaths to see his Wounds, for he believed he was a dead Man.

The next Witness was the Chairman which carried *Mr. James*, and he only tells your Lordships, that he carried a Gentleman into *Leicester-fields*; that my Lord *Mobun* endeavoured to put off the Business for that Night; but who the Person was that he carried he cannot so well tell, nor give an Account of; but when he had set him down at the further End of the Square, there he left him, and he knows no further.

Then there was the Surgeon at the *Bagnio* in *Long-Acre*, who gives your Lordships an Account, that about Two of the Clock in the Morning on the Sunday, my Lord of *Warwick* and Captain *French* came in there; Captain *French* was wounded in the Body, and my Lord *Warwick* was wounded in the Hand, and my Lord *Warwick* did take extraordinary Care of Captain *French*, and would not have the Door open'd to any Body, nor his Lordship known to be there; that afterwards Captain *James* and *Mr. Dockwra* came to the Door, and my Lord came to the Door himself, and when he saw who they were, he order'd them to be let in; and that there was a Discourse about going into the Country, and that there was a Fear that *Coote* was kill'd. This is the Effect of the Testimony both of the Surgeon and his Servants; and it is to be observed, that when Captain *French* came in, his Sword was not bloody, but my Lord of *Warwick's* Sword was bloody almost all over, and that was taken notice of the next Day, and there are several Witnesses both Men and Women of that House that give your Lordships an Account much to the same purpose; then there was Captain *Duckinfield*, who says, that my Lord of *Warwick* came to his Lodgings, and they went in a Coach together to the Tavern in *Cornhill*, and then there was a Discourse of going into the Country, and my Lord said that he was afraid his Friend *Coote* was kill'd, but that they had no absolute News of his being kill'd at that Time; for it should seem my Lord of *Warwick* forsook the Field as soon as the fatal Stroke was given, which, by whom it was given, is left to your Lordships Consideration. Indeed it is pretended by my Lord, that the Wound that he had in his Hand was given him by *Mr. James*, but nothing of that is made apparent to your Lordships upon the Proofs.

Then we came to give your Lordships an Account of the Nature of the Wounds that *Mr. Coote* had in his Body; and for that we produced both the Surgeon that did probe the Wounds by the Order of the Coroner, and the Coroner himself. Indeed we could not get a positive Answer from either the Surgeon or the Coroner, whether the Wounds were given by one and the same Sword, or by different Swords; but then your Lordships have the Testimony of *Mr. Turner*, who was Captain *Coote's* Servant, and who knows his Master's Sword, and it hath been shewn to him, and he says, that is his Master's Sword that he went out with; and it can be easily judged whether he could

give himself those Wounds by that Sword.

And your Lordships have likewise had brought before you another Sword, which was left at the *Bagnio* in *Long-Acre*, that was Captain *French's* that had no Blood at all upon it, but my Lord of *Warwick's*, it seems by all the Evidence, had a great deal of Blood upon it.

Then came the Witnesses for the Prisoner at the Bar, this noble Lord, my Lord *Warwick*; and the Sum of the Testimonies that they have given, is of a great deal of Kindness between my Lord *Warwick* and Captain *Coote*; that my Lord lent him a hundred Guineas to purchase his Commission in the Guards, when he had but three of four hundred Guineas which was necessary to make the Purchase; and there are several of them that do testify, that they always look'd upon Captain *Coote* and my Lord of *Warwick* to be very good Friends, and that there never was any Quarrel between them; and that is the Sum of what the Evidence on that Side did testify. And this, my Lords, I take to be the Sum of the Evidence that has been given on either Side; and when I have laid it thus before your Lordships, I must submit it to your Lordships Judgment, what Opinion you will be of upon the whole Matter; only there is this one Observation that I would make to your Lordships upon this Evidence, That there is not one Witness that has given you an Account satisfactory by whose Hand these Wounds were given to *Mr. Coote*; and therefore, tho' it is apparent my Lord of *Warwick* was in the Place where the mortal Wound was given, yet by whose Hand it was given is not yet known; until that can be known, every Person that was there must remain under the Imputation of the same Guilt, as having a Hand, and contributing to his Death; it is certain, and cannot be denied, that this noble Lord, my Lord at the Bar, was in the Field, wherein there was actual Fighting; for he does not deny it himself, but says, that he was engaged particularly with Captain *James*, when Captain *Coote* was engaged with Captain *French*, between whom, as it is alledged, the Quarrel was; but that is no Way in Point of Fact made appear to your Lordships; and there being such Suspensions and Circumstances of the Blood upon my Lord of *Warwick's* Sword, and the great Concern that he was in when he came to the *Bagnio*, and desiring to be concealed, and that no Body should know that he was there, and the Care he took of *Mr. French*, who is the pretended Person that did the Fact, is that which is to be submitted to your Lordships; and it is to be observed, that *Mr. French's* Sword was not bloody, but only dirty, but my Lord of *Warwick's* Sword was very bloody from the Hilt to the Point, and he was in a great Consternation when he came into the House.

There is likewise a Circumstance which your Lordships will please to observe, that even *Mr. Coote's* Sword was brought into the House by some of the Company that were there, and whatsoever this noble Lord pretends of his Friendship to *Mr. Coote*, yet, it seems by his Care that he took of Captain *French*, he had as much Friendship for him.

There is another Circumstance that has been testified, which it will be fit for your Lordships to take into Consideration, and make some Observation of; that is, the Nature of the Wound: It seems, he had two Wounds, one on the left Side of the Breast, near the Collar Bone, and that was downward; and yet his Man, that was here produced

duced as a Witness, does testify, that he was one that used his right Hand, and then it is a Wonder that he should receive such a Sort of a Wound in that Part; and the other Wound was on the left Side too, but it was upward, and how that could be given to one that was a Right-handed Man, is certainly a very great Wonder; and the Wounds being both given upon the same Side, it cannot but be concluded, that they were given by one and the same Sword.

Another Circumstance which relates to my Lord of *Warwick* is, that when he came into the *Bagnio*, after the Fact was over, he would have himself denied to be there, and went to the Door when *James* and *Dockwra* came in; and his declaring his desire of going into the Country; these, we say, are Circumstances that do induce a Doubt, That my Lord of *Warwick* had a Concern upon him of great Guilt of having a Hand in this Man's Death: It is indeed pretended by my Lord of *Warwick*, That *Mr. Coote* was a Person that my Lord of *Warwick* had a Kindness for; but it is plain by the Evidence, that he left him dead in the Field, and did not take any Care of him, but took a great deal of Care of Captain *French*, who, it is pretended, was the Person that fought with *Coote*, when he came to the *Bagnio*; and there is nothing of Kindness at this Time pretended, nor any Thing of a Defence to this Matter offer'd by my Lord of *Warwick*, but only what the Chairmen say, that he endeavoured to put it off to another Time. These, my Lords, are all the Observations that I shall make upon the Evidence in this Case; how far this Evidence, upon Consideration, will weigh with your Lordships, I must submit it to you. If my Lord of *Warwick* did do the Fact, as these Circumstances, we think, may incline your Lordships to believe he did, it will surely be Murder; but how far the Evidence comes up to the Proof of that, we must humbly submit to your Lordships, who are the Judges of it; and we leave it entirely to your Consideration upon what you have heard.

L. H. St. Then it seems you have done on all Sides.

Counsel. Yes, my Lords.

Lords. Then adjourn, adjourn.

L. H. St. Is it your Lordships Pleasure to adjourn into the House of Lords?

Lords. Ay, ay.

L. H. St. This House is adjourned into the House of Lords.

Then the Lords went back to their own House in the same Order they came into the Court in Westminster-hall, and debated the Matter among themselves, what Judgment to give upon the Evidence that had been heard; and in about Two Hours Time they returned again into the Court, erected upon a Scaffold in Westminster-hall; and after they were seated in their Places, the Lord High Steward being seated in his Chair before the Throne, spoke to the Lords thus:

L. H. St. Will your Lordships proceed to give your Judgment?

Lords. Ay, ay.

L. H. St. Your Lordships will give me leave, as I ask your Lordships your several Opinions, to take so much Time as to write down the Opinion of every Lord.

Lords. Ay, ay.

Then the Lord High Steward asked this Question of every one of the Lords there present, beginning with the puisne Baron, which was the Lord Bernard.

L. H. St. My Lord *Bernard*, Is *Edward* Earl of *Warwick* guilty of the Felony and Murder whereof he stands indicted, or not guilty?

The Lord Bernard stood up in his Place uncovered, and laying his Right Hand upon his Breast, pronounced his Judgment thus:

L. Bernard. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

The same Question was asked severally of all the Lords, who in the same Form delivered their Opinions, as followeth.

L. Haversham. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Herbert of Cberbury. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Weston. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Ashburnham. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Cholmondeley. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Jefferys. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Godolphin. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Guilford. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Osulstone. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Osborne. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Craven. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Cornwallis. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Granville. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Berkley. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Lexington. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Rockingham. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Lucas. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Culpeper. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Vaughan. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Byron. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Fermyn. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Leigh. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Raby. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Howard of Escrick. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Lovelace. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L. Hunston. Not guilty of Murder, but guilty of Manslaughter, upon my Honour.

L.

L. *North and Gray*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

L. *Wharton*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

L. *Eure*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

L. *Willoughby of Parham*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

L. *Dudley*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

L. *Ferrers*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

L. *Willoughby of Eresby*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

L. *Audley*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

L. *Abergavenny*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

L. *H. Steward*. My Lord Viscount *Lonsdale*, Is Edward Earl of *Warwick* guilty, &c.?

L. Viscount *Lonsdale*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

L. Viscount *Longueville*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

L. Viscount *Townshend*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

L. *H. St.* The Earl of *Grantham*, Is Edward Earl of *Warwick* guilty, &c.?

E. of *Grantham*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

E. of *Albemarle*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

E. of *Tankerville*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

E. of *Werrington*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

E. of *Scarborough*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

E. of *Torrington*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

E. of *Marlborough*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

E. of *Montagu*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

E. of *Portland*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

E. of *Rocheſter*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

E. of *Nottingham*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

E. of *Yarmouth*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

E. of *Macclesfield*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

E. of *Radnor*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

E. of *Feverſham*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

E. of *Burlington*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

E. of *Carlisle*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

E. of *Bath*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

E. of *Angleſea*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

E. of *Effex*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

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E. of *Scarſdale*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

E. of *Thanet*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

E. of *Cheſterfield*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

E. of *Carnarvan*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

E. of *Kingſton*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

E. of *Wincheſſea*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

E. of *Stamford*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

E. of *Peterborough*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

E. *Rivers*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

E. of *Mancheſter*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

E. of *Denbigh*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

E. of *Leiceſter*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

E. of *Bridgewater*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

E. of *Dorſet and Middleſex*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

E. of *Suffolk*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

E. of *Huntingdon*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

E. of *Derby*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

E. of *Kent*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

E. of *Oxford*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

Lord High Steward. My Lord Great Chamberlain, Is Edward Earl of *Warwick* guilty, &c.?

E. of *Lindſey*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

Lord High Steward, My Lord Marquis of *Normanby*, Is Edward Earl of *Warwick* guilty, &c.?

Lord Marquis of *Normanby*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

L. Marquis of *Hallifax*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

Lord High Steward. My Lord Duke of *Newcaſtle*, Is Edward Earl of *Warwick* guilty, &c.?

D. of *Newcaſtle*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

D. of *Scomberg*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

D. of *St. Albans*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

D. of *Northumberland*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

D. of *Ormonde*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

D. of *Southampton*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

D. of *Richmond*. Not guilty of Murder, but guilty of Manlaughter, upon my Honour.

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D. of *Somerſet*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

D. of *Devonſhire*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

Lord High Steward. My Lord Preſident, Is *Edward Earl of Warwick* guilty, &c.

D. of *Leeds*. Not guilty of Murder, but guilty of Manſlaughter, upon my Honour.

Lord High Steward. My Judgment is, That my Lord of *Warwick* is not guilty of the Murder, but is guilty of Manſlaughter, upon my Honour.

Then the Lord High Steward reckoned up the Number of the Peers that were then preſent, and the Opinions that were given, and afterwards acquainted their Lordſhips with the Reſolutions that they came to, in this manner.

L. H. St. My Lords, your Lordſhips are Ninety-three in Number here preſent, and you have all acquitted my Lord of *Warwick* of the Murder whereof he ſtands indicted, but you are of Opinion that he is guilty of Manſlaughter; Is it your Pleaſure, that he ſhould be called to the Bar, and acquainted with your Lordſhips Judgment?

Lords. Ay, ay.

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Serj. at Arms. O Yes, O Yes, O Yes; Chief Governor of the *Tower of London*, bring forth the Body of your Priſoner, *Edward Earl of Warwick*, forthwith, upon Pain and Peril will fall thereon.

Then the Earl of Warwick was brought to the Bar.

L. H. St. My Lord of *Warwick*, your Lordſhip has been Arraigned upon an Indictment for the killing Mr. *Coote*; you have pleaded not Guilty, and put your ſelf upon your Trial by your Peers here preſent; my Lords have heard the Evidence given both againſt you and for you, and have conſidered of it, and are come to a Reſolution; and their Judgment is, That your Lordſhip is not guilty of the Murder whereof you ſtand indicted, but that you are guilty of Manſlaughter. What has your Lordſhip to ſay, why Judgment of Death ſhould not be pronounced againſt you according to the Law?

Earl of Warwick. My Lords, I deſire that the Benefit of my Peerage may be allowed me, according to the Statute of *Edward the Sixth*.

L. H. St. My Lord, your Lordſhip has demanded the Benefit of your Peerage upon the Statute of *Edward the Sixth*, and you muſt have it by Law; but I am directed by their Lordſhips to acquaint you, That you cannot have the Benefit of that Statute twice; therefore I am likewiſe directed by their Lordſhips to ſay, That they hope you will take a more than ordinary Care of your Behaviour for the future, that ſo you may never hereafter fall into ſuch unfortunate Circumſtances as you have been now under; my Lords hope this will be ſo ſenſible a Warning, that nothing of this kind will ever happen to you again; your Lordſhip is now to be diſcharged.

L. H. St. Is it your Lordſhips Pleaſure to adjourn to the Houſe of Lords?

Lords. Ay, ay.

L. H. St. This Houſe is adjourned to the Houſe of Lords.

Then the Lords went in Proceſſion, in the ſame Order that they came into the Court.

CLXV. *The TRIAL of Charles Lord Mohun, before the Houſe of Lords, for the Murder of Richard Coote, Eſq; March 29, 1699. 11 Will. III.*



ABOUT One of the Clock the Lords came in the ſame Order, as the Day before, to the Trial of the Earl of *Warwick*, into the Court erected in *Weſtminſter-Hall*.

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Serj. at Arms. O Yes, O Yes, O Yes, my Lord High Steward, his Grace, does ſtrictly Charge and Command all manner of Perſons here preſent, to keep Silence, upon Pain of Imprifonment.

Serj. at Arms. O Yes, O Yes, O Yes, All manner of Perſons who are obliged to give their Attendance here this Day, before his Grace, my Lord High Steward of *England*, let them give their Attendance forthwith.

Cl. of the Crown. Serjeant at Arms, make Proclamation again.

Serj. at Arms. O Yes, O Yes, O Yes, his Grace

my Lord High Steward of *England*, does ſtrictly Charge and Command all manner of Perſons here preſent to be uncovered.

Cl. of the Crown. Serjeant at Arms, make Proclamation again.

Serj. at Arms. O Yes, O Yes, O Yes, Chief Governor of the *Tower of London*, bring forth the Body of your Priſoner *Charles Lord Mohun* forthwith, upon Pain and Peril will fall thereon.

Then my Lord Mohun was brought to the Bar.

*L. High Steward**. My Lord *Mohun*, your Lordſhip is now brought upon your Trial for the Murder of Mr. *Coote*, for which you ſtand indicted by the Grand Jury for the County of *Middleſex*. The King, who knows that Juſtice is one of the Pillars which ſupports a Throne, will have a ſtrict Account

* *Lord Somers.*

count taken of the Blood of any of his Subjects, without respect to the Quality of the Slain, or of the Person who stands charged with his Death. There is not one of the noble Peers here present, who are to be your Triers, but does heartily wish your Lordship innocent; but, on the other side, if you should appear to be guilty upon the Evidence, you ought not to hope that any Consideration of Relation, Friendship, or Pity, will prevail against Justice. And therefore since in your present Condition every Thing that is valuable in this World is at stake, it will be highly necessary for your Lordship to recollect your self, and to have your best Thoughts about you. Facts of this Nature are frequently attended with such unhappy Circumstances, that a noble Person may be justly covered with Shame to have Faults and Weaknesses exposed to such an Assembly as this, although he be not conscious to himself of the Guilt of Blood: But your Lordship ought not to be so far discomposed with any Thoughts of this Kind, as to neglect your Defence against this heavy Accusation of Murder. In order to this, it is necessary for your Lordship to hear with Temper what will be said against you, and by no means to interrupt the Counsel or Witnesses. I will take care to give your Lordship notice when the proper Time comes for you to make your Observations upon the Evidence, to examine your Witnesses, and to say what you think proper for your own Defence; and when my Lords have heard, and fully and maturely considered the whole Matter, their Lordships will give such a Judgment as the Law and Justice require.

L. H. St. Read the Indictment to my Lord.

Clerk of the Crown. **C**harles Lord Mohun, your Lordship stands indicted in the County of Middlesex by the Name of Charles Lord Mohun of Okehampton in the County of Devon, late of the Parish of St. Martins in the Fields in the County of Middlesex, together with Edward Earl of Warwick and Holland, late of the same Parish and County, Richard French, late of the same Parish and County, Gent. Roger James, late of the same Parish and County, Gent. and George Dockwra, late of the same Parish and County, Gent. not having the Fear of God before your Eyes, but being moved and seduced by the Instigation of the Devil, the 30th Day of October, in the Tenth Year of the Reign of our Sovereign Lord that now is, William the Third, by the Grace of God of England, Scotland, France, and Ireland, King, Defender of the Faith, &c. with Force and Arms, &c. at the Parish aforesaid, in the County of Middlesex aforesaid, in and upon one Richard Coote, Esq; in the Peace of God, and our said Sovereign Lord the King, that now is, then and there being, Feloniously, Wilfully, and of your Malice aforethought, did make an Assault; and that the aforesaid Edward Earl of Warwick and Holland, with a certain Sword made of Iron and Steel, of the Value of five Shillings, which he the said Edward Earl of Warwick and Holland, in his right Hand then and there had and held drawn, the aforesaid Richard Coote, in and upon the left Part of the Breast of him the said Richard Coote, near the Collar-Bone of him the said Richard Coote, then and there Feloniously, Voluntarily, and of his Malice aforethought, did Strike, Stab, and Thrust in, giving to the said Richard Coote, then and there with the Sword drawn aforesaid, in and upon the left Part of the Breast of him the said Richard Coote, near the Collar-Bone of him the said Richard

Coote, one mortal Wound of the Breadth of half an Inch, and of the Depth of five Inches, of which said mortal Wound he the aforesaid Richard Coote then and there instantly died: And that you the said Lord Mohun, together with the said Richard French, Roger James, and George Dockwra, then and there Feloniously, Wilfully, and of your Malice aforethought, were present, aiding, abetting, comforting, assisting, and maintaining the said Edward Earl of Warwick and Holland, the said Richard Coote, in Manner and Form aforesaid, Feloniously, Wilfully, and of his Malice aforethought, to kill and murder; and so the said Edward Earl of Warwick and Holland, and you the said Charles Lord Mohun, Richard French, Roger James, and George Dockwra, the aforesaid Richard Coote, in Manner and Form aforesaid, Feloniously, Wilfully, and of your Malice aforethought, did kill and murder, against the Peace of our Sovereign Lord the King, that now is, his Crown and Dignity.

Cl. of the Crown. How say you, Charles Lord Mohun, are you guilty of this Felony and Murder, whereof you stand indicted, or not guilty?

Lord Mohun. Not guilty.

Cl. of the Crown. Culprit, How will you be tried?

Lord Mohun. By God and my Peers.

Cl. of the Crown. God send your Lordship good Deliverance.

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Serj. at Arms. O Yes, O Yes, O Yes, All manner of Persons that will give Evidence on behalf of our Sovereign Lord the King, against Charles Lord Mohun, the Prisoner at the Bar, let them come forth and give their Evidence; for now he stands at the Bar for his Deliverance.

Lord Mohun. My Lords, I desire I may have the Benefit of Pen, Ink, and Paper.

L. H. St. Your Lordships are pleased to permit my Lord Mohun to have Pen, Ink and Paper?

Lords. Ay, ay.

[Pen, Ink, and Paper were carried to my Lord, by one of the Clerks of the House.]

Mr. Cowper. May it please your Lordships, my Lord Mohun, the Prisoner at the Bar, stands indicted by the Grand Jury of the County of Middlesex, before Commissioners of Oyer and Terminer in that County; and the Indictment sets forth, That Edward Earl of Warwick and Holland, Charles Lord Mohun, Baron Mohun of Okehampton in the County of Devon, Richard French, Roger James and George Dockwra, the 30th of October, in the Tenth Year of his Majesty's Reign, with Force and Arms at the Parish of St. Martin in the Fields, in the County of Middlesex, upon one Richard Coote, Esq; Feloniously, Wilfully, and of their Malice aforethought, did make an Assault; and that the said Edward Earl of Warwick and Holland, with a drawn Sword then in his Right Hand, the said Richard Coote, upon the left Part of his Breast near the Collar-Bone, did Strike, Stab, and Thrust, giving him thereby a mortal Wound of the Breadth of half an Inch, and the Depth of five Inches, of which Wound he instantly died; that my Lord Mohun, Mr. French, Mr. James and Mr. Dockwra, Feloniously, Wilfully, and of their Malice aforethought, were present, aiding, and abetting my Lord of Warwick and Holland, the said Richard Coote, in manner aforesaid, to Kill and

any Murder: and then concludes, so that the Earl of *Warwick* and *Holland*, the said Lord *Mobun*, *Richard French*, *Roger James*, and *George Dockwra*, the said *Richard Coote*, in Manner and Form afore-said, Feloniously, Wilfully, and of their Malice afore-thought, did kill and murder, against the Peace of the King, his Crown and Dignity. To this Indictment my Lord *Mobun* has pleaded not guilty, and for his Trial has put himself upon God and your Lordships, his Peers. We shall call our Witnesses, and produce what Evidence we have to give to prove my Lord *Mobun* guilty, and so submit it to you.

Sir Thomas Trevor. Mr. *Att. Gen.* My Lords, This noble Lord, my Lord *Mobun*, the Prisoner at the Bar, stands indicted for the Death of Mr. *Coote*, one of the King's Subjects, as your Lordships have heard in the Case that was before you Yesterday, to which Indictment he hath pleaded not guilty, and for his Trial has put himself upon my Lords, who are his Peers; I shall very shortly open the Substance of the Evidence that we shall offer for the King against my Lord, the Prisoner at the Bar; we shall produce Evidence to prove, That at the Time laid in the Indictment, the 29th of *October* at Night, and the next Morning, which was *Sunday*, my Lord the Prisoner at the Bar, and my Lord of *Warwick*, (who has been found guilty of Manlaughter upon this Indictment before your Lordships) and those other Persons that are named in the Indictment, Captain *French*, Captain *James*, and Mr. *Dockwra*, and the Gentleman that was killed, happened to be at the *Greyhound Tavern* in the *Strand*, which was then kept by Mr. *Locket*, and continued there a great Part of the Night, indeed till the next Morning, about One or Two of the Clock in the Morning; there was my Lord of *Warwick*, my Lord *Mobun*, Captain *French*, Captain *Coote*, and Mr. *Dockwra*, but very late in the Night the other Gentleman, Mr. *James*, was sent for: A Messenger was sent particularly to have him come to them; There they continued drinking till about One or Two of the Clock in the Morning, then Coaches were sent for; then the Drawer of the House will acquaint your Lordships, that he went for them, and could not get any at that Time, being a very dark Night; and when there could be no Coaches had, then there were Chairs called for, and the Drawer went to call Chairs; and as we shall make it appear to your Lordships, when the Drawer came back, there did appear to be a Quarrel among them, for there was clashing of Swords, and they seem'd to be divided into two Parties; on the one Side were my Lord of *Warwick*, my Lord *Mobun* the Prisoner at the Bar, and Mr. *Coote*; On the other Side were Captain *French*, Captain *James*, and Mr. *Dockwra*; and first there were two Chairs came to the Door, into which Mr. *French*, and Mr. *Coote* went, and when they were in the Chairs my Lord *Mobun* came out, and said he would kill any of the Chairmen that went away; and so they put up again, and the Gentlemen came out, and came into the House, but afterwards Mr. *Coote* went into the first Chair, and my Lord of *Warwick* into the next, and my Lord *Mobun* into the third, and then they went away; and the other three Gentlemen went into the other three Chairs, and followed them. Your Lordships will hear whither they were all carried. When they came to the End of *St. Martins-lane* in the *Strand*, my Lord *Mobun* would indeed have endeavoured to

have perswaded Mr. *Coote* in particular to have gone home for that Night, and let the Business alone till another Time, but Mr. *Coote* would go on; and while the three Chairs carried my Lord of *Warwick*, my Lord *Mobun*, and Mr. *Coote* to *St. Martins-lane End*, which were the three first Chairs that went away from *Locket's*, the other three Chairs that went after them overtook them, and then by Mr. *Coote's* Command, the Chairmen that carried him went forward towards *Leicester-fields*, and then this noble Lord, my Lord *Mobun*, did say, If you go on, I will go and see the End of it, and ordered the Chairmen that carried him to go after those Chairs in which my Lord of *Warwick*, and Mr. *Coote* went, and accordingly they did go till they came to the hither End of the Square in *Leicester-fields*, near *Green-street End*, where my Lord *Mobun* got out of his Chair, and paid for all the three Chairs three Shillings. But we shall not be able to give to your Lordships an Account particularly as to my Lord *Mobun*, what he did afterwards, but we shall call our Witnesses to prove what we have opened; and when our Witnesses are heard, we shall leave the Matter to your Lordships Judgment.

Samuel Cawtherne, which was the Drawer at the Tavern at Locket's, was sworn, and gave his Evidence to the same Effect that he did the Day before.

Mr. *Att. Gen.* Pray, Will you acquaint my Lords, Who were at your House the 29th and 30th of *October* last, *Saturday Night* and *Sunday Morning*.

Cawthorne. There where my Lord of *Warwick*, my Lord *Mobun*, Capt. *Coote*, Capt. *French*, Mr. *Dockwra*, and Mr. *James*.

Mr. *Att. Gen.* How long did they continue there?

Cawthorne. Till between One and Two of the Clock in the Morning.

Mr. *Att. Gen.* Pray, Will you acquaint my Lords what happened at your Master's House at that Time; you remember what Evidence you gave Yesterday; tell the whole Matter again, because it relates to another noble Lord that is now at the Bar.

Cawthorne. The Reckoning was called for about that Time, and I went up and took the Reckoning, and all the Gentlemen came down to the Bar, and Coaches were sent for; I went for them, but no Coaches could be had; Then Chairs were sent for, and I called for Chairs, and there came two Chairs to the Door, and into those two Chairs went Captain *Coote* and Captain *French*; and my Lord *Mobun* and my Lord of *Warwick* endeavoured to quiet them, and to put off the Business till another Day, and thereupon they came out of the Chairs, and came into the House again; My Lord *Mobun* did desire there might be no Quarrel, and would have Mr. *Coote* go home with him to his Lodgings at *Westminster*, or he would go with Mr. *Coote*, and said there should be no Quarrel that Night: There were then three of them on one Side of the Bar, and three of the other Side, and their Swords were all drawn. My Lord of *Warwick*, my Lord *Mobun*, and Mr. *Coote*, were of one Side, and Capt. *French*, Capt. *James*, and Mr. *Dockwra*, were of the other Side: I was without the House when the Swords were first drawn

drawn, but I heard my Lord *Mobun* say, I have got a cut Finger by endeavouring to part them, and at first when the Chairs came on, my Lord *Mobun* said, if they did quarrel, he would send to the Guards for a File of Musqueteers, and secure them; so that he did what he could to prevent any Quarrel at all; and when he had received the Wound in his Hand, I helped him to a Napkin to wrap his Hand in upon the bleeding of it: Then my Lord of *Warwick*, my Lord *Mobun*, and Captain *Coote*, went away in three Chairs, and my Lord *Mobun* gave Order to go down to *Westminster*; and there were three Chairs called for by the other three Persons; two did come, and Captain *French* and Captain *James* went in to them; and the 6th not being come, they stayed till it did come, and then they three went away too; the Chairs were all ordered to go home with them; My Lord of *Warwick*, and my Lord *Mobun* gave Order to their Chairs to keep close with Mr. *Coote*; and the other three Chairs immediately followed.

Mr. *Att. Gen.* Pray, will you consider, and recollect with your self, Was Mr. *James* there at first?

Cawthorne. No, I was sent for him about Ten a Clock at Night, and there he continued with them till they went all away in the six Chairs, and he was almost fuddled when he came in.

Mr. *Att. Gen.* When *James* came in, was his Sword drawn?

Cawthorne. His Sword was in the Scabbard, but the Scabbard was broken, and he took and broke his Sword stamping upon it.

Mr. *Att. Gen.* Pray, can you tell, you being up and down in the Room, what was the Occasion of the Quarrel?

Cawthorne. Indeed I can't tell; but some Words past when they were below Stairs by the Bar from Captain *Coote*, That he would laugh when he pleased, and frown when he pleased; and Mr. *Dockwra* did say, that they would fight them whenever they pleased when they went away; but I did not observe that there was any Quarrel between them while they were above, nor any Swords drawn till after I came from calling the Chairs.

Mr. *Att. Gen.* Were all the Swords drawn at once?

Cawthorne. They were all drawn when I came in from calling for the Coaches and the Chairs, and three were within the Bar, and three were without; They were putting up their Swords when I came in again; Indeed I do not know any Thing of the Quarrel.

L. *H. St.* My Lord *Mobun*, Will you ask this Witness any Questions?

L. *Mobun.* Indeed I think I need not ask him any Question; but yet, if your Lordships please, I would ask him this, Whether directly or indirectly I was any ways concerned in the Quarrel? Or, Whether I did not endeavour all that ever I could to quiet them?

Cawthorne. Yes, indeed, my Lord *Mobun* did endeavour all that ever he could to prevent any Quarrel at that Time.

L. *Mobun.* Did I say any Thing tending to the promoting of a Quarrel or Fighting among them?

Cawthorne. No, my Lord *Mobun* did not promote any Thing of the Quarrel between them, but he did say two or three times, that he would send for the Guards to secure them, and keep

them from fighting, both at the Door of the House, and at the Bar, and ask'd for a Napkin to wrap up his Hand in, for the Wound which he said he got in endeavouring to quiet and part them, and prevent their fighting.

L. *Mobun.* That is all that I would ask him, whether I did not endeavour all that I could to prevent any quarrelling or fighting at that Time?

Cawthorne. Yes, indeed, my Lord did so.

L. *H. St.* He has said so already, my Lord, and therefore there does not need any further Examination of him to that Point: If both Sides have done with this Witness, let him go down. (*Which he did.*)

L. *H. St.* Then Mr. Attorney, who is your next Witness?

Mr. *Att. Gen.* Our next Witness is *Tho. Browne*, who was one of the Chairmen that carried Mr. *Coote* into *Leicester-fields*.

Then he was sworn.

L. *H. St.* What is the Question you would ask him, Mr. Attorney?

Mr. *Att. Gen.* My Lords, I desire he may be ask'd and examin'd, and acquaint your Lordships, who it was that he carried from *Locket's* the 29th of *October* last to *Leicester-fields*, and what Time it was of the Night?

Browne. I carried Mr. *Coote* in my Chair.

Mr. *Att. Gen.* Whither were you directed to carry him?

Browne. To *Leicester-fields*.

Mr. *Att. Gen.* What Time of Night was it?

Browne. It was three Quarters past One, as near as I could guess.

Mr. *Att. Gen.* Pray, What other Chairs were there that went along with you?

Browne. There were two other Chairs.

Mr. *Att. Gen.* Who were in those Chairs, pray?

Browne. There were my Lord of *Warwick* in one, and my Lord *Mobun* in the other.

Mr. *Att. Gen.* Did you three go away from *Locket's* together?

Browne. Yes, we did; and when we were bid to take up, we went to the End of *St. Martin's-lane*, and turning up at the End of *St. Martin's-lane*, there my Lord of *Warwick* and my Lord *Mobun* called out to Capt *Coote* to stay, and to turn down to go to *Westminster*; but Mr. *Coote* would turn up the Lane, and my Lord of *Warwick* and my Lord *Mobun* made a Stop at the Back-Door of the *Cross-keys* Tavern, and both of them perswaded Mr. *Coote* to put it off till the next Morning; but he would not, he said he would make an End of it that Night.

Mr. *Att. Gen.* Pray, recollect your self, Did they name among them what their Business was that they would make an End of?

Browne. No, they did not.

Mr. *Att. Gen.* Who was it that stop'd at *St. Martin's-lane* End?

Browne. When we were turning up at *St. Martin's-lane* End, my Lord of *Warwick* and my Lord *Mobun* call'd out to stop, and ask'd Mr. *Coote* whither he was going? And when he said, to *Leicester-fields*, my Lord *Mobun* called out to us to set down, which we did, at the Back-Door of the *Cross-keys* Tavern; They did both of them, my Lord *Warwick*, and my Lord *Mobun*, perswade Mr. *Coote* to go home to *Westminster*, and not to end

end the Business that Night ; but he would go on, and while we were there, there went three other Chairs up *St. Martin's-lane* on the other Side of the Way ; then *Mr. Coote*, who was in our Chair, bid us take up, and follow those Chairs into the Fields, and swore, damn him he would run his Sword into one of us, if we did not make haste, and overtake those other Chairs, and go before them ; I think his Words were, *Damn me, I'll run my Sword into your Breech, if you do not make haste, and get before that other Chair.*

Mr. Att. Gen. You say then, they went all away together up to *Leicester-fields* ?

Browne. Yes, they did so.

L. Mohun. I desire he may be ask'd, whether I did not desire him to go home with me to my Lodging at *Westminster*.

Browne. Yes, you did, and begg'd of him as if it had been for an Alms, that he would put it off for that Night ; but when the other Chairs past by us at *Charing-Cross* in *St. Martin's-lane*, he would have the Chair taken up, and us to make what haste we could to get before them thither, or else, he swore, damn him he would run his Sword into one of us, if we did not make haste to get to *Leicester-fields* before the other Chairs that went up the other Side of the Way.

Mr. Att. Gen. When the other Chairs were past by, and you went away to *Leicester-fields*, pray tell my Lords what happened then.

Browne. We went away to *Leicester-fields*, and when we came to *Green-street End*, and were entring upon the Square upon the Broad Stones, *Mr. Coote* call'd out to us, and bid us to set him down, and so did the other two Chairs, and when he put his Hand into his Pocket to discharge us, my Lord of *Warwick* put his Hand in his Pocket to pay the three Chairs, and *Mr. Coote* offered half a Guinea to discharge the Chairs, and my Lord *Mohun* did produce 3 s. and with it discharged all the three Chairs, and they all three walked away together forward upon the Broad Stones on the Right Hand Side of the Way ; It was so dark a Night, I could not see half a dozen Yards from me ; It was the darkest Night, I think, that ever I saw in all my Life, and therefore I cannot tell what became of them after they went out of the Chairs.

Mr. Att. Gen. Pray, did you see my Lord *Mohun* afterwards ?

Browne. No, I did never see my Lord *Mohun* afterwards till now here at the Bar.

Mr. Att. Gen. You say it was so dark, that you could not see three Yards from you ; pray, what did happen afterwards when you were in the Field ?

Browne. A little while after we had set down these Gentlemen, I fill'd my Pipe out of my Box, and before I could light it, I heard a Calling of Chairs, Chairs, and I went up towards the End of the Square, where the Noise was, and when I came there, they would have had me lift the Chair over the Rails, and I told them, if I did I could not lift it over again : but they would needs have me lift it over, and I did so, and by the Light of the Lanthorn I saw *Capt. French* and *Captain James* holding up *Captain Coote*, and they did desire me to take him into our Chair, but he was in such a Condition that I could not get him into the Chair ; it was before I could well light my Pipe the Chairs were called.

Mr. Att. Gen. Who did call, can you tell ?

Browne. No, indeed I cannot tell who did call Chairs, but it was a Voice from the upper End of the Fields, and we lifted our Chair over the Rails into the Fields, and there were two Gentlemen holding up another Man ; I have heard it said it was *Captain French* and *Captain James*, and they cried out, *Dear Coote, Dear Coote*, and would have had him gotten into the Chair, but we could not ; and my Lord of *Warwick* did then say, if any Damage did come to the Chair, tho' it were 100 l. we should be satisfied for the Damage ; but we were not able to get him into the Chair, and so there we left him.

Mr. Att. Gen. You say you saw two Gentlemen holding up *Mr. Coote*, and 'twas a very dark Night, how could you tell who those Gentlemen were ?

Browne. I could not see any Thing of them till we came up with the Candle close to them.

Mr. Att. Gen. And what did they say when you came up close to the Chair ?

Browne. They offered me an 100 l. Satisfaction for any Damage to my Chair ; but they could not get him in, for he was at that Time dead, I believe, for we went to hale him up, and to get him into the Chair, but we could not do it.

Mr. Att. Gen. Can you tell who the two Persons were that held him up ?

Browne. No, but by the Description of the Persons they had such Cloaths on, as that they must be *Captain French* and *Captain James*, but indeed I cannot swear directly who they were that were there, nor who they were that called for Chairs at the upper End of the Field ; but when our Chair was lifted over again over the Rails, and we came to the Corner to see who should be taken in, there came one to us who bid us carry him to the *Bagnio* in *Long-Acre*, and thither we did go accordingly.

Mr. Att. Gen. Pray, can you tell who the Persons were that held up the Gentleman they would have to be got into the Chair ?

Browne. No, indeed I cannot.

Mr. Att. Gen. Pray, can you describe 'em so as to know them, whether my Lord of *Warwick*, and my Lord *Mohun* were those two Gentlemen ?

Browne. My Lord of *Warwick* and my Lord *Mohun* were not there I'm sure, for I know them very well ; I was acquainted with them before ; and when I came up to these Gentlemen with the Candle, there was one of them was bigger than my Lord of *Warwick*, or my Lord *Mohun* ; and the Elder of them had other Sort of Cloaths than either of them had on at that Time, as we could see when we came up close with the Candle to them.

Mr. Att. Gen. Were there any Lights of the Lamps, that are usually in the Streets at that Time, about the Square ?

Browne. Yes, there were those Lights ; but it was a very dark Night, and we could not see two Yards before us, that I am sure of, and there was no Body else that I saw at that Time at the upper End of the Field, but those two Gentlemen, holding up of *Captain Coote*, whom we had brought up before to the Square, and left him with the Earl of *Warwick* and my Lord *Mohun*, at the Bottom of the Square ; but whither they all went, indeed I can't tell : We call'd Watch, but they said it was not within their Ward, and therefore they would not come. When we saw how ill *Mr. Coote* was upon our coming

coming up, and that he could not get him into the Chair, we went away, lifted our Chair over the Rails again, and carried a Gentleman to the *Bagnio* in *Long-Acre*.

Lord *Mobun*. I have a Question to ask this Witness, and that is, How far the Place is whither he carried the Chair, that is, from *Green-street* End, to the Place whither the Chairs were called for again, at the upper End of the Pales, where he found the two Gentlemen holding up Mr. *Coote*, and endeavouring to get him up into the Chair?

Browne. I believe it is about fifty Yards, as near as I can guess.

Lord *Mobun*. I desire to know, whether he means fifty Yards from the upper End to the lower End of *Leicester-fields*?

Browne. Yes, I believe, my Lord, it is, and better.

Lord *Mobun*. I desire to ask him, whether *Green-street* be not the very lower End of the Square?

Browne. Yes, my Lord, the lower End of the Square, coming out of *St. Martin's-lane* into *Green-street*.

Mr. *Att. Gen.* But did you see three other Chairs in that Place?

Browne. Yes, while I was filling my Pipe out of my Box, three other Chairs did come by, and went away; but within a little while after the filling of my Pipe, or rather before I could well fill it, or light it, we heard calling for Chairs again towards the upper End of the Fields, and we carried up our Chair thither, and there we found, as I have told you, two Gentlemen holding up Mr. *Coote*, and crying out, *My dear Coote!* *my dear Coote!*

Mr. *Att. Gen.* Can you tell who it was that called for the Chairs the second Time, when you were in the Fields?

Browne. No, indeed, I cannot; but they would have us bring our Chair over the Rails, and we did lift it over; and when we came up to them, I saw only two Gentlemen, whom I did not know who they were particularly, till we came up close to 'em, that we could see their Cloaths, by the Light of the Candle in our Lanthorn; and they would have had us put Mr. *Coote* into our Chair, and he being very much wounded, they would have had us carry him away; we told them it would spoil our Chair, and we could not besides lift him over the Rails again; they promised we should have any Satisfaction for Damage to our Chair, even to the Value of a hundred Pounds; we went to heave him up to put him into the Chair, and did all we could to have got him into the Chair, but we could not; so we lifted the Chair over the Rails again; and when we came to the Corner of the Rails, at the Way that goes to *Long-Acre*, there we took up a Gentleman, whom we carry'd to the *Bagnio* in *Long-Acre*; we called out to the Watch, but they said it was not within their Ward, and they would not come.

Mr. *Att. Gen.* Can you tell who were the Persons that were at the upper End of the Fields?

Browne. No, indeed, I cannot tell who they were.

Mr. *Att. Gen.* Was my Lord *Mobun* and my Lord *Warwick* the two?

Browne. No, my Lord *Mobun* was not there,

nor my Lord *Warwick*; I know them so well, that it could not be them; one of the Gentlemen was bigger then my Lord of *Warwick*, and the other of them had other Cloaths than my Lord *Mobun*.

Mr. *Att. Gen.* Was that the Way they walked up, when they came out of the Chairs, that led to that End of the Fields where you found Mr. *Coote* wounded?

Browne. Yes, it was.

Mr. *Att. Gen.* My Lords, this is but the Repetition of the Evidence that he gave to your Lordships Yesterday.

L. H. St. If you have done with this Witness, my Lord *Mobun* may ask him any Questions.

Lord *Mobun*. I desire to have him ask'd, How far is the Place where he carried the Chair at first into *Leicester-fields*, from the Place where they put over the Chair within the Rails, and would have taken in Mr. *Coote*?

Browne. It is about fifty Yards, as near I can guess.

Lord *Mobun*. I desire to know of him, whether the Place where we were set down, that came in the first three Chairs, from *Locket's* into *Leicester-fields*, to the Place where he found Mr. *Coote* supported by the two Gentlemen, be not from one End of the Fields to the other?

Browne. The Place where we set down Captain *Coote* is at the lower End of *Green-street*, and the Place where we found him wounded, was at the upper End by *Leicester-house*.

L. H. St. I think it is understood, that *Green-street*, which comes out of *St. Martin's-lane*, is at one End of *Leicester-square*, and *Leicester-house* is at the other End.

Mr. *Att. Gen.* Pray, where was it that you saw the two Gentlemen holding up Captain *Coote*, and cry out, *My dear Coote!* *my dear Coote!*

Browne. It was on one Side of the Cross-way, that leads out of the Fields towards *Newport-street*, and by *Leicester-house*.

Mr. *Att. Gen.* But you say three Chairs did go up towards the upper End of the Fields?

Browne. Yes, they did so; but our three Chairs that came away first from the *Greyhound* Tavern, set down at *Green-street* End, and the three Gentlemen that came in our Chairs went up the Pales to them; but whither they went I can't tell, but soon after we heard calling for Chairs again, and so we went up, where we found the two Gentlemen holding Captain *Coote*, and saying, *My dear Coote!* *my dear Coote!*

Mr. *Att. Gen.* But when you were called the second Time, that is, into the Fields, where was the Place you say that you found them in?

Browne. It was within the Rails, one Side of the Cross-way towards *Leicester-house*.

Lord *Mobun*. Pray, was that the direct Way that I went from the Place that I was set down, that is, the lower End of *Green-street*, to the Place that they afterwards went to, which was the *Bagnio* in *Long-Acre*.

Browne. When Captain *Coote*, and my Lord *Mobun* were set down, and walked away upon the Pav'd Stones of the Square, to the Place where I found the two Gentlemen holding up Capt. *Coote*, was the quite contrary Way from the End of *Green-street* to the *Standard* Tavern.

L. H. St. Who is your next Witness, Mr. Attorney?

Mr. Att. Gen. The next Witness that we call, is *Robert Applegate*.

Who was sworn.

L. H. St. What do you ask this Witness?

Mr. Att. Gen. My Lords, this is the Chairman that carried my Lord *Mobun* to *Leicester-fields* from *Locket's*; he will give your Lordships an Account when he carry'd him, who he carry'd, and what happened afterwards, which is all but to the same Purpose with the Evidence that he gave Yesterday. But pray, who was that whom you carried on the Thirtieth of *October* last to *Leicester-fields*?

Applegate. I carried my Lord *Mobun* from *Locket's*, at the *Greyhound Tavern* in the *Strand*, to *Leicester-fields*.

Mr. Att. Gen. Pray, How many Chairs were there of you that went away together?

Applegate. There were three of us that went away together, one carry'd my Lord *Warwick*, we my Lord *Mobun*, and the third carry'd Captain *Coote*, which was the first Chair that went away.

Mr. Att. Gen. Whither did you go?

Applegate. We went to the Corner of *St. Martin's-lane*.

Mr. Att. Gen. Who do you say were in the other two Chairs?

Applegate. My Lord of *Warwick*, and my Lord *Mobun*.

Mr. Att. Gen. When they came out first, What Orders or Directions were given?

Applegate. My Lord *Mobun* said, That he and my Lord of *Warwick*, and Captain *Coote*, would go all three together down to *Westminster*, and there they would all lie together, or be together that Night.

Mr. Att. Gen. What Answer was given to what my Lord *Mobun* said?

Applegate. Indeed I do not remember any Answer that was given at all; but after that my Lord *Mobun* went into the Chair, and ordered us to follow down the other two Chairs towards *Westminster*, and we put up the Chair and came away; and when we came to *St. Martin's-lane* End, the Chair that carried Capt. *Coote* turn'd up the Lane, and we being ordered to follow the other Chairs, went up the Lane too; but my Lord *Mobun* perceiving that they were not going down to *Westminster*, call'd out to stop, just when we were entered into *St. Martin's-lane*, over-against the Back-door of the *Cross-keys Tavern*, and made the other Chairs to stand, and all the three Chairs were set a-breast before that Place, and my Lord *Mobun* ask'd Capt. *Coote*, Whither he was going? and he answered, to *Leicester-fields*: He begg'd of him, as one would beg for an Alms, that he would not go that Night, for the Business could not be done that Night, and it was better to put it off till the next Morning.

Mr. Att. Gen. Did they name what the Business was, that was to be done?

Applegate. No; but my Lord *Mobun* did say, 'twas impossible to be done that Night.

Mr. Att. Gen. Well, and what happened afterwards, while you were in that Place?

Applegate. While we were there, three other Chairs pass'd by us on the other Side of the Way, and going forward up the Street, Capt. *Coote* order'd their Chairs to follow, and so we did to *Green-street* End, and there we set 'em down.

Mr. Att. Gen. Pray, can you remember what was said by my Lord *Mobun* at the Time when the other Chairs pass'd by?

Applegate. He was then desiring and begging of Capt. *Coote* to go home to *Westminster*, telling him that it could not be done that Night; but it must be deferr'd till the next Morning; but Capt. *Coote* said he would not delay it till the next Morning, but he would go to *Leicester-fields* that Night, and all three Chairs were ordered to go forward, and we did go on forward to *Leicester-fields*; my Lord *Mobun*, indeed, did beg and desire as heartily as, I say, a Man for an Alms, that they would let it alone for that Night; but Capt. *Coote* would not, and ordered his Chair to go forwards.

Mr. Att. Gen. You say, my Lord *Mobun* begg'd as heartily as if it were for an Alms to defer it for that Night?

Applegate. Yes, he did so; so that I do really think that he was not concerned in the Matter.

Mr. Att. Gen. If he were so earnest to defer and put off the Business, how came you to carry him thither that Night? What Expressions did he use particularly in *St. Martin's-lane*, after the other Chairs were pass'd by?

Applegate. He said, If you must go, I'll go with you and see it; and he bid us take up and follow the other Chairs wherein Capt. *Coote* and my Lord *Warwick* were; and we did go.

Mr. Att. Gen. And where did you set my Lord *Mobun* down?

Applegate. At the hither End of *Leicester-square*, at the Corner of *Green-street*, the lower Corner of the Pav'd Stones, going up to *Leicester-house*.

Mr. Att. Gen. What became of the three Gentlemen that you set down at the End of *Green-street*?

Applegate. They went all three together up the Stone Pavement, towards the upper End of the Square, towards the *Standard Tavern*, I think.

Mr. Att. Gen. Did they go together, or did they go asunder?

Applegate. They went together, I think; I did not see them part one from another.

Mr. Att. Gen. Pray did you see my Lord *Mobun* afterwards?

Applegate. No, I did not.

Mr. Att. Gen. What became of you afterwards?

Applegate. I stay'd a little at the lower End of the Square to take a Pipe of Tobacco, and when I had filled my Pipe, I heard calling Chairs, Chairs again, at the upper End of the Square; and when we brought up our Chair to the upper End of the Fields, the first Man that I did see was my Lord of *Warwick*, who would have had us put over our Chair within the Rails; but we told him we could not get it over again if any one was put in it; but if they would come out into the Square, there we were ready to carry 'em any where; and when we came to the upper End of the Square, there was Captain *French*, and we took him into the Chair, and he bid us carry him to the *Bagnio* in *Long-Acre*; and at *Newport-street* End he would have had us stop and pull off his Cloaths, for he believed he was a dead Man.

Mr. Att. Gen. Pray, who did you see there at the upper End of *Leicester-fields*?

Applegate. No Body indeed, but my Lord of *Warwick* and Mr. *French*.

Mr. Att. Gen. No Body but them two?

Applegate. No; no Body but them two.

Mr.

Mr. Att. Gen. Where do you say that was, that the Calling for Chairs was, and where you brought your Chair?

Applegate. It was just at the upper End of *Leicester-fields*, by *Leicester House*, and by the *Standard Tavern*.

Mr. Att. Gen. Who was it that you there took up?

Applegate. It was Captain *French*.

Mr. Att. Gen. Whither then did you carry him?

Applegate. We were order'd to go to the *Bagnio* in *Long-Acre*; and thither we, and another Chair that carried my Lord *Warwick*, did go; and when we came there, we did knock a good while before we could get any Body up; and when they were let in, we came away, and were bid to call for our Fare the next Morning.

Mr. Att. Gen. Pray, where was it that you took up Captain *French*?

Applegate. It was the upper End of all of *Leicester-fields*.

Mr. Att. Gen. And you went away with him, did you?

Applegate. Yes, as soon as ever we took him up; it was as soon as ever we could, at the outside of the Rails, I was the first Chair that, upon the Calling for Chairs after they came thither, was by the *Standard Tavern*, and from thence we went into *Long-Acre*.

Mr. Att. Gen. Whereabout is the *Standard Tavern*?

Applegate. It is at the further End of the Fields by *Leicester House*; it is by *Cranburne-lane*, which is the Street that leads into *Newport-street*, and so into *St. Martin's-lane*; and then we were to go to the *Bagnio* in *Long-Acre*.

L. H. St. My Lord *Mobun*, will you ask this Witness any Questions?

Lord *Mobun*. Yes, my Lord, I have a Question or two to ask him; I desire to ask him, Whether, when we were going along, and the Chair, in which Captain *Coote* was, turn'd up *St. Martin's-lane*, I did not call out to have him stop, and know whither they were going?

Applegate. Yes, my Lord, you did.

Lord *Mobun*. Pray, whither did I bid you go, when you first took me up at *Locket's*?

Applegate. My Lord *Mobun* bid me follow those Chairs, but go down to *Westminster*, for he said they all three would go together, and lie together that Night.

Lord *Mobun*. My Lords, I desire this Man may be ask'd, whether there were not several Ways of going out of the Fields, besides those of *Green-street* and the *Standard Tavern*?

Applegate. Yes, my Lord, no doubt, there are.

Lord *Mobun*. Then I'll leave it to your Lordships to make the Observation; for there is no Evidence that I was even seen in the Field after I alighted out of the Chair at *Green-street* End; and I hope your Lordships do observe, That he has told you, I was asearnest in begging Captain *Coote* to defer going to *Leicester-fields* till the next Morning, and begg'd as heartily of him for it, as any Beggar would do for an Alms.

L. H. St. My Lord, their Lordships no doubt, have made that Observation; for he did say so.

Lord *Mobun*. My Lords, I have no more to ask him.

L. H. St. Mr. Attorney, Who is your next Witness?

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Mr. Att. Gen. Our next Witness is *Peter Ketro*, who likewise was a Chairman that carried my Lord *Mobun* into the Place where the Fact was done.

Peter Ketro was sworn.

Mr. Att. Gen. Pray will you acquaint my Lords who you carried upon the Thirtieth of *October* last, from the *Greyhound Tavern* to *Leicester-fields*?

Ketro. Upon the Thirtieth of *October* last, in the Morning (which was *Sunday*) very early, we were call'd to the Door of the *Greyhound Tavern*, and when we came there, there were several other Chairs there, for there was no Coach, it seems, to be had.

Mr. Att. Gen. And who was in your Chair?

Ketro. My Lord *Mobun*; and there were two other Chairs that went away together, wherein were Captain *Coote* and my Lord *Warwick*.

Mr. Att. Gen. And whither did you go from thence?

Ketro. We went along the *Strand*, and when we came to the End of *St. Martin's-lane*, the Chair that Capt. *Coote* was in, we supposed by his Order, turn'd up the Lane; for my Lord *Mobun* had given us Order to go down to *Westminster*; and then when we came there to the End of *St. Martin's-lane*, he call'd out to stop, and to have the other Chairs stop, and they stood still at the Back-door of the *Cross-keys Tavern*, which is at the End of *St. Martin's-lane*, and all the three Chairs did make a stand at that Place, and my Lord of *Warwick*, and my Lord *Mobun*, and Captain *Coote* talk'd together; and my Lord *Mobun* did desire Capt. *Coote* to go down to *Westminster*, and to put off the Business for that Night, for nothing of Business could be done: Then my Lord of *Warwick* did say, if they did go on he would go on with them; but my Lord *Mobun* did endeavour to persuade 'em to go down to *Westminster* to lodge, for nothing could be done that Night; but when the other three Chairs pass'd by, on the other Side of the Way, and Captain *Coote* would needs go forwards to *Leicester-fields*, my Lord *Mobun* did bid us take up and follow them; and he said, if they would go, he would go and see what came of it; so we took up, and followed the other Chairs, and went up the Lane, and into *Green-street*, to the lower End of *Green-street*, next the Square, and there our three Chairs set down my Lord of *Warwick*, my Lord *Mobun*, and Captain *Coote*, and were discharged.

Mr. Att. Gen. And what became of them after?

Ketro. There they went up upon the *Broad-Stones*, up towards the upper End of the Fields.

Mr. Att. Gen. Did they go all together, or did they part?

Ketro. They went together for any Thing I know; I saw no parting, and indeed it was so dark a Night, that I cannot tell what became of 'em after they went out of the Chairs: It was one of the darkeft Nights that ever I saw.

Mr. Att. Gen. Well then, pray what happened after that?

Ketro. I went to light my Pipe of Tobacco, and before we could light a Pipe of Tobacco, there was calling at the upper End of the Square for Chairs again; and so up we went with our Chair to the upper End of the Fields; and when we came there, some Body call'd out to have us lift our Chair over within the Rails; but we told 'em, if we did so, we could not get it over again, if any

Body were put into it; and so we were bid to go to the End of the Rails, in order to the getting out from that Place, and getting in of any Body that was to go into the Chair; and when we came to the End of the Rails, we took up Capt. *French*, and he bid us carry him to the *Bagnio* in *Long-Acre*, and we did so, and at *Newport-street* End he would have had us have pull'd off his Cloaths, for he said, he believ'd he was a dying Man; but we carried him on to the *Bagnio* in *Long-Acre*, and there came after us the Lord of *Warwick* in another Chair; and there we set them down.

Mr. *Att. Gen.* I have a Question to ask you, Friend; Did you not see my Lord *Mohun* after you set him down at *Green-street* End?

Ketro. No, indeed, not I; I did not, after he went out of the Chair?

Mr. *Att. Gen.* Can you tell whither he went after he went out of the Chair.

Ketro. No, I can't tell whither he went; they all three went up the Pav'd Stones together, but whither they went I can't tell.

Mr. *Att. Gen.* Did you hear of any other Chair that was at that End of the Fields at that Time?

Ketro. There was another Chair at that Time, at the upper End of the Fields.

Mr. *Att. Gen.* Did you hear 'em desire to take Mr. *Coote* into that Chair?

Ketro. No, I did not,

Mr. *Att. Gen.* Nor do you know any Thing of their putting Mr. *Coote* into a Chair?

Ketro. No, indeed, not I; what they did as to the other Chair, that was before, they can best tell, for I can't.

L. *H. St.* Who is your next Witness, Mr. Attorney?

Mr. *Att. Gen.* *Richard Edwards.*

L. *H. St.* What do you call him to?

Mr. *Att. Gen.* Because we would not trouble your Lordships with the Repetition of every one of the Witnesses that were here Yesterday; this is the Man that carry'd Mr. *Dockwra* into the Field.

Edwards was sworn.

L. *H. St.* Mr. Attorney, What do you ask this Witness?

Mr. *Att. Gen.* Pray do you acquaint my noble Lords here, who you carried in your Chair to *Leicester-fields*?

Edwards. Indeed, I can't tell; there were three Chairs that took up three Persons at the *Greyhound* Tavern in the *Strand*, after three other Chairs were gone away, and every one had a Gentleman in 'em: I, for my Part, did not know who was in our Chair; but when we shut up the Chair we were bid to go to the *Standard* Tavern in *Leicester-fields*, and thither we did go, and there we set down the Gentleman that was in our Chair, and away we went; and as we went up *St. Martin's-lane*, we pass'd by the three other Chairs that turn'd up before, at the Back-Door of the *Cross-Kays* Tavern.

Mr. *Att. Gen.* Did you see the other three Chairs in *Leicester-fields* afterwards?

Edwards. No, indeed, I did not; but went up to the *Standard* Tavern, and set down the Gentleman that was in our Chair, and there we left him, and went away.

Mr. *Att. Gen.* Pray, Can you tell who it was that you carried?

Edwards. Indeed, I cannot very well tell; but I believe it was Captain *James*, or Mr. *Dockwra*.

Mr. *Att. Gen.* When you came to the *Standard* Tavern, pray, what happen'd? What pass'd there?

Edwards. To the best of my Knowledge, I took hold of the Knocker of the Door, and knock'd at the Door, and the Gentleman came out, and was set down there; and he gave me a Shilling, and away I went with my Chair.

Mr. *Att. Gen.* When you set him down at the *Standard* Tavern, pray, what did he say?

Edwards. He gave me a Shilling, and bid me go about my Business; and so we went away.

Mr. *Att. Gen.* Was you there when you heard 'em call Chairs back?

Edwards. No, we went away as soon as we had set him down at the *Standard* Tavern.

Mr. *Att. Gen.* Did you observe which Way they went after you set him down?

Edwards. No, indeed, I did not; I never minded which Way they went, after we set him down.

Mr. *Att. Gen.* Which Way did you go?

Edwards. We went away down towards *Charing-Cross*.

Mr. *Att. Gen.* Did you see any other Chairs in the Square when you went down?

Edwards. Yes, there were other Chairs at the other End of the Square.

Mr. *Att. Gen.* Did you see any Gentlemen as you came down, walking towards the *Standard* Tavern, upon the Pav'd Stones?

Edwards. No, indeed, my Lords, not that I remember; but I did see the other three Chairs as I pass'd by *Green-street* End; who were in 'em, or what was become of them that were in 'em, that I can't tell.

Mr. *Att. Gen.* What did they say to you any of 'em at that Time?

Edwards. They ask'd us if we were going away, and we told them yes; we were discharged.

Mr. *Att. Gen.* But pray, did you not meet any of the other Gentlemen upon the Pav'd Stones?

Edwards. No, indeed, I did not see, to the best of my Remembrance, any other Gentlemen upon the Pav'd Stones.

Mr. *Att. Gen.* What did the other Chairmen say to you?

Edwards. They ask'd if we were coming away? and we left 'em behind us.

L. *H. St.* Has my Lord *Mohun* any Questions to ask him?

Lord *Mohun.* No, I have not.

L. *H. St.* Mr. Attorney, who is your next Witness?

Mr. *Att. Gen.* *Jackson*, who was the Chairman that carry'd Capt. *James*. (*He was sworn.*)

Mr. *Att. Gen.* Pray, Will you acquaint my Lords who you carry'd away from *Locket's* to *Leicester-fields*?

Jackson. Captain *James*: There were six Chairs in all: I do not know who went in the other Chairs, but in the three Chairs that went together, when we went, there was Captain *Dockwra*, Captain *French*, and Captain *James*.

Mr. *Att. Gen.* And where did you set him down?

Jackson. At the *Standard* Tavern in the Square in *Leicester-fields*.

Mr.

Mr. Att. Gen. What became of him after you set him down?

Jackson. We knock'd twice at the Tavern Door, and then he gave us a Shilling, and we went away presently, and went down on the Left Hand upon the Pav'd Stones, towards Green-street End.

Mr. Att. Gen. Did you meet any Persons coming up upon the Pav'd Stones?

Jackson. Yes, my Lord, I did.

Mr. Att. Gen. Can you tell who those Persons were?

Jackson. Indeed, I cannot tell.

Mr. Att. Gen. How many were they in Number?

Jackson. They were two or three; but it was so dark, that I cannot tell how many they were.

Mr. Att. Gen. Which Way were they walking?

Jackson. They were going up towards the middle Street.

Mr. Att. Gen. How far was that from the Standard Tavern?

Jackson. It might be about sixty Yards from the Standard Tavern.

Mr. Att. Gen. You say there were three Chairs standing at the End of Green-street when you came by?

Jackson. Yes, there were so.

Mr. Att. Gen. Had you no Discourse with them?

Jackson. No, indeed, I had not.

Mr. Att. Gen. Did you not ask them why they stay'd there?

Jackson. No, indeed, I did not; we pass'd by and went home.

Mr. Att. Gen. You know my Lord Mobun, don't you?

Jackson. Yes, I do, very well.

Mr. Att. Gen. Was not my Lord Mobun in that Company?

Jackson. He was, when the six Chairs were call'd to Locket's, but I did not hear any Discourse, that I can remember, that pass'd among 'em, nor do I know, or did hear, what became of my Lord Mobun afterwards.

Mr. Att. Gen. Were those the other three Chairs that went away from Locket's first, that you saw at Green-street End?

Jackson. Indeed, my Lords, I believe so; I cannot swear that they were those three Chairs; when we had set down Captain James, we did not look back any Way at all, but went away home, it being so late and so dark.

L. H. St. My Lord Mobun, will you ask this Witness any Questions?

Lord Mobun. No, my Lord.

Mr. Att. Gen. Then, my Lord, we shall call William Salmon, who was the Surgeon that did search the Wound by the Coroner's Command, when he took the Inquisition upon the View of the Body.

Who was sworn.

Mr. Att. Gen. Pray, Did you view the Body of Mr. Coote after he was dead?

Salmon. Yes, I did view his Body by the Command of the Coroner at the Watch-house, where it lay in St. Martin's-lane.

Mr. Att. Gen. Pray then, will you acquaint

my Lords what Wounds you found upon the Body?

Salmon. There was one upon the Left Part of the Breast, near the Collar-bone; which, upon probing, I found to be half an Inch in Breadth, and four or five Inches deep downward; the other was a Wound that was in his Left Side, just under the short Ribs, and that was upward; and upon probing of it, I found it was about the Breadth of an Inch at the Orifice, and about the Depth of five or six Inches, and pierced through the Diaphragma.

Mr. Att. Gen. Pray, did you observe any Difference in the Wounds, or in the Orifice of them?

Salmon. That below was a large Wound, larger than the other.

Mr. Att. Gen. Were the Wounds, do you think, given with two Swords, or with one and the same Sword?

Salmon. Indeed, I can't tell.

Mr. Att. Gen. Did you look upon either, and which of them to be mortal?

Salmon. I look'd upon both to be mortal.

L. H. St. If you have done with him, Mr. Attorney, will my Lord Mobun ask him any Questions?

Lord Mobun. No, I shall ask him no Questions, for I think I need not; I was never prov'd to be in the Company, in the Place where the Fighting was.

Mr. Att. Gen. We have done with calling of Witnesses, till we hear what my Lord Mobun says to it.

L. H. St. My Lord Mobun, This is the Time (the King's Evidence being finished) for you to call your Witnesses, and make your Defence.

Lord Mobun. My Lords, I shall not call many Witnesses, for I think there is nothing that fixes any thing of Guilt, as to Capt. Coote's Death, as to me; but I shall call one Witness that was here (as I understand) yesterday, but not examined, and that is a Person that saw me afterwards, and knows that I had a Wound in my Finger laid open, and that Wound was received at Locket's, by endeavouring to part 'em, when they were quarrelling there at that Time.

The Witnesses stood up.

L. H. St. Tho' you are not upon your Oath, yet you are as much obliged, in Justice and Conscience, to speak the exact Truth, as if you was upon your Oath; therefore have a Care what Testimony you give.

Witness. Yes, my Lord.

L. H. St. What is the Question you would have this Witness ask'd?

Lord Mobun. What he knows of my being wounded about this Time, and what I declared concerning that Wound, how I received it?

L. H. St. I will not refuse to ask the Question, but I must acquaint your Lordship that it signifies nothing in Point of Evidence at Law, what you your self did declare after the Fact was over. It is material what you did to prevent this Mischief before it happened, but not what you said or declared after the Thing was done. You hear my Lord's Question, What say you to it?

Witness. I was at My Lord Mobun's several Days after this Business happened, at the Lodging where he lay, and where I saw him; he had a Hurt in his

his Hand, and it was laid open, it was in the Finger, and that he said was all he got by endeavouring to part People from fighting.

Mr. Att. Gen. Pray, Sir, when was this?

Witness. It was several Days after the Death of Mr. Coote.

L. H. St. I told your Lordship before, that in Point of Law, such Evidence would signify nothing; because your declaring any Matter, after the Thing was done, in relation to the Fact, could not be admitted as legal Evidence; if any of my Lords be of another Opinion, I suppose they will declare it.

Lord Mohun. My Lords, I submit it to your Lordships; I only desire he may be ask'd, Whether he saw my Hand or no, and how it was?

Witness. I saw my Lord's Finger, and it had been laid open some time before; and he said, he had received that Wound by endeavouring to part Captain French and Captain Coote: That's all I know of the Matter.

Mr. Att. Gen. But, pray, When was that that he declared so? How long after the Death of Mr. Coote?

Witness. It was several Days after that.

L. H. St. You hear, in Point of Law, that can be no Evidence at all: If you have no other Witnesses to call, your Lordship would do well to sum up your Evidence, and make what Observations you think fit upon the Evidence which has been given for the King?

Lord Mohun. My Lords, I hope I shall make my Defence, against this Accusation, with all the Modesty and Submission to your Lordships, that becomes me. I am very much ashamed to be brought before your Lordships upon any such Account as this again, after having been once before your Lordships upon such an Account before. I may very well say, I am not guilty at all of having any hand in Mr. Coote's Death; and I can assure your Lordships, I will avoid all Occasions of giving you any Trouble of this Nature for the future: I do not doubt but to acquit my self of all Guilt, in relation to this Matter; and, indeed, with Submission to your Lordships, there has been no Evidence given, relating to me, that does infer any Guilt upon me, to prove that I was at the Place where the Fact was done; therefore I shall only make some few little Remarks upon what has been said, and leave it all to your Lordships Consideration.

The King's Counsel first have call'd the Drawer of the House, and he has satisfied, that I did so far endeavour to part 'em, that I threaten'd to send for the Guards and secure them, if they would not go home; and when they went into the Chairs, I went into my Chair, on purpose to follow 'em down to Westminster, whither I would have had them gone. The Prick that I got in my Finger, of it self speaks, that I endeavour'd to part 'em, and so the Drawer he has told you; I am sure it was the Occasion of a great deal of Pain to me, it being forc'd to be afterwards laid open. The Chairman that carry'd Mr. Coote, swears, That I, at the Door of the Tavern in St. Martin's-lane, did make 'em stand, and when I came up to them, I begg'd, as for an Alms, that they would go home; and I ask'd Coote whither he was going? Which proves that I was not conscious of any Design of going to fight at that Time. Your Lordships are likewise told, That when we came to Green-street End, I was set down upon the Pav'd

Stones. I was so, indeed, and I went up about five or six Yards, but that is all that's prov'd; but I did take the quite contrary Way to the Place where Mr. Coote was wounded. Then there was another Chairman, one Applegate, and truly what Use they make of him, I cannot imagine, as an Evidence against me; for he says, I was very earnest in St. Martin's-lane to hinder any Quarrel, and indeed at the Tavern Door, at Locket's, I was so at first; and when we came to St. Martin's-lane End, he says, that I order'd 'em to make them stop, and ask Coote whither he was going? And he saying he was going to Leicester-fields, I endeavour'd all I could to persuade him to the contrary, and did entreat him that he would go no farther, but go down to Westminster to his Lodging, or lodge with me; but Mr. Coote would not give me Time, at that Time, the other Chairs coming by, to give him further Reasons, but would go away: And then it is objected, that I should say, that if they would go, I would go and see: That was, my Lords, I would go on till I could have a further Opportunity to prevent any Fighting among them: And the Witness Ketso says, my Lord of Warwick did bid the Chair to follow the other Chair in which Captain Coote was. My Design was for Westminster, to go to my Lodgings; and when we came to the End of the Square, if I did go up the whole Stones, it was directly the contrary Way to the Place where it is prov'd this Fact happen'd. For the next Witness, Edwards, he says he saw no Body walking upon the Pav'd Stones; and truly, I did go the direct Way into Newport-street: And for my not appearing before, it was for avoiding Confinement; and I must submit the whole Matter to your Lordships, how far any Guilt is fix'd upon me, not being prov'd to be in the Field at the Time when they fought, or seen to be in the Company when they came up and found Mr. Coote wounded, and dying, or dead. It is a plain Case I could have no hand at all in his Death; and so I think I need give no further Trouble to your Lordships, for I believe your Lordships cannot but be satisfied, that as I have pleaded, I am not guilty of killing this Gentleman: Nay, it is impossible that I should go into the Field to be a Second, when my own right Hand was wounded, for I was not able to hold my Sword in my Sword Hand, because of that Wound. I submit the Matter entirely to your Lordships, from whom I am sure to meet with every Thing that will be suitable to Honour and Justice.

L. H. St. The King's Counsel are now to sum up the Evidence for the King.

Mr. Solicitor General * began to sum up the Evidence for the King, but his Voice was so low, and the Noise in the Hall so great, that he could not be heard; and therefore the Lord High Steward moved the House that he might stand by the Prisoner at the Bar, which was something nearer than the Place where the King's Counsel stood, as was done the Day before; and it was order'd accordingly.

* Sir John Hawles.

L. H. St. Mr. Solicitor, Pray raise your Voice as much as you can, that all my noble Lords may hear you.

Several

Several of the Lords did move, That one that had a better Voice might sum it up, and particularly Mr. Cowper; but it being usually the Part of the Solicitor General, and he only having prepared himself, he was ordered to go on; but for the better Hearing of him, several of the Lords towards the upper End of the House, removed from their Seats down, as they did the Day before, to sit upon the Wooll-packs.

Mr. Sol. Gen. My Lords, I am of Counsel for the King against this noble Lord, my Lord Mobun, the Prisoner at the Bar, who has been upon his Trial this Day, and it comes to my Turn to sum up the Evidence that has been given against him, which is but a Repetition of what your Lordships, no doubt of it, have taken exact Notice of; but I must shortly sum up the Chief of the Particulars thereof, and make a few Remarks what of that Evidence sticks particularly upon my Lord Mobun. The first Witness was the Drawer of the House, at the Greyhound in the Strand, who gives you an Account, who were at his Master's House the Nine and twentieth of October last, and particularly, that my Lord Mobun was there in the same Company wherein this Gentleman was, that was unfortunately killed, and that he continued in that Company till very late that Night, or rather, very early the next Morning; when, after the Reckoning was paid, they came all down to the Bar and call'd for Coaches; and he tells you, that he was sent out, and he tells you what he was sent for, he was sent for Coaches, and so cannot give any Account what pass'd while he was gone; but when upon calling for Coaches, none could be had, there was Order for Chairs to be call'd, and Chairs were brought to the Door; and when he came in again he heard the Clashing of Swords, and there were Three on the one Side of the Bar, and Three of 'em on the other: Indeed he does say, he did not see when the Swords were drawn, but at that Time they were putting up their Swords, my Lord Mobun was in the Company; upon which I would observe to your Lordships, that there had been some Fighting; for the Witness says, upon my Lord's Question, that my Lord call'd for a Napkin to put his Hand in, for his Finger was cut; and he said, This is all that I have got by endeavouring to part them; so that it shews there was a Quarrel, and my Lord Mobun was in it. When the Chairs were brought to the Door, they went into them; there went Mr. Coote into one, into the second my Lord of Warwick, and into the third my Lord Mobun; so that still my Lord Mobun was in the Company, and they went away together; and tho' it is pretended by my Lord, that he did all he could to prevent the Quarrel, yet he gave Directions to the Chairmen that carry'd him to follow the other Chairs, and your Lordships perceive what the Business was that they went about; and the other three Chairs followed after presently, so that they all went away together; nay, my Lord himself does not disown his being in the Company till they came into Leicester-fields. Next I would observe what fell from Browne, who carry'd the very Gentleman that was kill'd, Mr. Coote, that my Lord Mobun was in one of the three first Chairs, and that they all went together, till that my Lord Mobun call'd out to stop, upon the Turning up into St. Martin's-lane; and tho' they stop'd in St. Martin's-lane, and my Lord Mobun did intreat them to let it alone at that

Time, yet it was only to let it alone till the Morning; and when the other three Chairs pass'd by on the other Side of the Way, and Coote would have them go on, my Lord Mobun said, If they would go on, he would go with them and see it. Applegate, the Chairman, that carry'd my Lord Mobun, says the same: And so it is plain my Lord Mobun did go on with an Intention to make one in the Affray; for Applegate says, That when my Lord Mobun could not prevail upon his Persuasions, and when Coote went away, after the other three Chairs were pass'd by, my Lord Mobun said, If you do go, I must go and see it; and they did go all together: And the Chairman says, he set my Lord Mobun down at the End of Green-street, at the lower End of the Fields, where the other two Chairs set down Captain Coote and my Lord of Warwick, and that they all three walk'd up together towards the Standard Tavern; still all this proves my Lord did go there, and that he himself did say he would go and see it: And it is plain that my Lord Mobun did go as far as Leicester-fields, and it is only his Declaration concerning himself, without any Proof, that he went away, and did not go into the Fields, to the Place where the Fact was done; and we think it is sufficient Proof that he was one of them that were concerned, because we do prove, that he was all along in the Company till the very Time that they came into the Place where the Thing was done. Then there is the Chairman that carry'd Mr. James, and he tells your Lordships, that the three first Chairs that went up St. Martin's-lane, went to the Standard Tavern, and there knock'd at the Door, and paid the Chairmen, and went out of their Chair; and so says the other Chairmen that carry'd Capt. Dockwra and Capt. French; and they say also, that when they came down the Pav'd Stones again, they heard Chairs call'd for, but they did not interpose at all in the Matter, but the other two Chairs it seems did, for they went up to the upper End of the Square, where there were two Persons holding up Mr. Coote, and after they put the Chair over the Rails, in order to have him carried away in a Chair, but they could not get him into the Chair. I would likewise observe from the Evidence of the Surgeon, who gives you an Account of what Nature the Wounds were; one was in the Breast, near the Collar-Bone, on the left Side; the other was under the short Ribs, on the left Side too, which could not be given him by the Person that he was fighting with, he being a Right-hand Man, as was prov'd by his Servant. My Lord Mobun has call'd but one Witness, which is only about a little Circumstance of his being wounded in the Hand, and having the Wound laid open, but that was two Days after the Fact was done; my Lord Mobun could not but know that the Matters he was to answer, related to a Time before. It must be agreed to me, that they all three, my Lord of Warwick, my Lord Mobun and Mr. Coote, went all away together, that they were carried to Leicester-fields, that they were set down together, and walk'd up together upon the Stone Pavement, when the others were gone towards the upper End of the Fields; so that in all probability, they all went together into the Place where the Fight was, and were all concern'd; and if so, my Lord Mobun must be equally guilty with the rest, my Lord Mobun knowing what Business it was they were going about. It must be left to your Lordships, whether he shall not be presumed to be there

there when the Fact was done, especially his saying, when he could not prevail in *St. Martin's-lane*, to put the Matter off till another Time, that if they did go on, he would go and see it; so that putting these two Circumstances together, his going in one of the Chairs with my Lord *Warwick* and *Coote*, and what he said after when the Chairs stopt in *St. Martin's-lane*, we think are Circumstances to induce your Lordships to believe, that he was present at the Time of the Fact committed, or very near the Place; and if that be so, how far he is guilty must be submitted to your Lordships Consideration; and this is all that I shall trouble your Lordships with, without repeating the particular Evidence, which your Lordships, I am sure, very well remember.

Lord *Mohun*. My Lords, I desire I may say one Word in answer to what Mr. Solicitor has observed. I think your Lordships have had no Evidence given you where Mr. *Coote* was kill'd; but only the Chairman that was desir'd to bring over his Chair within the Rails, says, it was towards *Panton-street*, which is quite contrary to the Place where I was set down, at *Green-street* End; I must then be at a very great Distance from the Place where the Fact was done.

L. H. St. If all have done on both Sides, then your Lordships have nothing left but to consider of the Evidence which has been given, which I suppose you will do among your selves.

Lords. Ay, adjourn, adjourn.

L. H. St. Is it your Pleasure, my Lords, to adjourn into the House of Lords?

Lords. Ay, ay.

L. H. St. This House is adjourn'd into the House of Lords.

[And the Lords went back in the same Order to the House of Lords, and there they staid for about two Hours Time, debating the Matter among themselves, and afterwards returned again into the Court in Westminster-hall, and were seated all in their Places, as they were before, and the Lord High Steward was seated in the Chair before the Throne.]

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Serj. at Arms. O Yes, O Yes, O Yes, my Lord High Steward of England, his Grace, does straitly Charge and Command all manner of Persons here present to be uncovered, and keep Silence, upon pain of Imprisonment.

L. H. St. Is it your Lordships Pleasure to go on now to give your Judgment?

Lords. Ay, ay.

L. H. St. Then I must pray your Lordships to give me Time to write down your Opinions distinctly, that I may be able to acquaint you with Certainty of the Numbers.

Lords. Ay, ay.

Then the Lord High Steward stood up, and put the Question to every Lord, beginning with the youngest Baron, to know what his Judgment was; and the Lord to whom he call'd, stood up in his Place uncovered, and laying his Right Hand upon his Breast, delivered his Judgment in the Manner following.

L. H. St. My Lord *Bernard*, Is *Charles Lord Mohun* guilty of the Felony and Murder whereof he stands indicted, or not guilty?

L. *Bernard*. Not guilty, upon my Honour.

The same Question was ask'd severally of all the Lords, who in the same Form delivered their Opinions, as followeth.

L. *Herbert*. Not guilty, upon my Honour.

L. *Weston*. Not guilty, upon my Honour.

L. *Asburnham*. Not guilty, upon my Honour.

L. *Cholmondeley*. Not guilty, upon my Honour.

L. *Jefferys*. Not guilty, upon my Honour.

L. *Godolphin*. Not guilty, upon my Honour.

L. *Guilford*. Not guilty, upon my Honour.

L. *Osestone*. Not guilty, upon my Honour.

L. *Osborne*. Not guilty, upon my Honour.

L. *Craven*. Not guilty, upon my Honour.

L. *Cornwallis*. Not guilty, upon my Honour.

L. *Granville*. Not guilty, upon my Honour.

L. *Berkley*. Not guilty, upon my Honour.

L. *Lexington*. Not guilty, upon my Honour.

L. *Rockingham*. Not guilty, upon my Honour.

L. *Lucas*. Not guilty, upon my Honour.

L. *Culpeper*. Not guilty, upon my Honour.

L. *Byron*. Not guilty, upon my Honour.

L. *Jermyn*. Not guilty, upon my Honour.

L. *Leigh*. Not guilty, upon my Honour.

L. *Raby*. Not guilty, upon my Honour.

L. *Howard*. Not guilty, upon my Honour.

L. *Lovelace*. Not guilty, upon my Honour.

L. *Hunsdon*. Not guilty, upon my Honour.

L. *Wharton*. Not guilty, upon my Honour.

L. *Eure*. Not guilty, upon my Honour.

L. *Dudley*. Not guilty, upon my Honour.

L. *Fitzwaller*. Not guilty, upon my Honour.

L. *Willoughby*. Not guilty, upon my Honour.

L. *Audley*. Not guilty, upon my Honour.

L. *Abergavenny*. Not guilty, upon my Honour.

L. H. St. My Lord Viscount *Lonsdale*, Is *Charles Lord Mohun* guilty, &c.

L. Viscount *Lonsdale*. Not guilty, upon my Honour.

L. Viscount *Townshend*. Not guilty, upon my Honour.

L. H. St. The Earl of *Grantbam*, Is *Charles Lord Mohun* guilty, &c.

E. of *Grantbam*. Not guilty, upon my Honour.

E. of *Albemarle*. Not guilty, upon my Honour.

E. of *Tankerville*. Not guilty, upon my Honour.

E. of *Warrington*. Not guilty, upon my Honour.

E. of *Montagu*. Not guilty, upon my Honour.

E. of *Portland*. Not guilty, upon my Honour.

E. of *Rocheſter*. Not guilty, upon my Honour.

E. of *Nottingham*. Not guilty, upon my Honour.

E. of *Yarmouth*. Not guilty, upon my Honour.

E. of Radnor. Not guilty, upon my Honour.
E. of Macclesfield. Not guilty, upon my Honour.

E. of Feversham. Not guilty, upon my Honour.
E. of Burlington. Not guilty, upon my Honour.

E. of Carlisle. Not guilty, upon my Honour.
E. of Bath. Not guilty, upon my Honour.
E. of Anglesea. Not guilty, upon my Honour.
E. of Essex. Not guilty, upon my Honour.
E. of Scarsdale. Not guilty, upon my Honour.
E. of Thanet. Not guilty, upon my Honour.
E. of Chesterfield. Not guilty, upon my Honour.

E. of Carnarvan. Not guilty, upon my Honour.
E. of Kingston. Not guilty, upon my Honour.

E. of Wincelsea. Not guilty, upon my Honour.
E. of Stamford. Not guilty, upon my Honour.

E. of Peterborough. Not guilty, upon my Honour.
E. Rivers. Not guilty, upon my Honour.

E. of Manchester. Not guilty, upon my Honour.
E. of Denbigh. Not guilty, upon my Honour.

E. of Leicester. Not guilty, upon my Honour.
E. of Bridgewater. Not guilty, upon my Honour.

E. of Dorset. Not guilty, upon my Honour.
E. of Suffolk. Not guilty, upon my Honour.

E. of Huntingdon. Not guilty, upon my Honour.
E. of Derby. Not guilty, upon my Honour.

E. of Kent. Not guilty, upon my Honour.

Lord High Steward. My Lord Great Chamberlain, Is Charles Lord Mobun guilty, &c. ?

Lord Chamberlain. Not guilty, upon my Honour.

Lord High Steward. My Lord Marquess of Normanby, Is Charles Lord Mobun guilty, &c. ?

Lord Marquess of Normanby. Not guilty, upon my Honour.

Lord Marquess of Hallifax. Not guilty upon my Honour.

Lord High Steward. My Lord Duke of Newcastle, Is Charles Lord Mobun guilty, &c. ?

D. of Newcastle. Not guilty, upon my Honour.

D. of Scomberg. Not guilty, upon my Honour.
D. of St. Albans. Not guilty, upon my Honour.

D. of Northumberland. Not guilty, upon my Honour.

D. of Ormonde. Not guilty, upon my Honour.
D. of Southampton. Not guilty, upon my Honour.

D. of Richmond. Not guilty, upon my Honour.

D. of Somerset. Not guilty, upon my Honour.

L. High Steward. My Lord Steward, Is Charles Lord Mobun guilty, &c. ?

Lord Steward. Not guilty, upon my Honour.

Lord High Steward. My Lord President, Is Charles Lord Mobun guilty, &c. ?

Lord President. Not guilty, upon my Honour.

Then the Lord High Steward of England, standing up uncovered, putting his right Hand upon his Breast, said, My Lord Mobun is not guilty, upon my Honour.

Then the Lord High Steward seated himself again in the Chair, to take the Number of the Peers who had given their Judgment.

L. H. St. My Lords, Eighty-seven of your Lordships are present, and you are all unanimously of Opinion, That my Lord Mobun is not guilty of the Felony and Murder whereof he stands indicted.

Lords. Ay, ay.

L. H. St. Let the Prisoner be called to the Bar.

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Serj. at Arms. O Yes, O Yes, O Yes, my Lord High Steward of England, his Grace, does straitly Charge and Command all manner of Persons here present, to keep Silence, upon Pain of Imprisonment.

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Serj. at Arms. O Yes, O Yes, O Yes, Chief Governor of the Tower of London, bring forth the Body of your Prisoner Charles Lord Mobun, whom you have committed to you, in order to be brought hither this Day, upon Pain and Peril will fall thereon.

Then he was brought forth to the Bar, and the Lord High Steward address'd himself to him in this Manner.

L. H. St. My Lord Mobun, you have been indicted for the Murder of Mr. Richard Coote, upon which Indictment your Lordship has been Arraigned, and upon your Arraignment has pleaded not guilty, and for your Trial you have put your self upon your Peers, my Lords here present; and they have heard the Evidence, and have considered of it, and delivered their Judgment upon the whole Matter; and I am to acquaint your Lordship, they are all unanimously of Opinion, That your Lordship is not guilty of the Felony and Murder whereof you stand indicted; and therefore your Lordship is discharged from your Imprisonment, paying your Fees.

Then the Lord Mohun made his Reverence to the Lords, and express'd himself thus.

Lord Mobun. My Lords, I do not know which Way to express my great Thankfulness and Acknowledgment of your Lordships great Honour and Justice to me; but I crave leave to assure your Lordships, That I will endeavour to make it the Business of the future Part of my Life, so to behave my self in my Conversation in the World, as to avoid all Things that may bring

194 166. *The Trial of Spencer Cowper, Esq; &c.* 11 Will. III.

me under any such Circumstances, as may expose me to the giving your Lordships any Trouble of this Nature for the future. And then making his Reverences to the Lords, he went away from the Bar.

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Serj. at Arms. O Yes, O Yes, O Yes, All manner of Persons here present, are commanded to keep Silence, by my Lord High Steward of England, his Grace, upon Pain of Imprisonment.

L. H. St. My Lords, the Trial being at an End, there is nothing remains to be done here, but the determining the Commission.

Lords. Ay, ay.

L. H. St. Sir Samuel Astry, let Proclamation be made in order to the dissolving the Commission of High Stewardship.

Cl. of the Crown. Serjeant at Arms, make Proclamation.

Serj. at Arms. O Yes, O Yes, O Yes, my Lord

High Steward of England, his Grace, does straitly Charge and Command all manner of Persons here present, and that have here attended, to depart hence in the Peace of God, and of our Sovereign Lord the King; for his Grace, the Lord High Steward of England, intends now to dissolve his Commission.

And then the White Staff being delivered to his Grace, the Lord High Steward, he stood up, and holding it in both his Hands, broke it in two; and then leaving the Chair, came down to the Wool-pack, and said, Is it your Lordships Pleasure to adjourn to the House of Lords?

Lords. Ay, ay.

L. H. St. This House is adjourned to the House of Lords.

And so they went back in the same Order that they came into the Court, and all the Assembly broke up.

CLXVI. *The TRIAL of Spencer Cowper, Esq; Ellis Stephens, William Rogers, and John Marson, at Hertford Assizes, for the Murder of Mrs. Sarah Stout, July 16, 1699.*
11 Will. III.

Proclamation was made for all Persons concerned to attend.

Cl. of Arr.



O U good Men that are empannell'd to enquire, &c. answer to your Names, and save your Fines.

Then Ellis Stephens, William Rogers, and

John Marson, being upon Bail, Proclamation was made for them to attend, which they accordingly did; and Mr. Cowper was brought into Court by the Under Sheriff.

Cl. of Arr. { *Spencer Cowper, hold up thy Hand.*
(Which he did.)
John Marson, hold up thy Hand.
(Which he did.)
Ellis Stephens, hold up thy Hand.
(Which he did.)
William Rogers, hold up thy Hand.
(Which he did.)

Cl. of Arr. Y OU stand indicted by the Names of Spencer Cowper, late of the Parish of St. John's, in the Town of Hertford, in the County of Hertford, Esq; John Marson, late of the Parish aforesaid, in the County aforesaid, Gent. Ellis Stephens, late of the Parish aforesaid, in the County aforesaid, Gent. and William Rogers, late of the Parish aforesaid, in the County aforesaid, Gent. for that you not having the Fear of God before your Eyes, but being moved and seduced by the Instigation of the Devil, on

the Thirteenth Day of March, in the Eleventh Year of the Reign of his present Majesty, by Force and Arms, &c. at the Parish aforesaid, in the County aforesaid, in and upon one Sarah Stout, Spinster, in the Peace of God and our Sovereign Lord the King, then and there being, violently, feloniously, voluntarily, and of your Malice afore-thought, did make an Assault; and that you the aforesaid Spencer Cowper, John Marson, Ellis Stephens, and William Rogers, a certain Rope of no Value, about the Neck of the said Sarah then and there feloniously, voluntarily, and of your Malice afore-thought, did put, place, fix and bind; and the Neck and Throat of the said Sarah, then and there with the Hands of you the said Spencer Cowper, John Marson, Ellis Stephens, and William Rogers, feloniously, voluntarily, and of your Malice afore-thought, did hold, squeeze, and gripe; and that you the said Spencer Cowper, John Marson, Ellis Stephens, and William Rogers, with the aforesaid Rope, by you the said Spencer Cowper, John Marson, Ellis Stephens, and William Rogers, then as aforesaid, about the Neck of the said Sarah Stout put, placed, fixed, and bound, and by the squeezing and gripping of the Neck and Throat of the said Sarah with the Hands of you the said Spencer Cowper, John Marson, Ellis Stephens, and William Rogers, as aforesaid, the said Sarah Stout then and there, by Force and Arms, &c. feloniously, voluntarily, and of your Malice afore-thought, did choak and strangle; by reason of which choaking and strangling of her the said Sarah Stout, by you the aforesaid Spencer Cowper, John Marson, Ellis Stephens, and William Rogers, with the said Rope about the Neck of the said Sarah Stout as aforesaid, placed, fixed and bound, and by the squeezing

squeezing and griping of the Neck and Throat of the said Sarah, with the Hands of you the said Spencer Cowper, John Marlon, Ellis Stephens and William Rogers, as aforesaid, the said Sarah then and there instantly died. And so you the said Spencer Cowper, John Marlon, Ellis Stephens and William Rogers, the said Sarah Stout, on the thirteenth Day of March, in the Year aforesaid, in the Parish aforesaid, in the County aforesaid, in Manner and Form aforesaid, feloniously, voluntarily, and of your Malice aforethought, did kill and murder; and the said Sarah Stout, as aforesaid, by you the said Spencer Cowper, John Marlon, Ellis Stephens and William Rogers, feloniously, voluntarily, and out of your Malice aforethought, choaked and strangled, into a certain River there, being called the Priory River, then secretly and maliciously did put and cast, to conceal and hide the said Sarah Stout so murdered, against the Peace of our Sovereign Lord the King, his Crown and Dignity, &c.

How sayest thou, Spencer Cowper, art thou guilty of the Felony and Murder whereof thou standest indicted, or not guilty?

Mr. Cowper. Not guilty.

Cl. of Arr. Culprit, How wilt thou be tried?

Mr. Cowper. By God and my Country.

Cl. of Arr. God send you a good Deliverance.

Then the other Three pleaded not guilty, and put themselves upon their Country in manner aforesaid.

Then Proclamation was made for Information.

Cl. of Arr. You the Prisoners at the Bar, these Men that you shall hear called, and personally appear, are to pass between our Sovereign Lord the King and you, upon Trial of your several Lives and Deaths; therefore if you will challenge them, or any of them, your Time to speak is as they come to the Book to be sworn, before they be sworn.

Then the Pannel was called over.

Cl. of Arr. Do you design to join in your Challenges, or to challenge separately?

Mr. Cowper. If we should challenge separately, there must be so many separate Trials; and therefore to prevent the Trouble of the Court, I am willing there should be but one Challenge for all.

Cl. of Arr. Gentlemen, do you all agree to that?

Prisoners. Yes, yes.

Then after some Challenges, as well on the Part of the King as of the Prisoners, there not being a full Jury of the principal Pannel:

Mr. Cowper. If your Lordship please, the Pannel is now gone through, I desire they may shew some legal Cause for their Challenges.

Mr. Jones. I conceive we that are retained for the King are not bound to shew any Cause, or the Cause is sufficient if we say they are not good for the King, and that is allowed to be a good Cause of Challenge; for what other Cause can we shew in this Case? You are not to shew your Cause, you challenge peremptorily; so in this Case the King does.

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Mr. Cowper. My Lord, I stand at the Bar with some Disadvantage, to encounter a Gentleman that hath no Concernment; but however, I do take it for Law, that there must be a Cause shewed, and that Cause must be a legal one, and what that Cause is they must certainly make out. I do think it ought to appear that there is some Relation, or some notorious Affection or Friendship, or something of that sort, or otherwise it is not a legal Cause of Challenge; and if there seem to be any Difficulty in this Particular, I hope your Lordship will assign me Counsel to argue it with the King's Counsel.

Mr. Baron Hatsell. Mr. Cowper, you are not under such Disadvantage as Men usually are that stand where you now do. You have been educated in the Study of the Law, and understand it very well. I have several Times seen how you have managed your Clients Causes to their Advantage. As for this Matter of Challenge, Mr. Jones, I think, you should shew your Cause of Challenge, tho' the Law allows the Prisoner Liberty to challenge twenty peremptorily.

Mr. Jones. I don't know, in all my Practice of this Nature, that it was ever put upon the King to shew Cause; and I believe some of the King's Counsel will say they have not known it done.

Mr. Cowper. In my Lord Chief Justice Hales's *Pleas of the Crown*, p. 259, it is expressly so, and in the Statute of 33 Edw. I. 'tis said, the King shall not challenge without Cause, and that must be legal.

Cl. of Arr. Call Daniel Clarke.

Mr. Baron Hatsell. Mr. Jones, if you can say any Juryman hath said any Thing concerning this Cause, and given his Verdict by way of Discourse, or shewed his Affection one way or other, that would be good Cause of Challenge.

Mr. Jones. My Lord, then we should keep you here while to Morrow Morning.

Mr. Baron Hatsell. If there hath been any great Friendship between any Jury-man and the Party, it will look ill if he be insisted upon.

Mr. Cowper. My Lord, I don't insist upon it, but I profess I know of no Friendship, only that Mr. Clarke in Elections hath taken our Interest in Town; I know I have a just Cause, and I am ready to be tried before your Lordship and any fair Jury of the County; therefore I do not insist upon it.

Then the Jury sworn was as followeth:

Evan Lloyd, Esq;	}	Thomas Parrot,
William Watson,		Sam. Wallingham,
John Prior,		Francis Cole,
John Harrow,		Rich. Crouch,
George Holgate,		John Cock,
John Stracey,		Rich. Dickinson.

Mr. Cowper. My Lord, I humbly move that I may have Pen, Ink and Paper.

Mr. Baron Hatsell. Ay, by all means.

Cl. of Arr. Hold up your Hand. (*Which he did.*) And so of the rest. You of the Jury, look upon the Prisoners, and hearken to their Charge. They stand indicted by the Names of, &c. (*Prout in the Indictment, mutatis mutandis.*)

Jury. My Lord, we desire we may have Pen, Ink and Paper.

Cl. of the Affize. There are three of the Jury desire Pen, Ink and Paper.

C c 2

Mr.

Mr. Baron *Halsell*. Let as many have it as will.

Mr. *Jones*. May it please your Lordship, and you Gentlemen that are sworn, I am of Counsel for the King in this Cause, and it is upon an Indictment by which the Gentlemen at the Bar stand accused for one of the foulest and most wicked Crimes almost that any Age can remember: I believe in your County you never knew a Fact of this Nature; for here is a young Gentlewoman of this County strangled and murdered in the Night-time. The Thing was done in the Dark, therefore the Evidence cannot be so plain as otherwise might be.

After she was strangled and murdered, she was carried down into a River to stifle the Fact, and to make it supposed she had murdered her self; so that it was indeed, if it prove otherwise, a double Murder, a Murder accompanied with all the Circumstances of Wickedness and Villainy that I remember in all my Practice, or ever read of.

This Fact, as it was committed in the Night-time, so it was carried very secret, and it is very well we have had so much Light as we have to give so much Satisfaction: For we have here in a manner two Trials, one to acquit the Party that is dead, and to satisfy the World, and vindicate her Reputation, that she did not murder herself, but was murdered by other Hands. For my part, I shall never, as Counsel in the Case of Blood, aggravate; I will not improve or enlarge the Evidence at all, it shall be only my Business to set the Fact as it is, and to give the Evidence, and state it as it stands here in my Instructions.

My Lord, for that Purpose, to lead to the Fact, it will be necessary to inform you, that upon Monday the 13th of March, the first Day of the last Assizes here, Mr. *Cowper*, one of the Gentlemen at the Bar, came to this Town, and lighted at Mr. *Barefoote's* House, and staid there some Time, I suppose to dry himself, the Weather being dirty, but sent his Horse to Mrs. *Stout's*, the Mother of this Gentlewoman. Some Time after, he came thither himself, and dined there, and staid till Four in the Afternoon; and at Four, when he went away, he told them he would come and lodge there that Night, and sup.

According to his Word he came there, and had the Supper he desired; after Supper Mrs. *Stout*, the young Gentlewoman, and he sat together till near Eleven a-Clock. At Eleven a-Clock there was Orders given to warm his Bed, openly to warm his Bed, in his hearing. The Maid of the House, Gentlemen, upon this went up Stairs to warm his Bed, expecting the Gentleman would have come up and followed her before she had done; but it seems, while she was warming his Bed, she heard the Door clap together, and the Nature of that Door is such, that it makes a great Noise at the Clapping of it to, that any Body in the House may be sensible of any one's going out. The Maid upon this was concerned, and wondered at the Meaning of it, he promising to lie there that Night; she came down, but there was neither Mr. *Cowper* nor Mrs. *Stout*, so that we suppose, and for all that we can find and learn, they must go out together. After their going out, the Maid and Mother came into the Room; and the young Gentlewoman not returning, nor Mr. *Cowper*, they sat up all Night in the House, expecting what Time the young Gentlewoman would return. The next Morning, after they had sat up all Night, the first News of this Lady was, that she lay floating and swimming in Water

by the Mill-dam. Upon that there was several Persons call'd; for it was a Surprize how this should come to pass. There she lay floating with her Petticoats and Apron, but her Night-Rail and Morning-Gown were off, and one of them not found till some time after; and the Maid will give you an Account how it came to be found.

This made a great Noise in the Country; for it was very extraordinary, it happening that from the Time the Maid left Mr. *Cowper* and this young Gentlewoman together, she was not seen or heard of till next Morning, when she was found in this Condition, with her Eyes broad open, floating upon the Water.

When her Body came to be viewed, it was very much wondered at; for in the first Place, it is contrary to Nature, that any Persons that drown themselves should float upon the Water. We have sufficient Evidence that it is a Thing that never was; if Persons come alive into the Water, then they sink, if dead, then they swim, that made some more curious to look into this Matter. At first it was thought that such an Accident might happen, though they could not imagine any Cause for this Woman to do so, who had so great Prosperity, had so good an Estate, and had no Occasion to do an Action upon her self so wicked and so barbarous, nor cannot learn what Reason she had to induce her to such a Thing. Upon View of the Body it did appear there had been Violence used to the Woman, there was a Crease round her Neck, she was bruised about her Ear; so that it did seem as if she had been strangled either by Hands or a Rope.

Gentlemen, upon the Examination of this Matter, it was wondered how this Matter came about, it was dark and blind. The Coroner at that Time, nor these People, had no Evidence given, but the ordinary Evidence, and it pass'd in a Day. We must call our Witnesses to this Fact, that of Necessity you must conclude she was strangled, and did not drown her self. If we give you as strong a Proof as can be upon the Nature of the Fact, that she was strangled, then the second Matter under that Enquiry will be, to know who, or what Persons should be the Men that did the Fact. I told you before, it was, as all wicked Actions are, a Matter of Darkeness, and done in secret, to be kept as much from the Knowledge of Men as was possible.

Truly, Gentlemen, as to the Persons at the Bar, the Evidence of the Fact will be very short, and will be to this Purpose.

Mr. *Cowper* was the last Man unfortunately in her Company, I could wish he had not been so with all my Heart, 'tis a very unfortunate Thing, that his Name should upon this Occasion be brought upon the Stage; but then, my Lord, it was a strange Thing, here happens to be three Gentlemen, Mr. *Marson*, Mr. *Rogers*, and Mr. *Stephens*; as to these three Men, my Lord, I don't hear of any Business they had here, unless it was to do this Matter, to serve some Interest or Friend, that sent them upon this Message; for, my Lord, they came to Town, (and in Things of this Nature, 'tis well we have this Evidence, but if we had not been straightned in Time it would have brought out more, these Things come out slowly) these Persons, Mr. *Stephens*, Mr. *Rogers*, and Mr. *Marson*, came to Town here on the 13th of March last, the Assize Day. My Lord, when they

they came to Town, they came to an House, and took Lodgings at one *Gurrey's*, they took a Bed for two, and went out of their Lodging, having taken a Room with a large Bed in it, and afterwards they went to the *Glove* and *Dolphin*, and then about Eight a-Clock one *Marson* came to them there; in what Company they came, your Lordship and the Jury will know by and by; they staid there, my Lord, at the *Glove* from Eight a-Clock to Eleven, as they say. At Eleven these three Gentlemen came all into their Lodging together to this *Gurrey's*. My Lord, when they came in, it was very observable amongst them, unless there had been a Sort of Fate in it, *First*, That they should happen to be in the Condition they were in; and, *secondly*, fall upon the Discourse they did at that Time; for, my Lord, they called for Fire, and the Fire was made them; and while the People of the House were going about, they observed and heard these Gentlemen talk of *Mrs. Sarah Stout*; that happened to be their Discourse; one said to the other, *Marson*, she was an old Sweet-heart of yours: Ay, saith he, but she cast me off, but I reckon by this Time a Friend of mine has done her Business. Another Piece of Discourse was, I believe a Friend of mine is even with her by this Time. They had a Bundle of Linnen with them, but what it was is not known, and one takes the Bundle and throws it upon the Bed; Well, saith he, her Business is done, *Mrs. Sarah Stout's* courting Days are over; and they sent for Wine, my Lord; so after they had drank of the Wine they talk'd of it, and one pulled out a great deal of Money; saith one to another, what Money have you spent to Day? Saith the other, thou hast had 40 or 50*l.* for thy Share: Saith the other, I will spend all the Money I have, for Joy the Business is done.

My Lord, this Discourse happened to be among them, which made People of the House consider and bethink themselves; when the next Day they heard of this *Mrs. Stout's* being found in the Water, this made them recollect and call to mind all these Discourses.

My Lord, after these Gentlemen had staid there all Night, next Morning, truly it was observed (and I suppose some Account will be given of it) that *Mr. Cowper* and they did meet together, and had several Discourses, and that very Day went out of Town, and I think as soon as they came to *Heddesdon*, made it all their Discourse and Business to talk of *Mrs. Stout*.

My Lord, we will call our Witnesses, and prove all these Facts that I have opened to your Lordship; and then I hope they will be put to give you some Account how all these Matters came about.

Call Sarah Walker, (*who was sworn.*)

Mr. Jones. *Mrs. Walker*, pray give an Account to my Lord and the Jury, of *Mr. Cowper's* coming to your House the 13th of *March*, and what was done from his coming there at Night to his going out.

Sarah Walker. May it please you, my Lord, on Friday before the last Affizes, *Mr. Cowper's* Wife sent a Letter to *Mistress Stout*, that she might expect *Mr. Cowper* at the Affize-Time; and therefore we expected *Mr. Cowper* at that Time, and accordingly provided; and as he came in with

the Judges, she ask'd him if he would alight? He said no, by Reason I come in later than usual, I will go into the Town and show my self, but he would send his Horse presently. She ask'd him, how long it would be before he would come, because they would stay for him? he said, he could not tell, but he would send her Word; and she thought he had forgot, and sent me down to know, whether he would please to come? He said, he had Business, and he could not come just then, but he came in less than a Quarter of an Hour after, and dined there, and he went away at Four a-Clock; and then my *Mistress* ask'd him, if he would lie there? and he answered yes, and he came at Night about Nine a Clock; and he sat talking about half an Hour, and then call'd for Pen, Ink and Paper, for that, as he said, he was to write to his Wife; which was brought him, and he wrote a Letter; and then my *Mistress* went and ask'd him, what he would have for Supper? he said Milk, by Reason he had made a good Dinner; and I got him his Supper, and he eat it; after she called me in again, and they were talking together, and then she bid me make a Fire in his Chamber; and when I had done so, I came and told him of it, and he looked at me, and made me no answer: Then she bid me warm the Bed, which accordingly I went up to do as the Clock struck Eleven, and in about a Quarter of an Hour, I heard the Door shut, and I thought he was gone to carry the Letter, and staid about a Quarter of an Hour longer, and came down, and he was gone and she, and *Mrs. Stout* the Mother, ask'd me the Reason why he went out when I was warming his Bed? and she ask'd me for my *Mistress*, and I told her I left her with *Mr. Cowper*, and I never saw her after that, nor did *Mr. Cowper* return to the House.

Mr. Jones. How long did you sit up?

Walker. All Night.

Mr. Jones. What Time next Morning did you see her?

Walker. About Seven a-Clock.

Mr. Jones. In the Water or out?

Walker. Out of the Water.

Mr. Cowper. Pray will you recollect a little, and be very particular as to the Time when I went out at Night?

Walker. Sir, it was a Quarter after Eleven by our Clock; the Difference between the Town-Clock and ours was half an Hour.

Mr. Cowper. But you say by your Clock it was a Quarter after Eleven.

Walker. Yes, Sir.

Mr. Cowper. Pray what Account did you give as to the Time to the Coroner's Inquest?

Walker. I said then it was Eleven, or a Quarter after Eleven, when I heard the Door shut.

Mr. Cowper. Pray was *Mrs. Stout* present with the Coroner's Inquest when you gave that Account?

Walker. Yes, she was.

Mr. Cowper. Pray what Account did you give as to the Time before my Lord Chief Justice Holt?

Walker. I gave the Account that it was Eleven, or a Quarter of an Hour after.

Mr. Cowper. In her Depositions there is half an Hour's Difference, for then she said it was half an Hour after Ten.

Mr. Baron Hatfield. Which Clock was earliest, yours or the Town-Clock?

Walker.

Walker. Ours was half an Hour faster than theirs.

Mr. Cowper. How came you to know this?

Walker. By reason that Dinner was dress'd at the Cook's, and it was ordered to be ready by Two a-Clock, and it was ready at Two a-Clock by the Town-Clock, and half an Hour after Two by ours.

Mr. Cowper. When you came down and misfed your Miftrefs, did you enquire after her all that Night?

Walker. No, Sir, I did not go out of the Doors; I thought you were with her, and so I thought she would come to no Harm.

Mr. Cowper. Here is a whole Night she gives no Account of. Pray, Miftrefs, why did not you go after her?

Walker. My Miftrefs would not let me.

Mr. Cowper. Why would she not let you?

Walker. I said I would see for her: No, faith she, by Reason if you go and see for her, and do not find her, it will make an Alarm over the Town, and there may be no Occasion.

Mr. Cowper. Did your Miftrefs use to stay out all Night?

Walker. No, never.

Mr. Cowper. Have not you said so?

Walker. I never said so in my Life.

Mr. Cowper. Pray Mrs. *Walker* did you never take notice that your Miftrefs was under Melancholy?

Walker. I don't say but she was melancholy; she was ill for some time, and I imputed it to her Illness, and I know no other Cause.

Mr. Cowper. Have you not often told People that your Miftrefs was a melancholy Person, upon your Oath?

Walker. I have said she hath been ill, and that made her melancholy.

Mr. Cowper. I will ask you this Question; Pray, did you ever purchase any Poison, more or less, within these twelve Months?

Walker. Yes, Sir, I did so, and can tell what it was for.

Mr. Cowper. By whose Order?

Walker. By my own Order.

Mr. Cowper. Did you buy Poison but once, upon your Oath?

Walker. I believe I might buy twice.

Mr. Cowper. Where?

Walker. Of Mr. *Ludman*.

Mr. Cowper. Both Times there?

Walker. Yes.

Mr. Cowper. Of him?

Walker. No, of the young Man.

Mr. Cowper. Did you ever buy any Poison at *Luton*?

Walker. No.

Mr. Cowper. Did you ever buy any by your Miftrefs's Order, or of one Mrs. *Crooke*, upon your Oath?

Walker. No, I never did.

Mr. Cowper. Pray at what Time was it that you bought this Poison you speak of?

Walker. I can't remember.

Mr. Cowper. Pray recollect your self?

Walker. It was within this half Year, to be sure.

Mr. Cowper. What was the Name of the Poison you ask'd for?

Walker. I ask'd for White Mercury.

Mr. Cowper. She faith, I pass'd by her Miftrefs's House, and went directly to Mr. *Barefoot*'s; Pray did not you come to Mr. *Barefoot*'s after me?

Walker. Yes, Sir.

Mr. Cowper. Pray did you give the same Account before the Coroner, when this Matter was enquired into, that you have now done?

Walker. Yes, I did, as near as I can tell.

Mr. Cowper. Did you give this Account in Substance?

Walker. Yes, I did.

Mr. Baron Hatsell. Mr. *Cowper*, I suppose you don't mean in relation to the Poison.

Mr. Cowper. My Lord, I mean in relation to so much of the Evidence which she now gives, and particularly respects me. For what End or Purpose did you buy it?

Walker. I bought it to poison a Dog.

Mr. Cowper. Why should you poison the Dog?

Walker. It was a Dog that used to haunt our House, that did us a great deal of Mischief; but that did not do, so I bought it a second Time.

Mr. Cowper. Who gave it to the Dog?

Walker. 'Twas another Maid did give it the Dog.

Mr. Cowper. Why did you then swear it was given the Dog?

Walker. Sir, I saw it given.

Mr. Cowper. Did your Miftrefs know of it?

Walker. Yes, she did know of it afterwards.

Mr. Cowper. How did you give it?

Walker. In warm Milk.

Mr. Cowper. How did the Milk look?

Walker. It did not look discolour'd in the least.

Mr. Baron Hatsell. You said just now your Miftrefs was ill, and that made her melancholy; what Illness was it?

Walker. My Lord, she had a great Pain in her Head.

Mr. Baron Hatsell. How long had she been troubled with it?

Walker. Ever since last May was twelve Months was the beginning of it.

Mr. Jones. Did you ever find her in the least inclined to do her self a Mischief?

Walker. No, I never did.

Mr. Cowper. You bought Poison twice, did you give all the Poison you bought to the Dog?

Walker. Yes.

Mr. Cowper. The first and the last?

Walker. Yes, the whole.

Mr. Cowper. How much did you buy?

Walker. I am not certain how much I bought.

Mr. Cowper. Pray, what Mischief did it do the Dog?

Walker. I cannot tell, he may be alive till now for ought I know.

Mr. Cowper. What Mischief did the Dog do?

Walker. A great deal, he threw down several Things and broke them.

Mr. Jones. Did Mr. *Cowper*, upon your Oath, hear Miftrefs *Stout* give you Order to make his Fire, and warm his Bed?

Walker. He knows best, whether he heard it or no; but he sat by her when she spake it.

Mr. Jones. Did she speak of it so as he might hear?

Walker. Yes she did, for he was nearer than I.

Mr. Jones. And did not he contradict it?

Walker. Not in the least.

Mr. Jones. Was it the old or young Woman that gave you the Order?

Walker. The young Woman.

Mr. Cowper. Pray, did the Dog lap it, or did you put it down his Throat, upon your Oath?

Walker. No, he lapt it, upon my Oath.

Mr. Jones. Did Mr. Cowper send for his Horse from your House the next Day?

Walker. I can't say that; I was not in the Way.

Mr. Jones. Did he come to your House afterwards?

Walker. No, I am sure he did not.

Mr. Jones. Was the Horse in your Stable when it was sent for?

Walker. Yes, Sir.

Mr. Jones. And he did not come to your House again, before he went out of Town?

Walker. No, Sir.

Mr. Jones. Do you know which Way he went out of Town?

Walker. No, Sir.

Mr. Baron Hatsell. Did Mr. Cowper use to lodge at your House at the Affizes?

Walker. No, my Lord, not since I came there; the Sessions before, he did.

Mr. Cowper. Where did you come to invite me to Dinner?

Walker. At Mr. Barefoot's.

Mr. Cowper. Then you knew I was to lodge there?

Mr. Baron Hatsell. Who wrote the Letter on Friday, that Mr. Cowper would lodge there?

Walker. I know not who wrote it, his Wife sent it.

Mr. Jones. Did he tell you he would lodge there that Night before he went away?

Walker. When he went from Dinner he said so.

Mr. Jones. Call James Berry. (*Who was sworn.*) Now, my Lord, we will give Evidence of the Manner how she was found. Mr. Berry, Do you remember when Mrs. Stout was found by your Mill?

Berry. No, indeed, I do not know just what Day it was.

Mr. Jones. When you found her, do you remember, how, in what Manner she was found?

Berry. Yes; I went out in the Morning to shoot a Flush of Water by Six a-Clock, and I saw something a floating in the Water, so I went out to see what it was, and I saw part of her Cloaths.

Mr. Jones. Did you see her Face?

Berry. No, not then.

Mr. Jones. Was her Face under Water, or above?

Berry. No part of her Body was above Water, only some part of her Cloaths.

Mr. Jones. How many Foot deep might the Water be?

Berry. Five Foot deep.

Mr. Jones. And how much was she under Water, do you conceive?

Berry. She might be under Water about five or six Inches.

Mr. Jones. Then he whole Body was not under Water, was it?

Berry. Yes.

Mr. Jones. Was her Face under Water?

Berry. Yes.

Mr. Baron Hatsell. Did she lie upon her Face, or her Back?

Berry. She lay upon her Side.

Mr. Jones. When she was taken out, were her Eyes open or shut?

Berry. Her Eyes were open.

Mr. Jones. Was she swell'd with Water?

Berry. I did not perceive her swell'd: I was

amaz'd at it, and did not so much mind it as I should.

Mr. Jones. But you remember her Eyes were staring open?

Berry. Yes.

Mr. Jones. Did you see any Marks or Bruises about her?

Berry. No.

Mr. Cowper. Did you see her Legs?

Berry. No, I did not.

Mr. Cowper. They were not above Water.

Berry. No.

Mr. Cowper. Could you see them under Water?

Berry. I did not so much mind it.

Mr. Cowper. Did she lie streight or double, driven together by the Stream?

Berry. I did not observe.

Mr. Cowper. Did you not observe the Weeds and Trumpery under her?

Berry. There was no Weeds at that Time thereabouts.

Mr. Jones. Was the Water clear?

Berry. No, it was thick Water.

Mr. Jones. Was there any Thing under her, in the Water, to prevent her sinking?

Berry. No, I do not know there was; she lay on her right Side, and her right Arm was driven between the Stakes, which are within a Foot of one another.

Mr. Jones. Did any Thing hinder her from sinking?

Berry. Not that I saw.

Mr. Jones. Did you help to take her out from the Stakes?

Berry. No.

Mr. Jones. Call John Venables.

Mr. Cowper. Mr. Berry, if I understand you right, you say her Right Arm was driven between the Stakes, and her Head between the Stakes; could you perceive her Right Arm, and where was her Left Arm?

Berry. Within a small Matter upon the Water.

Mr. Baron Hatsell. Did you see her Head and Arm between the Stakes?

Berry. Yes, her Arm by one Stake, and her Head by another.

Mr. Jones. Did her Arm hang down, or how?

Berry. I did not mind so much as I might have done.

Then John Venables was sworn.

Mr. Jones. Did you see Mrs. Stout, when she was taken out of the Water, as she lay in it?

Venables. Yes.

Mr. Jones. Give an Account how you found her.

Venables. She was floating upon the Water.

Mr. Jones. How? Was all her Body, or what Part in the Water?

Venables. She lay upon her Right Side, and this Arm upon the Water, rather above the Water, her Ruffles were upon the Water.

Mr. Jones. Did you help to take her out?

Venables. No, Sir.

Mr. Jones. Were her Eyes open then?

Venables. Her Eyes were open when I saw her, but I did not see her when she was taken out.

Mr. Jones. Did any thing hinder her from sinking?

Venables. I saw nothing to hinder her if she would have sunk.

Mr.

Mr. Jones. Call Leonard Dell. (*Who was sworn.*) Did you see this Mrs. Stout in the Water?

Dell. Yes.

Mr. Jones. Pray tell us in what Posture she was found.

Dell. I saw her floating in the River; I saw her Face and her Cloaths.

Mr. Jones. Were her Cloaths all above the Water?

Dell. Her Stays and her Coat that she had next her.

Mr. Jones. Were these plainly above the Water?

Dell. Some Part of them.

Mr. Jones. Did you see her Face, was that above the Water?

Dell. No, Sir, it was between the Piles; she lay on her Right Side, and her Head was between the Stakes, and her Right Arm.

Mr. Jones. Did you help to take her out of the Water?

Dell. Yes.

Mr. Jones. Did any Thing hinder her from sinking?

Dell. Neither Stakes nor any Thing there.

Mr. Jones. Did her Arms or Neck stick to the Stakes?

Dell. Not to my thinking.

Mr. Jones. Was the Water clear, or weedy?

Dell. It was very clear.

Mr. Jones. How many Foot deep was it?

Dell. I know not, but it might be five Foot deep.

Mr. Jones. Did you help to take her out of the Water?

Dell. Yes, Sir, and we took her and carried her into the Meadow just by, and laid her on the Bank.

Mr. Jones. Did you observe her Face, Neck, or Arms, to be bruised?

Dell. I saw no Bruise at all.

Mr. Cowper. How did you know but her Right Arm did reach to the Ground, since you did not see it?

Dell. We could see her Arm lie in this Manner between the Piles, the Right Arm was downwards, for she lay on one Side.

Jury-man. Did you see any Arm above in the Water?

Dell. No.

Mr. Baron Hatsfell. You should propose your Questions to the Court.

Jury-man. My Lord, I desire to know where was her Left Arm.

Mr. Baron Hatsfell. Where was her Left Arm?

Dell. I can't tell how it did lie; I did not observe it.

Mr. Baron Hatsfell. When you took her out of the Water, did you observe her Body swelled?

Dell. We carried her into the Meadow, and laid her on the Bank-side, and there she lay about an Hour, and then was ordered to be carried in to the Miller's.

Mr. Baron Hatsfell. Did you observe that any Water was in her Body?

Dell. None at all that I could see; but there was some small Matter of Froth came from her Mouth and Nostrils.

Jury-man. My Lord, I desire to know whether her Stays were laced?

Dell. Yes, she was laced.

Mr. Cowper. If I take you right, you say she was strait-laced?

Dell. Her Stays were laced.

Mr. Cowper. And you say there was Froth and Foam came out of her Mouth and Nostrils?

Dell. Yes, Sir.

Mr. Jones. Pray, what Quantity?

Dell. I could hold it all in the Palm of my Hand.

Mr. Cowper. How was she taken out of the Water?

Dell. My Lord, we stood upon the Bridge, I and another Man, where she lay, and he laid hold of her and took her out.

Mr. Jones. And did you not perceive she was hung?

Dell. No, my Lord.

Mr. Cowper. Pray, Where was she laid when she was taken out?

Dell. In the Place call'd the *Hoppers*, just by.

Mr. Cowper. How long did she lie there?

Dell. About an Hour.

Mr. Cowper. Did you stay there all that Time?

Dell. Yes.

Mr. Cowper. And did the Froth continue to issue from her Mouth and Nostrils?

Mr. Baron Hatsfell. He told you, Mr. Cowper, he could hold it all in the Palm of his Hand.

Mr. Jones. Call John Ulfe. (*Who was sworn.*) John Ulfe, Did you see Mrs. Stout when she was taken out of the Water?

Ulfe. Yes.

Mr. Jones. Give an Account of the Condition she was in.

Ulfe. She lay on one Side; I help'd to take her out.

Mr. Jones. Did she hang or stick to any Thing?

Ulfe. There was nothing at all to hold her up; she lay between a Couple of Stakes, but the Stakes could not hold her up.

Mr. Jones. Did you see her after she was taken out?

Ulfe. Yes.

Mr. Jones. Did any Water come out of her?

Ulfe. Nothing at all, only a little Froth came out of her Nostrils.

Mr. Jones. Call Katharine Dew. (*Who was sworn.*) Did you see Mrs. Stout taken out of the River?

Dew. Yes.

Mr. Jones. Did you see her in the River before?

Dew. Yes, Sir.

Mr. Jones. How did she lie in the River?

Dew. She lay Side-way with her Eyes open, and her Teeth clenched in her Head, with Water flowing a little from her Face, some Part of her and her Petticoats were above Water.

Mr. Jones. Did nothing hold her from sinking?

Dew. Her Right Arm lay against the Stake.

Mr. Jones. Did you see her after she was taken out of the River?

Dew. Yes, Sir.

Mr. Jones. Was she swelled?

Dew. I did not perceive she was swelled at all.

Mr. Jones. Did you handle her?

Dew. No, I touch'd nothing but her Petticoat.

Mr. Jones. Did you observe her Legs were in the Water?

Dew. No, I did not.

Mr. Cowper. Did you see where her Right Arm was?

Dew. I could not see her Right Arm, the Water flow'd over it.

Mr. Cowper. Did you see her after this Time?

Dew. No, Sir, I saw her taken out, but not afterward.

Mr. Ba-

Mr. Baron *Hatsell*. Did you see her after she lay on the Ground?

Dew. Yes, my Lord.

Mr. Baron *Hatsell*. How was she then?

Dew. She purged at the Nose and one of her Eyes; I did not take particular Notice after she was out; the Notice I took was when she was in the Water.

Mr. Baron *Hatsell*. What did you see at her Eye?

Dew. Froth, my Lord.

Mr. *Jones*. Did you see her after she was stripp'd naked?

Dew. No, my Lord.

Mr. *Jones*. Was it a settled Frothing, or a Purging?

Dew. A purging Froth.

Mr. Baron *Hatsell*. Did any Body wipe it off?

Dew. No, my Lord, I did not see any Body do it.

Mr. Baron *Hatsell*. Then there was no new Froth came?

Dew. No, my Lord, I saw her froth at the Nose and one of the Eyes as soon as she was taken out, but I did not stay long.

Mr. *Cowper*. Was she in her Stays?

Dew. Yes, Sir.

Mr. *Cowper*. Was she not laced?

Dew. Yes, she was laced before and behind.

Mr. *Jones*. Call *Thomas Dew*. (*Who was sworn.*) Did you see this Mrs. *Stout* in the Water? Pray give my Lord and the Jury an Account what Posture she was in.

Dew. I saw her lying in the Water floating, above the Water I will not say, but the Water ran some small Matter over her; her right Arm was within the Stake, and her left Arm without; she lay just upon her Side, and I saw her when she was first taken up, and her Shoes and Stockings were as clean as when they were put on, no Mud nor Dirt upon them, and I saw her Shoes and her Stockings, as high as her Knee almost; but I saw no Dirt.

Mr. *Jones*. Do you believe she had been sunk to the Bottom?

Dew. She did not look as if she had, nor I see no Water come from her.

Mr. *Jones*. Did you observe that she was swelled at all?

Dew. No, nor swell'd that I perceive a bit; there was a little Froth that came out of her Nose, and about her (I can't say from her Eye) in that it was a small Quantity.

Mr. *Jones*. Call Mr. *Edward Blackno*. (*Who was sworn.*) Did you see Mrs. *Stout* when she lay in the Water?

Blackno. Yes, I did see her lye in the Water floating; I was so near, that I saw the Miller's Man lift her up by one of her Arms out of the Water.

Mr. *Jones*. Was the Arm bent or streight?

Blackno. It hung in this Manner (*showing the Court how with his own Arm.*)

Mr. Baron *Hatsell*. The other Witnesses said, she lay on her right Side.

Blackno. Yes, she lay on her right Side, and her Arm in this Manner.

Mr. Baron *Hatsell*. Did you observe her to be swelled?

Blackno. I did not see her taken out.

Mr. Baron *Hatsell*. Did you observe any thing to hinder her from sinking?

Blackno. No, I did not, nothing but the Water.

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Mr. *Cowper*. I think, Sir, if I heard you right, you say, that this taking by the Arm and stirring her, was before she was taken out of the Water; then I would know, after she was stirred, was she let go again? Was you by at the taking of her up?

Blackno. No, I was not.

Mr. Baron *Hatsell*. He told you she was floating when he saw her, and that nothing hindered her from sinking.

Then William Edmunds and William Page were sworn.

Mr. *Jones*. Edmunds, did you see Mrs. *Stout* when she was in the Water?

Edmunds. Yes, Sir.

Mr. *Jones*. Give an Account what Posture she was in?

Edmunds. She lay against the Stake, her Head lay against the Stake in the River; we were coming up in a Barge, and called to a Miller to draw the Water, but he said he could not, for then she would swim through; and then we came on, and see her lie in the Water.

Mr. *Jones*. Did any thing hinder her from sinking?

Edmunds. Not that I see.

Mr. *Jones*. Did no Part of her Legs or Arms stick? Did you see her taken out?

Edmunds. No, I did not, I was gone, I did not know whether they would take her out or no.

Mr. *Jones*. Page, did you see Mrs. *Stout* upon the Water?

Page. Yes, Sir.

Mr. *Jones*. Tell us how she lay.

Page. She lay floating on the Water on her right Side, with her Head between the Stakes.

Mr. *Jones*. Did her Arms br Cloaths, or any Thing stick?

Page. Not that I saw.

Mr. *Jones*. Did any Thing hinder her from sinking?

Page. I saw nothing.

Mr. *Cowper*. Did you see her Legs or Knees?

Page. No, I could not, they were not out of the Water.

Mr. *Jones*. Swear Mrs. *Anne Ulfe*. (*Which was done.*) Did you see Mrs. *Stout* in the Water?

Ulfe. Yes, I help'd to pull her out; she lay on one Side in the Water floating, and the Water came over her Face.

Mr. *Jones*. Did she stick by any Thing?

Ulfe. One of her Arms was about the Post.

Mr. *Jones*. How?

Ulfe. It got through the Grate.

Mr. *Jones*. But it did not hang.

Ulfe. No.

Mr. *Jones*. Did you take her out?

Ulfe. Yes, Sir.

Mr. *Jones*. Did you mind her Cloaths?

Ulfe. Yes I turn'd up her Petticoat in the Water.

Mr. *Jones*. Had she Gloves on?

Ulfe. No, Sir.

Mr. *Jones*. How were her Shoes and Stockings?

Ulfe. They were not muddy, her Stockings were rouled down, she had no Garters on.

Mr. *Cowper*. You say, one Arm lay through the Grate, where lay the other?

Ulfe. The other was down in the Water.

William How was sworn.

Mr. *Jones*. Did you see Mrs. *Stout* in the Water?

D d

How.

How. Yes, Sir, I see her lie upon the Water; she lay afloat, she might lie three or four Inches deep in the Water.

Mr. Jones. Did any of her Cloaths lie above the Water?

How. Some Part of her Coats lay above the Water.

Mr. Jones. Did any Thing hinder her from sinking?

How. I saw nothing, I saw them take her out, and did not perceive she hung any Way, she lay with one Arm, and her Head in the Grate, but I did not perceive she hung.

John Meager was sworn.

Mr. Jones. Well, do you give an Account of what you know of Mrs. Stout being in the Water?

Meager. I see Mrs. Sarah Stout floating in the Water, her right Arm in the Grate, and her left Arm with the Stream.

Mr. Jones. Did she hang or stick by any Thing?

Meager. No, neither hang nor stick, she floated.

Mr. Cowper. Did you see some Body go through the Blue-coat Building about Eleven a-Clock?

Meager. No, Sir, I was in Bed before Nine.

Mr. Jones. Now, my Lord, we will give an Account how she was when she was stript, and they came to view the Body. Call John Dimsdale junior. (*Who was sworn.*)

Dimsdale. My Lord, I was sent for at Night on Tuesday the last Assizes——

Mr. Cowper. My Lord, if your Lordship please, I have some Physicians of Note and Eminency that are come down from London; I desire they may be call'd into Court to hear what these Surgeons say.

Mr. Baron Hatfield. Ay, by all means.

Mr. Cowper. My Lord, there is Dr. Sloane, Dr. Garth, Dr. Morley, Dr. Gilstrap, Dr. Harriot, Dr. Wollaston, Dr. Crell, Mr. William Cowper, Mr. Bartlett, and Mr. Camlin.

Who respectively appear'd in Court.

Mr. Jones. Give an Account how you found Mrs. Stout.

Mr. Baron Hatfield. You are a Physician, I suppose, Sir?

Dimsdale. A Surgeon, my Lord. When I was sent for to Mrs. Stout's, I was sent for two or three times before I would go; for I was unwilling after I heard Mrs. Stout was drown'd; for I thought with myself, what need could there be of me when the Person was dead; but she still sent; and then I went with Mr. Camlin, and found a little Swelling on the Side of her Neck, and she was black on both Sides, and more particularly on the left Side, and between her Breasts up towards the Collar-bone, that was all I saw at that time, only a little Mark upon one of her Arms, and I think upon her left Arm.

Mr. Jones. How were her Ears?

Dimsdale. There was a Settling of Blood on both Sides the Neck, that was all I saw at that Time.

Mr. Jones. How do you think she came by it?

Dimsdale. Truly I only gave an Account just as I say now to the Gentlemen at that Time, I saw no more of it at that Time, but about six Weeks after the Body was opened by Dr. Philips——

Mr. Cowper. My Lord, he is going to another Piece of Evidence, and I would ask him——

Mr. Jones. Let us have done first; how was her Ears?

Dimsdale. There was a Blackness on both Ears, a Settling of Blood.

Mr. Jones. Call Sarah Kimpson.

Mr. Bar. Hatfield. Mr. Cowper, now you may ask him any Thing, they have done with him.

Mr. Cowper. I would ask him whether he was not employed to view these particular Spots, she mentions at the Coroner's Inquest?

Dimsdale. I was desired to look upon the Face and Arms, and Breast, because they said there was a Settling of Blood there.

Mr. Cowper. When you return'd to the Coroner's Inquest, What did you certify as your Opinion?

Dimsdale. I did certify there was a Settling of Blood; but how it came I could not tell.

Mr. Cowper. I ask you, Sir, Did not you say it was no more than a common Stagnation usual in dead Bodies?

Dimsdale. I do not remember a Word of it.

Mr. Cowper. Sir, I would ask you; You say the Spot was about the Collar-bone; was it above or below?

Dimsdale. From the Collar-bone downwards.

Mr. Cowper. Had she any Circle about her Neck?

Dimsdale. No; not upon my Oath.

Mr. Jones. Swear Sarah Kimpson. Did you observe this Mrs. Sarah Stout, when she was strip'd how her Body was?

Kimpson. Yes.

Mr. Jones. Pray give an Account of it.

Kimpson. She had a great Settlement of Blood behind her Ear, as much as my Hand will cover and more; and she had a Settlement of Blood under her Collar-bone.

Mr. Jones. Did you see nothing about her Neck?

Kimpson. Nothing round her Neck; on the Side of her Neck there was a Mark.

Mr. Jones. Was there any other Part bruised?

Kimpson. Only her left Wrist, and her Body was very flat and lank.

Mr. Cowper. Pray, what Day was it that you saw her?

Kimpson. It was the Day she was found.

Mr. Cowper. Was she not laced?

Kimpson. She was laced.

Mr. Cowper. Did you help to stir her?

Kimpson. Yes, Sir.

Mr. Jones. Did her Body seem to be swell'd, or was there any Water come from her?

Kimpson. I did not observe the least Drop of Water that appeared any Way.

Mr. Jones. Do you know what did Purge from her?

Kimpson. Nothing that I saw.

Mr. Jones. Had not you a Child drowned there lately?

Kimpson. Yes, about ten Weeks ago.

Mr. Jones. And you found her?

Kimpson. She was drowned at Night, and we found her next Morning.

Mr. Jones. Where did you find her, at the Top, or at the Bottom of the Water?

Kimpson. At the Bottom.

Mr. Jones. How was she?

Kimpson. She was swell'd as much as she could hold.

Mr. Jones. Were her Eyes shut or open?

Kimpson. Her Eyes were shut, and the Child was laced as tight as the Coat could be.

Mr. Jones. Was the Child opened?

Kimp-

Kimpson. Yes.

Mr. Jones. And what was in the Body of the Child?

Kimpson. 'Twas very full of Water.

Mr. Jones. Call *Sarah Peppercorn.*

Mr. Cowper. You say you view'd the Child; Had it any Settlement of Blood?

Kimpson. I saw none.

Mr. Cowper. And you view'd the Body?

Kimpson. Yes.

Then Sarah Peppercorn was sworn.

Mr. Jones. Did you see the Body of Mrs. *Sarah Stout*, after it was stript and laid out?

Peppercorn. I did, Sir.

Mr. Jones. In what Condition did you find her?

Peppercorn. I did not see her till she was brought home to her Mother's, and there was a Rumour in the Town that she was with Child, and I was sent for to give an account whether she was or not, and I found she was not; and I help'd to pull off her Cloaths, and she was very clear as any I ever knew, only had a black Place on the Side of her Head, and in another Place about her Ear; but how it came I know not.

Mr. Jones. Did you observe how her Body was?

Peppercorn. Her Body was very well as any Woman's could be.

Mr. Jones. Did you observe any Water, or any such thing from her?

Peppercorn. No.

Mr. Jones. Was there any Purging at her Mouth or Nostrils?

Peppercorn. A little Froth as any Body might have.

Mr. Cowper. At what Hour did you see her?

Peppercorn. I believe it might be Nine or Ten a-Clock.

Mr. Baron Hatsell. In the Morning?

Peppercorn. Yes, Sir; but I can't give a just Account of the Time.

Mr. Baron Hatsell. What was you sent to for?

Peppercorn. To know if she was with Child; for it was reported she had drowned her self because she was with Child; and so her Mother desired me to come to give an Account that it was not so, and I found that it was not so.

Mr. Baron Hatsell. You are a Midwife, are you not?

Peppercorn. Yes, my Lord.

Then Elizabeth Husler was sworn.

Mr. Jones. Had you the View of the Body of Mrs. *Sarah Stout* the Day you heard she was drowned?

Husler. She was not drowned, my Lord; I went thither and helped to pull off her Cloaths.

Mr. Jones. In what Condition was her Body?

Husler. Her Body was very lank and thin, and no Water appeared to be in it.

Mr. Jones. Was there any Water about her Mouth and Nose?

Husler. Not when I saw her.

Mr. Jones. Did you mind her about her Neck and Head?

Husler. Yes, yes, there was a Settling of Blood at the Top of the Collar-bone, just here, and there was a Settling of Blood upon both her Ears, most about her left Ear.

Mr. Jones. Swear *Ann Pilkington.* (Which was done.) Did you see the Body of Mrs. *Stout* after she was drowned?

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Pilkington. Yes, Sir.

Mr. Jones. Pray, in what Condition was she when she was stript?

Pilkington. I was in the House when she was brought in dead; and old Mrs. *Stout* desired me to help to lay her out; and taking a View of her, I did not at all perceive her Body to be swelled.

Mr. Jones. Was there any Water came out upon the moving of it?

Pilkington. No, I did not perceive any; and by a further View, I saw a Redness on the left Side of her Head, and her Ear was black, and there was a little Mark upon her Breast on the left Side.

Mr. Jones. What Colour was it of?

Pilkington. It seem'd reddish and blackish: As to Colour it was like a Settling of Blood: I can't tell how to make it out very well.

Mr. Cowper. Had she any Circle round about her Neck?

Pilkington. No, not that I see.

Mr. Cowper. Pray, did not you make some Deposition to that Purpose, that you know of?

Pilkington. Sir, I never did, and dare not do it.

Mr. Cowper. It was read against me in the *King's Bench*, and I will prove it; was not *Mr. Mead* with you at the Time of your Examination?

Pilkington. Yes.

Mr. Cowper. Did not he put in some Words; and what were they?

Pilkington. Not that I know of.

Mr. Cowper. But you never swore so, upon your Oath?

Pilkington. No, I don't believe I did; if I did, it was ignorantly.

Mr. Jones. Here is her Examination, it is cross her Neck.

Mr. Cowper. Was *Mr. Young of Hertford*, the Constable, present when you were examined?

Pilkington. Yes, he was so. The next Day Mrs. *Stout* sent for me again to put on her Daughter's Shroud, and I was one that helped to draw the Sheet away, and there was not one Drop of Water come from her; and I laid a Cloth under her Chin, when I help'd her into the Coffin, but I did not see the least Moisture come from her.

Mr. Cowper. What Day was it, that you put her into the Coffin?

Pilkington. The next Day after she was dead.

Mr. Cowper. Do you know nothing of her being convey'd into the Barn?

Pilkington. I happen'd to be in the Barn, Mrs. *Stout* desired me to go with her, and she was brought up in an indecent Manner, and I put a Sheet about her. I was in Mrs. *Stout's* House before her Daughter was brought thither.

Mr. Jones. Call *Doctor Coatsworth*, *Doctor Nailor*, *Doctor Woodbouse*, *Doctor Bide*.

Mr. Coatsworth was sworn.

Mr. Jones. Pray, Doctor, had you a View of the Body of Mrs. *Stout*?

Coatsworth. Yes, I had Sir: I am a Surgeon.

Mr. Jones. Pray give an Account of it, and what your Opinion was how she came by her Death.

Coatsworth. My Lord, in *April* last I was sent for by *Dr. Philips*, to come to *Hertford* to see the Body of Mrs. *Stout* open'd, who had been six Weeks buried; and he told me, That there was a Suspicion she was murdered, and that her Relations were willing to have her taken up and opened. I

came down, I think on the 27th of *April*, and lay at Mrs. *Stout's* House that Night, and by her Discourse, I understood she wanted to be satisfied, whether her Daughter was with Child. I told her it was my Opinion we should find the Parts contained in the *Abdomen* so rotten, that it would be impossible to discover the *Uterus* from the other Parts; however, if she would have her opened, I could not discover whether she was with Child, unless the Infant was become bony. Her Face and Neck, to her Shoulders, appeared black, and so much corrupted, that we were unwilling to proceed any further: But, however, her Mother would have it done, and so we did open her; and as soon as she was opened, we perceived the Stomach and Guts were as full of Wind as if they had been blown with a pair of Bellows; we put her Guts aside, and came to the *Uterus*, and Doctor *Philips* shewed it us, in his Hand, and afterwards cut it out and laid it on the Table, and opened it, and we saw into the Cavity of it, and if there had been any Thing there as minute as a Hair, we might have seen it, but it was perfectly free and empty; and after That, we put the Intestines into their Places; and we bid him open the Stomach, and it was opened with an Incision-Knife, and it sunk flat, and let out Wind, but no Water; afterwards we opened the Breast and Lobes of the Lungs, and there was no Water: Then we look'd on each Side, and took up the Lobes of the Lungs too, to see if there was no Water in the *Diaphragm*, and there was none, but all dry. Then I remember I said, this Woman could not be drowned, for if she had taken in Water, the Water must have rotted all the Guts: That was the Construction I made of it then; but for any Marks about her Head and Neck, it was impossible for us to discover it, because they were so rotten.

Mr. *Cowper*. You say, this Inspection was made about six Weeks after she was dead?

Coatsworth. It was made on the 28th of *April*.

Mr. *Cowper*. She was drowned on the 13th of *March*.

Mr. *Jones*. Did you make an Incision into those Parts of the Neck and Head.

Coatsworth. No: I told Mrs. *Stout* and her Son, If you imagine the Skull to be injur'd, I will open the Head; for if the Scalp be never so rotten, yet if the Skull has suffered any Impression I shall discover it; they said, They did not suspect a broken Skull in the Case, and so we did not examine it.

Mr. *Jones*. But all her other Parts were found?

Coatsworth. Yes, found to a Miracle; for I did not imagine we could find them so.

Mr. *Jones*. Call *John Dimsdale*?

Mr. *Cowper*. My Lord I would know, and I desire to be heard to this Point: I think where the Coroner's Inquest have view'd the Body, and the Relations have been heard, and the Body buried, that it is not to be stirr'd afterwards for any private Inspection of Parties, that intend to make themselves Prosecutors; but if it is to be taken up, it is to be done by some legal Authority; for if it should be otherwise, any Gentleman may be easily trepan'd: For instance, if they should have thought fit, after the Coroner's View, to have broken the Skull into a hundred Pieces, This was a private View altogether among themselves. Certainly, if they intended to have

prosecuted me, or any other Gentleman upon this Evidence, they ought to have given us notice, that we might have had some Surgeons among them, to superintend their Proceedings. My Lord, with submission, this ought not to be given in Evidence.

Mr. Baron *Hatfield*. Mr. *Cowper*, I think you are not in earnest; there is no Colour for this Objection: If they did take up the Body without notice, Why should not that be Evidence? unless you think they had a design to swear themselves.

Mr. *Cowper*. Had you a *Melius Inquirendum*, or any lawful Warrant for making this Inspection?

Coatsworth. No, there was not.

Mr. Baron *Hatfield*. Suppose they did an ill Thing in taking up the Body without some Order, tho' I don't know any more ill in taking up that Body than any other; but, however, Is that any Reason why we should not hear this Evidence?

Coatsworth. Mr. *Camblin*, Sir *William Cowper's* Surgeon was there by.

Mr. *Jones*. Call Mr. *Dimsdale* senior. (*Who was sworn*.) Had you a View of the Body after it was taken up?

Dimsdale. Yes.

Mr. *Jones*. Pray give your Opinion of it?

Dimsdale. On the 28th of *April*, as I remember, I was sent for down by Mrs. *Stout* to view the Body of her Daughter. Her Daughter was just taken out of the Ground, but not opened; they had just touch'd the Body, but not opened the Skin when I came there——

Mr. Baron *Hatfield*. Are you a Surgeon?

Dimsdale. Yes, my Lord. Finding her Head so much mortified, down to her Neck, we thought all the Parts were seized, and had a Consultation, Whether we should open her or not; but Mrs. *Stout* was very much enraged, because a great Scandal had been raised, That her Daughter was with Child; and she said, She would have her opened to clear her Reputation. With that we opened her, and found her Body as sound as any Flesh could be; no manner of Putrefaction in her Lungs or any other Part, but she was very full of Wind. We search'd the Stomach and the Thorax, and found not one Drop of Water about it. I was more curious than the rest, and turn'd away her Legs, to see if the Coffin was soil'd, and the Coffin and Shroud were not wet. Her *Uterus* was taken out, and I saw no manner of Sign of Conception. After this we had a Consultation to consider, Whether she was drowned or not drowned; and we were all of Opinion, That she was not drowned; only Mr. *Camblin* desired he might be excused from giving his Opinion, whether she was drowned or not; but all the rest of us did give our Opinions, That she was not drowned.

Mr. *Jones*. Give your Reasons, why you believ'd she was not drowned.

Dimsdale. My Reason was this: Because we found no Water in her; her Intestines were not putrified; for if there had been Water in her, that would have caused a Fermentation, and that would have rotted the Lungs and Guts.

Mr. Baron *Hatfield*. Could you tell, so many Weeks after, whether she was drowned or no?

Dimsdale. Yes, my Lord, for this Reason: For if she had been drowned, there had been some Sign of Water; and if there had been a Pint of Wa-

Water, it would have rotted her Lights and her Guts; and that is done in a Week's Time by Fermentation.

Mr. Cowper. Sir, I desire to know, Whether according to Reason and your Skill, after six Weeks Time, it's possible there should be Water in the Thorax?

Dimsdale. I do believe there may be some; for it can't come out after the Body is dead, by but Putrifaction; and there was no Putrifaction, but it was firm and sound.

Mr. Baron Hatfell. What Parts would have been putrified by the Water?

Dimsdale. The Lungs and Bowels.

Mr. Baron Hatfell. And they were firm?

Dimsdale. They were: And if there had been Water, they would have been putrified.

Mr. Jones. Call John Dimsdale junior.

Juryman. Was her Navel started?

Dimsdale sen. No: I never saw such a Body in my Life.

Mr. Cowper. Did you ever see a Body that was drowned, opened six Weeks after?

Dimsdale sen. No, never. If a Body be drowned a Fortnight, the Bowels will be so rotten, there will be no coming near it; and I took particular Notice, and I did not see one Drop of Water.

Mr. Baron Hatfell. Was the Coffin close?

Dimsdale sen. Yes; it was close and dry as any Board whatsoever; and all the Parts sound, but the Head and Neck, and left Arm.

Mr. Jones. What do you think could be the Reason of that?

Dimsdale sen. The left Arm was rottener than the other, the Neck was rotten before.

Mr. Jones. What did you take to be the Cause of it?

Dimsdale sen. I can't judge of that.

Call John Dimsdale (junior.) Who was sworn.

Dimsdale jun. My Lord, the Body was opened before I came to see it, and they were drawing up an Affidavit, that there was no Water in the Body, and they desired me to sign it; but I desired first to look into the Body; and I did look into it, and turn'd the Intestines aside, and there was no Water in it; but the Head from the Neck was very much putrified.

Mr. Jones. Do you believe she was drowned?

Dimsdale jun. No, I believe not.

Mr. Jones. Did you open the Child that was drowned? What Difference was there between the Body of that Child and this?

Dimsdale jun. The Child was extremely swell'd in the Belly and Stomach, and had abundance of Water in it.

Mr. Jones. Was the Child lac'd that you open'd?

Dimsdale jun. It was laid upon the Table before I came.

Mr. Cowper. How long was it before the Child was opened?

Dimsdale jun. It was drowned in the Afternoon, and opened the next Morning.

Mr. Cowper. You said, Sir, you was ask'd to sign the Affidavit before you saw the Body, and you were honest, and would see the Body first; Pray who ask'd you?

Dimsdale jun. All of them did.

Mr. Cowper. Who in particular; if you please name them?

Dimsdale jun. Mr. Coatsworth, Mr. Philips, Mr. Camblin, &c. they asked me to set my Hand to it, because they thought I had seen it before.

Then Dr. Dimsdale was sworn.

Mr. Jones. Mr. Robert Dimsdale, was you at the opening of this Body?

Dr. Dimsdale. I came after it was opened; my Brother and I came together.

Mr. Jones. What Profession are you of, a Physician?

Dr. Dimsdale. Yes: when the Body was taken up, they desired us to be there, to inspect the Body; but before we came, it happen'd they had opened the Body, and were setting there Hands to a Paper, a sort of Affidavit; and when I came in, they would have had us set our Hands, but we would not, till we had look'd upon the Body, and went and laid it open again, and we did not find the least Drop of Water neither in the Thorax nor Abdomen.

Mr. Cowper. Is it possible there should be Water in the Thorax, according to your Skill?

Dr. Dimsdale. Yes, we did think there would have been, if she had been drown'd.

Mr. Bar. Hatfell. Could you expect to find it, so long as six Weeks after?

Dr. Dimsdale. We should have expected that or a Putrifaction; but we found no Putrifaction, neither in the Bowels nor Intestines, but only upon her Head and Shoulders, and one Arm.

Mr. Cowper. Pray by what Passage does the Water go into the Thorax?

Dr. Dimsdale. 'Twill be very difficult for me to describe the Manner here; but we should have found some in the Stomach and Intestines.

Mr. Cowper. Pray, Sir, how should it go into the Thorax?

Dr. Dimsdale. By the Lymphæduct, if carried by any Means.

Mr. Cowper. When the Party is dead, Can any Water pass into any Part of the Body?

Dr. Dimsdale. We opened the Abdomen of the Child that was drowned, and found in the several Cavities abundance of Water.

Mr. Jones. When a Person is dead, Can they receive any Water after?

Dr. Dimsdale. No; for all the Parts are closed and contracted.

Mr. Cowper. Pray, If a dead Body be put into the Water, will not the Water come into the Wind-pipe?

Dr. Dimsdale. I question whether it will or no.

Mr. Jones. Was her Mouth shut?

Dr. Dimsdale. She was putrified about the Head and Shoulders, and one Arm that I saw was putrified; it was the left Arm, as I take it.

Mr. Jones. What is your Opinion, as to her Death?

Dr. Dimsdale. I believe, if she had been drown'd, there would have been a Putrifaction of the Abdomen first; and it was her extream Parts, her Arm, her Head, and her Breast, that was putrified, but her Bowels seem'd firm and sound.

Mr. Jones. Then you don't think her Death was by drowning?

Dr. Dimsdale. No.

Mr. Cowper. Pray, did not you give some Certificate or Paper, declaring the Death of this Gentlewoman, before you saw the Body at all?

Dr. Dimsdale. No, I did not.

Mr. Cow-

Mr. Cowper. Sir, I would ask you, Was not you angry that Mr. Camlin would not join with you in Opinion?

Dr. Dimsdale. No.

Mr. Cowper. Did not you tell him, that you were a Graduate Physician, and was angry he would not join with you?

Dr. Dimsdale. Suppose I did?

Mr. Baron Hatsell. But did you so or no?

Dr. Dimsdale. Yes, my Lord, we had some Words about it.

Mr. Jones. Swear Dr. Coatsworth. (*Which was done.*)

Now, my Lord, we call these Gentlemen that are Doctors of Skill, to know their Opinions of them that are found floating without Water in them, how they came by their Death.

Dr. Coatsworth. I have not seen many drowned Bodies to make Observation upon; but it is my Opinion, That every Body that is drowned, is suffocated by Water passing down the Wind-pipe into the Lungs upon Respiration; and at the same Time, the Water pressing upon the Gullet, there will be a necessity of swallowing a great Part of it into the Stomach: I have been in danger of being drowned my self, and I was forced to swallow a great Quantity of Water. If a Person was drowned, and taken out immediately, as soon as the Suffocation was effected, I should not wonder if there were but little Water in the Stomach and Guts; but if it lay in the Water several Hours, it must be very strange if the Belly should not be full of Water; but I will not say, it is impossible it should be otherwise.

Mr. Cowper. I desire to know, whether this Gentleman attempted to drown himself, or was in danger of being drowned by Accident.

Dr. Coatsworth. It was by Accident: I was passing up the Ship Side, and took hold of a loose Rope instead of the Entering-Rope, which failing me, I fell into the Water.

Mr. Cowper. But you struggled to save your self from drowning?

Dr. Coatsworth. I did so: I have seen several Persons that have been drowned, and they have lain several Days, until by Fermentation they have been rais'd; but I never made my Observations of any Persons that have been drowned above six Hours.

Mr. Jones. Did you ever here of any Persons that, as soon as they were drowned, had swam above Water?

Dr. Coatsworth. I have not known such a Case.

Mr. Cowper. Did you ever know, Sir, a Body that was otherwise kill'd, to float upon the Water?

Dr. Coatsworth. I never made any Observation of that.

Mr. Baron Hatsell. Dr. Browne has a learned Discourse, in his *Vulgar Errors*, upon this Subject, concerning the floating of dead Bodies; I don't understand it my self, but he hath a whole Chapter about it.

Then Dr. Nailor was sworn.

Mr. Jones. We ask you the same Question that Doctor Coatsworth was asked, What is your Opinion of dead Bodies? If a Body be drowned, will it have Water in it or no?

Dr. Nailor. My Lord, I am of Opinion, That it will have a Quantity if it be drowned; but if there be no Water in the Body, I believe that the Person was dead before it was put into the Water.

Mr. Cowper. I would ask the Doctor one Question, my Lord, Whether he was not a constant Voter against the Interest of our Family in this Corporation?

Dr. Nailor. I never did come to give a Vote, but Sir William Cowper, or his Son, oppos'd me, and said, I had no Right to Vote.

Mr. Cowper. I would have ask'd the same Question of the Dimsdales, if I had remembered it; they are of another Party, as this Gentleman is.

Mr. Baron Hatsell. It is not all material, as they are Witnesses.

Then call Mr. Babington. (Who was sworn.)

Mr. Jones. Pray, What is your Opinion of this Matter?

Mr. Babington. I am of Opinion, that all Bodies that go into the Water alive, and are drowned, have Water in them, and sink as soon as they are drowned, and don't rise so soon as this Gentlewoman did.

Mr. Cowper. Pray, what is your Profession, Sir?

Mr. Babington. I am a Surgeon.

Mr. Cowper. Because Mr. Jones, call'd you Doctor.

Mr. Baron Hatsell. Did you ever see any drowned Bodies?

Mr. Babington. Yes, my Lord, once I had a Gentlewoman a Patient that was half an Hour under Water, and she lived several Hours after, and in all that time she discharged a great Quantity of Water: I never heard of any that went alive into the Water, and were drowned, that floated so soon as this Gentlewoman did; I have heard so from Physicians.

Mr. Baron Hatsell. I have heard so too, and that they are forced to tie a Bullet to dead Bodies thrown into the Sea, that they might not rise again.

Mr. Cowper. The Reason of that is, that they should not rise again, not that they will not sink without it. But I would ask Mr. Babington, whether the Gentlewoman he speaks of went into the Water voluntarily, or fell in by Accident?

Mr. Babington. By Accident, but I believe that don't alter the Case.

Mr. Jones. Swear Dr. Burnet. (*Which was done.*)

Dr. Burnet. You hear what is the Matter in question; what is your Opinion of it?

Dr. Burnet. My Lord, I think that if any Person fall into the Water by Accident, or throws himself in, the Body will receive Water as long as it is alive, and there are Endeavours for Respiration, and after these Endeavours are over, there is no Water will come in, for all the Parts are clos'd; so consequently there must be Water in all probability found in her.

Mr. Jones. What, do they swim or sink?

Dr. Burnet. They sink; I never saw a Person drowned taken up without Water in my Life; but I have seen several full of Water.

Mr. Cowper. I think you say when the Faculty of Respiration ceases, no Water comes in.

Dr. Burnet. Yes, that is my Opinion.

Mr. Cowper. But the Water does pass into them while there are Endeavours for Respiration?

Dr. Burnet. Yes, that is my Opinion.

Then Dr. Woodhouse was sworn.

Mr. Jones. Doctor, What is your Opinion of this Matter?

Dr. Woodhouse. My Opinion is, that no Person is suffocated by Water, but he must have a great deal

deal of Water within him, a great deal of Water in the Stomach, and some in the Lungs?

Mr. Cowper. Pray, Sir, did you ever open any of these Bodies?

Dr. Woodhouse. Yes, I have opened a Child my self that had a great Quantity of Water in it.

Mr. Cowper. Did you find any Quantity of Water in the Throat?

Dr. Woodhouse. There was some, but a little, but a great deal in the Stomach.

Mr. Cowper. Pray, which way can it pass into the Thorax?

Dr. Woodhouse. While the Person is struggling for Respiration, there may be a Relaxation of and the Person must suck in Water as well as Air, and some Water may get into the Windpipe, and so enter into the Lungs.

Mr. Cowper. Is there a Passage from the Lungs to the Thorax?

Dr. Woodhouse. The Thorax is the Vessel wherein the Lungs lie, the Lungs in the Thorax, the Breast is the Cavity where the Lungs lie, the Windpipe is the Conveyance to the Lungs, and a Person in Respiration takes down some Water there, but no doubt the greater Quantity will be in the Stomach.

Mr. Bar. Hatfield. Pray let me ask you a Question: Some of the Witnesses said, That if a Person be drowned, and lies dead a great while, the Inwards will be putrified; What is your Opinion of it?

Dr. Woodhouse. No doubt, my Lord, where Water gets into the Stomach, or wherever it is, it will putrify very soon.

Mr. Jones. Call Edward Clement. (Who was sworn.) Are not you a Seaman?

E. Clement. Yes, Sir.

Mr. Jones. How long have you been so?

E. Clement. Man I have writ my self but six Years, but I have used the Sea nine or ten Years.

Mr. Jones. Have you known of any Men that have been kill'd, and thrown into the Sea, or who have fallen in and been drowned? Pray tell us the Difference as to their swimming and sinking?

E. Clement. In the Year 89, or 90, in Beachy Fight, I saw several thrown over-board during the Engagement, but one particularly I took notice of, that was my Friend, and kill'd by my Side; I saw him swim for a considerable Distance from the Ship; and a Ship coming under our Stern, caus'd me to lose sight of him, but I saw several dead Bodies floating at the same time; likewise in another Engagement, where a Man had both his Legs shot off, and died instantly, they threw over his Legs; though they sunk, I saw his Body float: Likewise I have seen several Men who have died natural Deaths at Sea, they have when they have been dead had a considerable Weight of Ballast and Shot made fast to them, and so were thrown over-board; because we hold it for a general Rule, that all Men swim if they be dead before they come into the Water; and on the contrary I have seen Men when they have been drowned, that they have sunk as soon as the Breath was out of their Bodies, and I could see no more of them. For Instance, a Man fell out of the *Cornwall*, and sunk down to rights, and seven Days afterwards we weighed Anchor, and he was brought up grasping his Arm about the Cable; and we have observed in several Cafes, that where Men fall over-board, as soon as their Breath is out of their Bodies they sink downright, and on the contrary

where a dead Body is thrown over-board without Weight it will swim.

Mr. Jones. You have been in a Fight; How do Bodies float after a Battle?

E. Clement. Men float with their Heads just down, and the small of their Back and Buttocks upwards: I have seen a great Number of them, some hundreds in Beachy-head Fight, when we engag'd the French. I was in the old *Cambridge* at that Time. I saw several (what Number I will not be positive, but there were a great Number, I can't guess to a Score) that did really swim, and I could see them float for a considerable Distance.

Mr. Jones. Have you seen a Shipwreck?

E. Clement. Yes; the *Coronation* in September 1691. I was then belonging to the *Dutchess*, under the Command of Captain Clement; we look'd out and see them taking down their Masts; we saw the Men walking up and down on the right Side, and the Ship sink down, and they swam up and down like a Shoal of Fish one after another; and I see them hover one upon another, and see them drop away by Scores at a time, and there was an Account of about Nineteen that sav'd themselves, some by Boats, and others by Swimming; but there were no more sav'd out of the Ship's Complement, which was between five and six Hundred, and the rest I saw sinking downright, some twenty at a time. There was a Fisherman brought our Captain Word, that in laying in of his Nets he drew up some Men close under the Rocks that were drowned belonging to the *Coronation*. We generally throw in Bags of Ballast with them.

Mr. Jones. I suppose all Men that are drowned, you sink them with Weights?

E. Clement. Formerly Shot was allowed for that purpose; there us'd to be threescore Weight of Iron, but now 'tis a Bag of Ballast that is made fast to them.

Mr. Jones. Then you take it for a certain Rule, that those that are drowned sink, but those that are thrown over-board do not?

E. Clement. Yes; otherwise why should the Government be at that vast Charge to allow threescore or fourscore Weight of Iron to sink every Man, but only that their Swimming about should not be a Discouragement to others?

Then Richard Gin was sworn.

Mr. Jones. You hear the Question; Pray what do you say to it?

R. Gin. I was at Sea a great while, and all the Men that I see turned over-board had a great Weight at their Heels to sink them.

Mr. Jones. Then will they swim otherwise?

R. Gin. So they say.

Mr. Jones. Are you a Seaman?

R. Gin. I went against my Will in two Fights.

Mr. Jones. Then Gentlemen of the Jury, I hope we have given you Satisfaction that Mrs. Stout did not drown herself, but was carried into the Water after she was killed. That was the first Question; for if it be true that all dead Bodies when they are put into the Water do swim, and the Bodies that go alive into the Water and are drowned do sink, this is sufficient Evidence that she came by her Death not by drowning, but some other Way. Now, my Lord, as to the second Matter, and that is to give such Evidence as we have against these Gentlemen at the Bar. Mr. Cowper, it appears, was the last Man that any one can give an Account of

was

was in her Company. What became of her afterwards, or where they went, no Body can tell; but the other Witnesses have given you Evidence that he was the last Man that was with her. I shall only give this further Evidence as to Mr. *Cowper*, That notwithstanding all the Civility and Kindnesses that pass'd between him and this Family, when the Bruit and Noise of this Fact was spread abroad, Mr. *Cowper* did not come to consider and consult with old Mrs *Stout* what was to be done; but he took no manner of Notice of it, and the next Day he rode out of Town, without further taking Notice of it.

Call George Aldridge, and John Archer.

John Archer was sworn.

Mr. *Jones*. Do you know any thing of Mr. *Cowper's* going out of Town about this Business of Mrs. *Stout's* being drowned?

J. *Archer*. Yes, I did see him go out of Town afterwards.

Mr. *Jones*. Which Way did he go?

J. *Archer*. He went the Back-way from the *Glove*; I suppose he came that Way.

Mr. *Cowper*. What Day was it I went? Is it not the Way that I us'd to go when I go the Circuit into *Essex*.

J. *Archer*. Yes, I believe so.

Mr. *Cowper*. I lodg'd at Mr. *Barefoot's*, and he has a Back-door to the *Glove*, where my Horse was, and I went the direct Way into *Essex*, and it was *Wednesday* Morning: What Day was it you see me go?

J. *Archer*. It was on the *Wednesday* Morning.

Mr. *Cowper*. That was the very Day I went into *Essex*.

Then George Aldridge was sworn.

Mr. *Jones*. When did Mr. *Cowper* go out of Town the last Affizes?

G. *Aldridge*. On *Wednesday*.

Mr. *Jones*. Which Way did he go?

G. *Aldridge*. He went the Way to *Chelmsford*.

Mr. *Jones*. Did you not fetch his Horse from *Stout's*?

G. *Aldridge*. Yes, Sir.

Mr. *Jones*. How often did you go for it?

G. *Aldridge*. Three Times.

Mr. *Jones*. When?

G. *Aldridge*. On *Tuesday* Night I sent once, and went twice my self; the first Time there was no Body at home to deliver the Horse, so I went to Mr. *Stout's*, and ask'd him about the Horse, and he said he could not deliver him till the Maid went home, and then I went about Eleven of the Clock and had the Horse.

Mr. *Baron Hatsell*. Was it Eleven at Night?

G. *Aldridge*. Yes, my Lord.

Mr. *Cowper*. When I sent you to fetch my Horse, what Directions did I give you?

G. *Aldridge*. You gave me Directions to fetch your Horse, because you said you should have occasion to go out next Morning betimes with the Judge.

Mr. *Cowper*. The Reason I sent for my Horse was this; when I heard she had drowned her self, I think it concern'd me in Prudence to send a common Hostler for him, for fear the Lord of the Manor should seize all that was there as forfeited.

Mr. *Baron Hatsell*. There was no Danger of that, for she was found *Non compos mentis*.

Mr. *Cowper*. No, my Lord, I sent before the Verdict.

Mr. *Jones*. It seems you did not think fit to go and take Horse there your self, though you put your Horse there.

Now, my Lord, we will go on and give the other Evidence that we opened concerning these three other Gentlemen that came to Town, two of them took Lodgings at *Gurrey's* at Five in the Afternoon, but did not come in till between Eleven and Twelve, and then they brought another in with them; and though he had been in Town five or six Hours, his Feet were wet in his Shoes, and his Head was of a reeky Sweat; he had been at some hard Labour I believe, and not drinking himself into such a Sweat.

Call John Gurrey, Matthew Gurrey, and Eliz. Gurrey.

John Gurrey was sworn.

Mr. *Jones*. Do you know any of the Gentlemen at the Bar?

J. *Gurrey*. Yes.

Mr. *Jones*. Name who you know.

J. *Gurrey*. There is Mr. *Stevens*, Mr. *Rogers*, and Mr. *Marson*.

Mr. *Jones*. Pray, do you remember when they took Lodging at your House?

J. *Gurrey*. The last Affizes; when they first came, there was only Mr. *Stevens* and Mr. *Rogers*.

Mr. *Jones*. At what Time did they take it?

J. *Gurrey*. I was at Church, and can't tell that, they hir'd the Lodgings of my Wife.

Mr. *Jones*. What can you say more?

J. *Gurrey*. I was in at Night when they came; there came three of them at Eleven at Night, whereof Mr. *Marson* was the third Person, and he said he was destitute of a Lodging, and he ask'd for a spare Bed; my Wife told him she had one, but had let it; whereupon Mr. *Stevens* and Mr. *Rogers* said he should lodge with them; so they went up all together, and they call'd for a Fire to be kindled, and ask'd for the Landlord, which was I, and they ask'd me to fetch a Bottle of Wine, and I told them I would fetch a Quart, which I did; and then they ask'd me to sit down and drink with them, which I did; and then they ask'd me if one Mrs. *Sarah Stout* did not live in Town, and whether she was a Fortune? I said yes; then they said they did not know how to come to the Sight of her; and I said I would shew them her to-morrow Morning, not questioning but I might see her some time as she was coming down the Street; so they said they would go to see her. Mr. *Rogers* and Mr. *Stevens* charged Mr. *Marson* with being her old Sweetheart; faith Mr. *Marson*, she hath thrown me off, but a Friend of mine will be even with her by this Time.

Mr. *Baron Hatsell*. What a-Clock was it then?

J. *Gurrey*. I reckon Eleven of the Clock when they came in.

Mr. *Baron Hatsell*. Did you observe in what Condition Mr. *Marson* was in?

J. *Gurrey*. I did not observe, only that he was hot, and put by his Wig; I see his Head was wet, and he said he was just come from *London*, and that made him in such a Heat.

Mr. *Jones*. Had he Shoes or Boots on?

J. *Gurrey*. I did not observe that.

Mr. *Jones*. What did they do he next Day?

J. *Gurrey*.

J. Gurrey. The next Morning I heard this Party was in the Water; I sat up all Night, and was fain to wait till my Daughter came down to look after the Shop, and then I went to see her, and she was remov'd into the Barn, and they were wiping her Face, closing her Eyes, and putting up her Jaws; and as I came back these Persons were walking, and I met Mr. Marson and Mr. Stevens, and told them the News: Said I, this Person is come to a sad Accident: Say they, so we hear; but nevertheless we will be as good as our Word, and go and see her. I went with them, and overtook Mr. Rogers; and Marson said, we are going to see Mrs. Stout. O Landlord, said Rogers, you may take up that Rogue (pointing at Mr. Marson) for what he said last Night; but I did not think, they speaking so jocularly, that there was any Suspicion of their being concern'd in the Murder. A second time I went, the Barn-door was lock'd; I knock'd, and they open'd it and let us in, and they uncover'd her Face to let me see her, and I touch'd her; and looking about for them, they were gone, and I can't say they see her or touch'd her: Then Mr. Marson and they were consulting how to send a Great Coat to London, and I directed them to a Coachman at the Bell-Inn; but I did not hear he went to enquire after the Coachman; then they went to your Lordship's Chamber, and I went home; and about Eleven of the Clock I saw Mr. Marson and Mr. Stevens coming down with Mr. Spencer Cowper.

Mr. Marson. I did not go out that Night after I came in.

Mr. Jones. No; we agree that. Did you see Mr. Cowper and these Gentlemen together?

J. Gurrey. Only at Eleven of the Clock on Tuesday Noon, Mr. Cowper, Mr. Marson, and Mr. Stevens were coming down to the Market-place.

Mr. Jones. Did not they take their Leave of you when they went away from you that Forenoon?

J. Gurrey. No; only in the Morning they told me they would send me Word at Noon if they intended to lodge there.

Mr. Marson. I desire to know of Mr. Gurrey, if his Sister was not in the Room when we came in?

J. Gurrey. She was in our House that Day; but whether when they came in, I can't tell.

Mr. Cowper. Pray, have you not had some Discourse with your Sister, the Widow Davis, concerning some Suspicion that you had of Sarah Walker, that hath been produced as a Witness?

J. Gurrey. I don't remember any such.

Mr. Cowper. Then did not you say these Words, We must not concern ourselves with Sarah Walker, for she is the only Witness against the Cowpers?

J. Gurrey. I can't remember any such Thing.

Mr. Baron Hatsell. You may answer according to the best of what you remember; if you say you have forgot when you have not, you are forsworn.

Mr. Cowper. If your Lordship pleases to give Leave to Mr. Gurrey to recollect himself. I ask him, whether he did not talk with his Sister Davis about some Suspicion his Wife and he had about Sarah Walker, the Maid-servant of the Deceased?

J. Gurrey. I believe there might be some Talk of a Person that was seen to go into the Church-yard at some Distance with Sarah Walker.

Mr. Cowper. Did your Wife say that she did suspect that Person?

J. Gurrey. Yes.

Mr. Cowper. Did your Wife say they behav'd themselves strangely, and that she would have per-

suaded the Widow Blewit to have watch'd her?

J. Gurrey. There was something of that.

Mr. Cowper. Was there not some such Words, that they must not meddle with Sarah Walker, for she is the Witness against the Cowpers?

J. Gurrey. I said, Do not concern your self with Sarah Walker, for fear of taking off her Evidence.

Mr. Cowper. Pray, did not the Widow Davis warm the Sheets for these Gentlemen?

J. Gurrey. She was with my Wife, but I can't say whether she warm'd the Sheets.

Mr. Cowper. When they came home, had you any Lodgers that wanted to come home? Had not you one Gape?

J. Gurrey. I can't say whether he was in before or after them.

Mr. Cowper. Did not you say to your Sister Davis, Now these Gentlemen are in Bed, if Mr. Gape would come home, our Family would be quiet?

J. Gurrey. I do not remember that.

Mr. Cowper. Pray, did not you go to look for Mr. Gape?

J. Gurrey. Yes, I went to Hockley's.

Mr. Cowper. Who did you employ to speak to Mr. Gape?

J. Gurrey. Mrs. Hockley.

Mr. Cowper. When you came home to your own House, and after you had been at Hockley's to speak with Mr. Gape, what Account did you give of the Time of Night, and other Particulars?

J. Gurrey. I gave no Account of the Time.

Mr. Cowper. Not to Mrs. Davis?

J. Gurrey. I can't tell whether I did or no.

Mr. Cowper. Did not you say Mr. Gape ask'd Mrs. Hockley what a-Clock it was?

J. Gurrey. No, I don't remember that; but Mrs. Hockley went in and told him what Time of Night it was; it was Eleven or Twelve of the Clock, whether I can't say.

Mr. Jones. Call Martha Gurrey. (Who was sworn.) Which of these Gentlemen do you know?

Mrs. Gurrey. Mr. Marson, Mr. Rogers, and Mr. Stevens.

Mr. Jones. What Time of the Night was it when they came to your House? Give an Account of it, and of what you heard them say.

Mrs. Gurrey. It was a little after Five, or thereabouts, that they came——

Mr. Jones. Who came?

Mrs. Gurrey. Mr. Stevens, and Mr. Rogers, and there was one Mr. Gilbert, that married a first Cousin of mine, he came and ask'd me for my Husband; and I ask'd him his Business, and he said, he wanted to speak with him——

Mr. Jones. Pray come to these Men; when did they come to your House?

Mrs. Gurrey. They hired the Lodging at Five of the Clock. When they first came to see them I was not at home: Mr. Gilbert brought them, and as I was coming along the Street I saw Mr. Gilbert walking off, and would not look at me.——

Mr. Jones. When did they go out?

Mrs. Gurrey. They never staid there.

Mr. Jones. When did they come in again?

Mrs. Gurrey. Between Eleven and Twelve.

Mr. Baron Hatsell. What did they do when they came in again?

Mrs. Gurrey. I was laying on some Sheets two Pair of Stairs when they came, and then there was three of them; so they saw me a little after, and begg'd my Excuse for bringing in another, for they said it was so late that they could not get a Lodging any

any where else; and said, if I thought fit, the Gentleman should lie with them; and I told them I liked it very well.

Mr. Jones. What Firing had they?

Mrs. Gurrey. The Firing I laid on in the Morning, and they sent for my Husband to fetch them some Wine.

Mr. Jones. What did you hear them talk on?

Mrs. Gurrey. They discours'd with my Husband, and ask'd him if he knew Mrs. Sarah Stout; and one of them said to Mr. Marson, I think she was an old Sweetheart of yours; ay, said he, but she turn'd me off, but a Friend of mine is even with her: And Mr. Rogers said he was in with her, and afterwards said, her Business was done. They had a Bundle, that was wrapt in a pure white Cloth, like to an Apron, but I can't say it was an Apron; and there was a Parcel hanging loose by it; and when he laid it down he said, he would pass his Word Mrs. Sarah Stout's courting Days were over; and I said, I hoped 'twas no Hurt to the Gentlewoman; and then I looking upon Mr. Marson, saw him put his Peruke aside, and his Head reek'd, and he told them he was but just come from London that Night, which made him disappointed of a Lodging.

Mr. Jones. What did you hear them say about any Money?

Mrs. Gurrey. I ask'd them how they would have their Bed warm'd, and Mr. Marson answer'd, very hot: With that I went down to send my Daughter up, and she could not go presently; I told her then she must go as soon as she could.

Mr. Baron Hatfield. Pray don't tell us what pass'd between you and your Daughter: What do you know of these Gentlemen?

Mrs. Gurrey. I went to the next Room, to see if every thing was as it should be; I hearkened, and they had some Discourse about Money, and I heard some-body (I don't know who it should be except it were Mr. Stevens) answer and say, the Use-money was paid to-night; but what Money they meant, I can't tell.

Mr. Jones. What did you find when they were gone?

Mrs. Gurrey. Sir, I found a Cord at the End of the Trunk.

Mr. Jones. Was it there in the Morning, or before they came?

Mrs. Gurrey. No, it could not, for I swept my Room, and wiped down the Dust.

Mr. Jones. Was the Cord white?

Mrs. Gurrey. No, it was more dirty than it is now, for my Husband and I have worn it in our Pockets.

Mr. Cowper. Pray, who brought the Cord down from above Stairs?

Mrs. Gurrey. My Daughter that liv'd with me, and she laid it upon the Shelf.

Mr. Cowper. Did not you hear there was a Coroner's Inquest sitting?

Mrs. Gurrey. The next Day at Night I did hear of it.

Mr. Cowper. Why did not you go to the Coroner's Inquest and give an Account of it there?

Mrs. Gurrey. I told my Husband of it, and I ask'd my Husband if he did not hear what they said concerning Mrs. Sarah Stout, and he answer'd, yes, they ought to be taken up for the Words they said last Night: Why, said I, don't you take notice of it? I think you ought to take them up. But he went out of Doors, and I saw no more of

him till the Afternoon. When I heard the Words I thought some-body had stole away and got to bed to her.

Mr. Cowper. Pray, if your Husband heard these Words, why did not he go to the Coroner's Inquest?

Mrs. Gurrey. I did speak to him to have them taken up.

Mr. Cowper. Why did he not do it?

Mrs. Gurrey. He said he would not do it; he did not know but it might cost him his Life.

Mr. Jones. How came you after this to discover it?

Mrs. Gurrey. Because I was so troubled in Mind I could not rest Night nor Day; and I told him if he would not tell of it, I would tell of it myself, for I was not able to live.

Then Elizabeth Gurrey was sworn.

Mr. Jones. Pray, do you know Mr. Rogers, Mr. Stevens, and Mr. Marson?

E. Gurrey. I know Mr. Marson, and these are the other Gentlemen I reckon.

Mr. Jones. What Discourse did you hear from them?

E. Gurrey. Mr. Marson ask'd the other Gentlemen how much Money they had spent; the other answer'd, what was that to him? you have had forty or fifty Pounds to your Share. Then the other ask'd him, whether the Business was done? and he answer'd, he believ'd it was; but if it was not done, it would be done to-night. Then, my Lord, he pull'd a handful of Money out of his Pocket, and swore he would spend it all for Joy the Business was done.

Mr. Jones. Was Mr. Cowper's Name mention'd?

E. Gurrey. I heard them mention Mr. Cowper's Name, but not Mrs. Sarah Stout's.

Mr. Jones. What Condition was the Gentleman's Shoes in?

E. Gurrey. I think it was Mr. Marson, his Shoes were very wet and dirty; one of them was very hot, and he wiped his Head with his Handkerchief.

Mr. Jones. Now, my Lord, we have done as to our Evidence. Mr. Marson pretended he was just then alighted and come from London, and was in a great Heat, and his Shoes were wet: I wonder what Mr. Marson had been doing; for when he was examined, he said, he came to Town about Eight of the Clock, and went to the *Glove and Dolphin Inn*, and stay'd there till he came to his Lodging. Now 'tis a wonderful Thing that he should come wetshod from a Tavern, where he had been sitting four or five Hours together.

[Then the Examination of Mr. John Marson was read.]

The Examination of JOHN MARSON, taken before Me, this 27 Day of April, 1699.

WHO being examin'd where he was on Monday the 13th of March last, saith, That he was at the Borough of Southwark (he being an Attorney of the said Court) till past Four of the Clock in the Afternoon; and saith, That he set out from Southwark for Hertford soon after, and came to Hertford about Eight of the Clock the same Afternoon, and put up his Horse at the Sign of ——— an Inn there, and then went to the Hand and Glove, together with Godfrey Gimbart, Esq; Ellis Stevens, William Rogers, and some others, where they stay'd till about Eleven of the Clock at Night, and then this Examinant went thence directly to the House of John Gurrey, with

the said Stevens and Rogers, who lay all together in the said Gurrey's House all that Night. And being ask'd what he said concerning the said Mrs. Sarah Stout, decess'd, this Examinant saith, That on Sunday the 12th of March last, this Examinant being in Company with one Thomas Marshall, and telling him that this Examinant intended the next Day for Hertford with the Marshal of the King's Bench, the said Thomas Marshall desired this Examinant and the said Stevens, who was then also in Company, that they would go and see the said Sarah Stout (his Sweetheart). He confesseth, That he did ask the said Gurrey if he would shew this Examinant where the said Stout lived, telling the said Gurrey that his Name was Marshall, and ask'd him if he never heard of him before, and jocularly said, That he would go to see her the next Morning; but doth not believe that he said any thing that any Friend was even with the said Sarah Stout, or to such like Effect. And doth confess, That he did the next Day, upon the said Gurrey's telling him that the said Stout was drowned, say, that he would keep his Word, and would see her. And saith, That meeting with Mr. Cowper (who is this Examinant's Acquaintance) he believes he did talk with him concerning the said Stout's being drowned, this Examinant having seen her Body that Morning.

Cogn. Die & Anno
antedict. coram
J. Holt.

John Marlon.

Mr. Jones. All that I observe from it, is this; that he had been five Hours in Town, and when he came to his Lodging he came in wet and hot, and said he was just come from London.

Mr. Marlon. I had rid forty Miles that Day, and could not be soon cold.

Mr. Baron Hatsell. They have done now for the King; come Mr. Cowper, what do you say to it?

Mr. Jones. If your Lordship please we will call one Witness more, Mary Richardson. Mrs. Richardson, Do you know Mr. Marlon, or any of these Gentlemen?

Mrs. Richardson. They came on Tuesday Night to the Bell at Hoddesdon and lay there, and one of the Gentlemen, when I was warming the Sheets, ask'd me if I knew Mrs. Sarah Stout? and I said yes. He ask'd me if I knew which Way she came to her End? and I told him I could not tell.

Mr. Jones. Is that all? what did they say more?

Mrs. Richardson. They did desire and wish it might be found out how it came about, and one Gentleman took no notice of her at all. They had a little Bundle, but what was in it I can't tell, but there I saw it bound up in some colour'd Stuff or other, but what it was I can't tell.

Mr. Jones. Is that all you can say?

Mrs. Richardson. Yes, that's all.

Mr. Jones. Then we have done.

Mr. Baron Hatsell. Come, Mr. Cowper, what do you say to it?

Mr. Cowper. Now they have done on the Part of the King, my Lord, and you Gentlemen of the Jury, I must beg your Patience for my Defence. I confess, it was an unfortunate Accident for me (as Mr. Jones calls it) that I happen'd to be the last Person (for ought appears) in the Company of a melancholy Woman. The Discourse occasion'd by this Accident had been a sufficient Misfortune to me, without any thing else to aggravate it; but I did not in the least imagine that so little, so trivial an Evidence as here is, could

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possibly have affected me to so great a Degree, as to bring me to this Place to answer for the worst Fact that the worst of Men can be guilty of.

My Lord, your Lordship did just now observe, that I have appear'd at the Bar for my Clients; but I must say too, that I never appear'd for my self under this, or the like Circumstances, as a Criminal, for any Offence whatsoever.

Mr. Jones very well said, when he spoke on the Part of the King, That if this Gentlewoman was murther'd, the Crime was Villainous, Base, Barbarous, and Cruel; and for my Part I think so too; the Crime would be so great, that it could never be sufficiently condemn'd: But at the same time I may aver, that to suppose a Murther without good Grounds for it, and afterwards to charge innocent Men with it knowingly and maliciously, is to a Trifle as Base and Barbarous as the Murther itself could be. My Lord, I speak for my own Part; I know not at what Price other Men may value their Lives, but I had much rather my self was murther'd than my Reputation; which yet I am sensible hath suffer'd greatly hitherto by the Malice and Artifice of some Men, who have gone pretty far in making this Fact, as Barbarous as it is, to be credited of me. And therefore I must beg your Lordship's and the Jury's Patience, while I not only defend my Life, but justify my self also from these things that have unjustly aspers'd me, by the Conspiracy and Artifice of my Accusers.

My Lord, in all the Evidence that hath been given, I must observe, that there is no positive Evidence, with Submission, to induce the Jury or any one to believe the General, that this Gentlewoman was murther'd; but they go upon Suppositions and Inferences, which are contradicted by other Circumstances, in the very Evidence of the Prosecutor, that make full as strong to prove she was not murther'd, as that she was; so that, as it stands, it can amount only to a bare Supposition that she was murther'd by any Body.

Then, as to the Evidence that particularly relates to my self, or the Gentlemen who stand with me at the Bar, that they or I were concern'd in it (if she was murther'd) there is not one Syllable of Proof; at most, it amounts but to make us suspect a Murther, not prov'd, but only suspected: This I observe upon the Evidence, as it now stands without Answer, as it has been given on the King's Part: And how far, in the Case of Life, Men shall be affected with Evidence of this nature, which neither proves the Murther in general, nor that they did it in particularly, tho' no Defence was made, or any further Answer given, I must submit to your Lordship's and the Jury's Judgment.

But, my Lord, I do not doubt but I shall be able to wipe away even that remote Suspicion by my Defence: They have been long in their Evidence for the King, and therefore I must beg your Patience while I give a particular Answer to every Part of it, in as good a Method as I am able; and I will waste as little Time as may consist with the justifying my Reputation; for which I know your Lordship will have as tender a Regard, to see it doth not suffer unjustly, as for my Life it self.

And I promise your Lordship, I shall trouble you with no Evidence which is not express and plain; no Inuendo's or Suspicions; but I shall prove

prove fully and clearly, in the first place, That there was no Ground at all, in this Case, to suppose she was murther'd by any one but herself.

The first Fact that they insisted upon to infer a Murther from it, was, that the Body was found floating: Now, my Lord, that Fact I am able by the Evidence I have, as well as from that of the Prosecutor, to deny; for the Fact was directly otherwise, that is, she was not found floating.

And whereas the Prosecutor's Witnesses, who have been produced to this Point, are obscure and poor Men, and, your Lordship observes, have been taught to say generally that she floated; which, when they are requir'd to explain, and describe how she lay, they contradict themselves in, by shewing she lay sideways between the Stakes, and almost all under Water. Now I shall give your Lordship and the Jury a full and particular Account and Description from the Parish Officers, Men employ'd by the Coroner to take the Body out of the Water, of the very Manner and Posture in which it was first found; which they are much better able to do than the Prosecutor's Witnesses, having seen her before all or most of those People; and these Officers clearly agree, that her Body was under Water when found, except some small Appearance of her Petticoats, near or on the Surface of the Water, which may be very easily accounted for, because the Stakes the Witnesses mention, and which are driven into the Ground cross the River, to prevent Weeds and Trumpery from running into the Mill-stand, as the Witnesses have already said, about a Foot distant from one another, and are set with their Feet from the Mill, and their Heads inclining toward the Mill with the Stream. Now my Lord, every one knows, that tho' a drowned Body will at first sink, yet is buoyant, and does not go downright and rest in one Place like Lead; for a human Body is seldom or never in a Stream found to lie where it was drown'd: A Body drown'd at *Chelsea* has been often found by Fishermen at *London*, and that before it came to float above Water. Now, if a Body is so buoyant, as that it is driven down by the impellent Force of the Current (tho' it do not float above Water) it seems a Consequence, that when it comes to be stopp'd and resisted by the Stakes, which lie with their Heads downward, inclining with the Stream, the Stream bearing the Body against the Stakes, must needs raise it upwards to find another Passage if possible, when the Ordinary and Natural is obstructed. I have seen, I remember, that where Weeds have been driven down a River, and have been rouled along at the Bottom, when they have come down to a Board or Stakes of a Wye, or Turnpike, they have been by the Force of the Water raised up against those Boards, or Stakes, and forced over them, tho' without such Obstruction they had undoubtedly continued to roul under the Water. I don't know of any other Symptom they pretend to, of her not being drowned, from any thing observ'd of her in the Water. Then, as to the Flatness of her Belly, when she was put into her Coffin, I shall shew 'tis a common and natural Accident; sometimes drowned Bodies are swell'd more, sometimes less, sometimes not at all: I think it hardly deserves a Physician to prove that a Body may be drowned with very little Water; that a Man may be drowned by Strangling or Suffocation, caused by a

little Water in the Lungs, without any great quantity of Water receiv'd in the Body, is a certain and establish'd Truth; for I am told that when Respiration ceases, the Party dies, and can receive no more Water after that: So that nothing is to be infer'd from a Body's having more or less Water found in it, especially if your Lordship will give me Leave to observe this Distinction, where a Body is voluntarily drowned, and where it is drowned by Accident; for People that fall in by Accident do struggle and strive as long as they can; every time they rise they drink some Water into the Stomach, to prevent its passing into the Lungs, and are drowned no sooner than needs must; but Persons that voluntarily drown themselves, to be sure desperately plunge into the Water, to dispatch a miserable Life as soon as they can; and so that little quantity in the Lungs which causes Death may be the sooner taken in; after which no more is receiv'd: And I hope by Physicians it will appear there is good Ground for this Difference.

The next is the Evidence that the *Surgeons* have given on the other Part, relating to the taking this Gentlewoman out of her Grave after she had been buried six Weeks. Whether this ought to have been given in Evidence, for the Reasons I hinted at in a Criminal Case, I submit to your Lordship; but, as it is, I have no reason to apprehend it, being able to make appear, that the Gentlemen who spoke to this Point have deliver'd themselves in that manner, either out of extream Malice, or a most profound Ignorance; this will be so very plain upon my Evidence, that I must take the Liberty to impute one or both of those Causes to the Gentlemen that have argued from their Observations upon that Matter.

And now, if your Lordship will but please to consider the Circumstances under which they would accuse me of this horrid Action, I don't think they will pretend to say, that in the whole Course of my Life I have been guilty of any mean or indirect Action; and I will put it upon the worst Enemy I have in the World to say it. Now, for a Man in the Condition I was in, of some Fortune in Possession, related to a better, in a good Employment, thriving in my Profession, living within my Income, never in Debt (I may truly say not Five Pounds at any one time these Years past) having no Possibility of making any Advantage by her Death, void of all Malice, and, as appears by her own Evidence, in perfect Amity and Friendship with this Gentlewoman, to be guilty of the murdering her, to begin at the Top of all Baseness and Wickedness, certainly is incredible.

My Lord, in this Prosecution my Enemies seeing the Necessity of assigning some Cause, have been so malicious to suggest before (tho' not now, when I have this Opportunity of vindicating my self publickly) that I have been concern'd in the Receipt of Money for this Gentlewoman, had her Securities by me; and sometimes, that I had been her Guardian, or her Trustee, and I know not what. I now see the Contrivers and Promoters of that Scandal, and they know it to be Base, False, and Malicious; I never was concern'd in Interest with her, directly or indirectly, and so I told them when I was before my Lord Chief-Justice: 'Tis true, it was then just suggested by the Prosecutors, I then denied it, and I deny it still—— I thank God, I have

have not been used, nor have I need, to deny the Truth.

My Lord, you find the Prosecutors have nothing to say to me upon this Head, after all the Slanders and Stories they have publish'd against me, of my having Money in my hands which belong'd to the Deceased: But tho' they do not stir it, I will, and give your Lordship a full Account of all that ever was in that Matter. When I lodg'd at *Herford*, some time since, she desired me to recommend to her a Security for 200*l.* if it came in my Way; my Lord, when I came to Town, I understood that one Mrs. *Puller*, a Client of mine, had a Mortgage formerly made to her by one Mr. *Lofius*, of *Lambeth* in *Surrey*, for the like Sum, and that she was willing to have in her Money: I wrote to this Gentlewoman, the Deceased, to acquaint her of the Security; she thereupon did send up 200*l.* and some odd Pounds for Interest (the Account of which I produced to my Lord Chief-Justice); this Money was sent to me by Mr. *Cramfield*, as I have been inform'd, and by him given to Mr. *Toller's* Clerk, and by him brought publicly to me: My Lord, this Mortgage I immediately transferr'd by Assignment, endors'd on the Back of it, and Mrs. *Habberfield*, a Trustee for Mrs. *Puller*, sign'd and seal'd it, and that very 100*l.* and Interest due, was at one and the same time paid to Mrs. *Puller*, and by her the Principal was paid to her Daughter, in Part of her Portion. All this was transacted the beginning of *December* last, and she was not drowned till the 13th of *March* following: And, my Lord, these People that are now the Prosecutors did own before my Lord Chief-Justice that they had found this Mortgage among the Deceased's Writings in her Cabinet at the Time of her Death. Now, my Lord, I say, that saving this one Service I did her, as I said in *December* last, I never was otherwise concern'd with her in the receiving or disposing of any of her Money; nor had I ever any of her Securities for Money in my keeping; and I defy any Adversary I have to shew the contrary.

My Lord, as there appears no Malice, no Interest, so they have prov'd for me that there was no Concealment of Shame, to induce me to commit so barbarous an Action; otherwise, perhaps, now they find they can assign no other Cause, they would content themselves to give that Reason, and fling that Scandal at me: And tho' I take it by the Experience I have had of them, they did not design to do me any Favour, yet I thank them, in endeavouring to vindicate her Honour, they have secured my Reputation against that Calumny; and tho' I am satisfied, as I said, they did not intend me Kindness, yet, I thank God, they have given me a just Opportunity to take Advantage of their Cunning for the clearing of my Innocence in that Particular.

Then, my Lord, not to rest it here, but to satisfy the *Jury* and the *World* how this Gentlewoman came to destroy her self: I shall give the clearest Evidence that was ever given in any Court that she murder'd her self. When I enter upon this Proof, I must of necessity trespass upon the Character of this Gentlewoman that is dead. I confess this is a tender Point, 'tis a thing I would willingly be excused from, and 'tis not without a great deal of Reluctance and Compulsion forced from me. That she was melancholy the Prosecutors themselves have prov'd; but I must of ne-

cessity shew you the Occasions and Reasons of it, and the Witnesses will tell your Lordship what desperate Resolutions she had been under formerly, and that will lead me to near the Time of her Death, to shew why, and upon what Accidents, she made away her self. I will not enumerate Particulars by way of opening; only I must tell your Lordship, that some Letters of hers must of necessity be produced, which truly, as I said, I should not meddle with, if I had not these innocent Gentlemen here to defend as well as my self. Perhaps it may be said, that in Honour I ought to conceal the Weakness of this Gentlewoman; but then in Honour and Justice to these Gentlemen that are falsely accus'd with me, I cannot do it: I hope this one Reason will excuse me to the World, for I have no other that could have oblig'd me to bring these Letters upon the Stage. I solemnly protest, if I stood here singly in the Case of my own Life, upon the Evidence given against me, I take it to be so inconsiderable, I would not do it; but I must do it, to shew that these Gentlemen also are innocent, and to preserve them, because I am satisfied in my own Mind they are so. My Lord, when I have done that, I shall shew your Lordship in the next Place, that it is utterly impossible I could be concern'd in this Fact, if I had had all the Motives and Provocations in the World to have done it; I shall shew your Lordship, in Point of Time it could not be.

The Maid *Sarah Walker*, who is the single Witness, I take it, that says any thing in the least relating to me, said but now the Clock had struck Eleven before she carried up the Coals, and about a quarter of an Hour after, while she was warming the Bed above Stairs, she heard the Door clap, and some time after that she came down and found that I and her Mistress were gone. Now in Point of Time I shall prove it utterly impossible I could be guilty of the Fact I am accus'd of, being seen to come into the *Glove-Inn* as the Town-Clock struck Eleven, and staying there more than a quarter of an Hour, was, after several things done at my Lodging, in Bed before Twelve a-Clock, and went no more out that Night, as I shall prove. As for that little Circumstance of sending for my Horse, which they have made use of all along to back this Prosecution, their very telling me of that Matter, shews how much they are put to their Shifts to justify their accusing me; I say, in Prudence I ought to have done what I did: I sent for him on the *Tuesday*, but, as their Witness saith, I told him at the time I bid him fetch my Horse, not to use then, nor till by the Course of the Circuit I was to go into *Essex* with the Judges the next Morning; and 'till then the Prosecutor's Witness, who is the Hostler of the *Glove-Inn*, was order'd to set him up there, to litter him down, and to take care of him and feed him, and that he should be ready for me to go to *Chelmsford* on the Morrow, whither I went with the other Counsel the next Morning being *Wednesday*: And this, my Lord, is the Whole of that Matter.

My Lord, this Business slept near two Months after the Coroner's Inquest before I heard of it, or imagin'd my self to be concern'd in it, and was never stirr'd till two Parties, differing on all other Occasions, had laid their Heads together: I beg leave to let your Lordship a little into that Matter, to shew you how this Prosecution came to be manag'd with so much Noise and Violence as it hath

hath been. I can make it appear, that one of the greatest of the Quakers, Mr. Mead by Name, has very much, and indirectly too, concern'd himself in this Matter: It seems they fancy the Reputation of their Sect is concern'd in it; for they think it a wonderful thing, nay, absolutely impossible (however other People may be liable to such Resolutions) that one who was by her Education entitled to the *Light within her*, should run headlong into the Water, as if she had been possess'd with the Devil; of this they think their Sect is to be clear'd, tho' by spilling the Blood of four innocent Men. The other sort of People that concur with the Quakers in this Prosecution, I shall mention, now I come to observe what the Witnesses are that have been produced against me; some of 'em I have nothing to object to, but that they are extream indigent and poor, and have been help'd by the Prosecutor; those that are so, say nothing as to me; others, who live in this Town, and give their Opinions of the Manner of her Death, are possess'd with much Prejudice against me, upon Feuds that have risen at the Elections of my Father and Brother in this Town; and these with the Quakers have wholly dress'd up this Matter for several Ends; the Quakers, to maintain the Reputation of their Sect; and the others, to destroy, or break at least, the Interest of my Family in this Place: But however effectual these Designs may have been to have made a great Noise in the World out of nothing, I am satisfied now that I am in a Court of Justice, where no Person's Reputation, much less his Life, will be sacrificed to the Policy or Malice of a Party without Proof; and therefore I have taken up so much of your Time, to set the true Rise of this Prosecution before you in a clear Light.

My Lord, as to my coming to this Town on Monday, it was the first Day of the Assizes, and that was the Reason that brought me hither: Before I came out of Town, I confess, I had a Design to take a Lodging at this Gentlewoman's House, having been invited by Letter so to do; and the reason why I did not was this: My Brother, when he went the Circuit, always favour'd me with the Offer of a Part of his Lodging, which out of good Husbandry I always accepted: The last Circuit was in Parliament-time, and my Brother being in the Money-Chair, could not attend the Circuit as he us'd to do; he had very good Lodgings, I think one of the best in this Town, where I us'd to be with him; these were always kept for him, unless notice was given to the contrary. The Friday before I came down to the Assizes, I happen'd to be in Company with my Brother and another Gentleman, and then I shew'd them the Letter by which I was earnestly invited down to lie at the House of this Gentlewoman during the Assizes ('tis dated the 9th of March last); and designing to comply with the Invitation, I thereupon desir'd my Brother to write to Mr. Barefoot, our Landlord, and get him, if he could, to dispose of the Lodgings; for, said I, if he keeps 'em they must be paid for, and then I cannot well avoid lying there: My Brother did say he would write, if he could think on't; and thus, if Mr. Barefoot disposed of the Lodgings, I own I intended to lie at the Deceased's House; but if not, I look'd on my self oblig'd to lie at Mr. Barefoot's. Accordingly I shall prove, as soon as ever I came to this Town, in the Morning of the first Day of the

Assizes, I went directly to Mr. Barefoot's (the Maid and all agree in this) and the Reason was, I had not seen my Brother after he said he would write, before I went out of London; and therefore 'twas proper for me to go first to Mr. Barefoot's, to know whether my Brother had wrote to him, and whether he had dispos'd of his Lodgings or not. As soon as I came to Mr. Barefoot's, there was one Mr. Taylor, of this Town, came to me, and I in his hearing ask'd Mr. Barefoot, his Wife, and Maid-servant, one after another, if they had receiv'd a Letter from my Brother to unbespeak the Lodgings; they told me No, that the Room was kept for us; and I think they had made a Fire, and that the Sheets were airing. I was a little concern'd he had not writ; but being satisfied that no Letter had been receiv'd, I said immediately, as I shall prove by several Witnesses, If it be so, I must stay with you, I will take up my Lodging here: Thereupon I alighted, and sent for my Bag from the Coffee-house, and lodg'd all my Things at Barefoot's, and thus I took up my Lodging there as usual. I had no sooner done this, but Sarah Walker came to me from her Mistress to invite me to Dinner, and accordingly I went and dined there; and when I went away, it may be true, that being ask'd, I said I would come again at Night; but that I said I would lie there, I do positively deny, and knowing I could not lie there, 'tis unlikely I should say so. My Lord, at Night I did come again, and paid her some Money that I receiv'd from Mr. Loftus, who is the Mortgager, for Interest of the 200*l.* I before mention'd (it was 6*l.* odd Money, in Guineas and Half-guineas): I writ a Receipt, but she declined the signing of it, pressing me to stay there that Night, which I refused, as engag'd to lie at Mr. Barefoot's, and took my leave of her; and that very Money which I paid her was found in her Pocket, as I have heard, after she was drowned.

Now, my Lord, the Reason that I went to her House at Night was first, as I said, to pay her the Interest-Money; in the next Place, 'twas but fitting, when I found my self under a Necessity of disappointing her, and lying at Barefoot's, to go to excuse my not lying there, which I had not an Opportunity at Dinner-time to do. My Lord, I open my Defence shortly, referring the Particulars to the Witnesses themselves, in calling those who will fully refute the Suppositions and Inferences made by the Prosecutor, whom first, my Lord, I shall begin with, to shew there is no Evidence of any Murther at all committed; and this, I say again, ought to be indisputably made manifest and prov'd before any Man can be so much as suspected for it.

Mr. Baron Hatsell. Do not flourish too much, Mr. Cowper; if you have open'd all your Evidence call your Witnesses, and when they have ended, then make your Observations.

Mr. Cowper. Then, my Lord, I will take up no more of your Time in opening this Matter.

Call Robert Dew. (*Who appeared.*)

When Mrs. Sarah Stout drowned her self, was not you a Parish Officer?

R. Dew. I was—— I was next House to the Coach and Horses, and about a Six a-Clock came a little Boy (Thomas Parker's Boy) and said there was a Woman fallen into the River I consider'd it was not my Business, but the Coroner's, and

and I sent the Boy to the Coroner, to acquaint him with it, and the Coroner sent Word by the Boy, and desir'd she might be taken out; so I went to the River and saw her taken out: she lay in the River (as near as I could guess) half a Foot in the Water; she was cover'd with Water; she had a striped Petticoat on, but nothing could be seen of it above Water. I heav'd her up, and several Sticks were underneath her, and Flags; and when they took her out, she froth'd at the Nose and Mouth.

Mr. Cowper. How was she? was she driven between the Stakes?

R. Dew. She lay on the right Side, her Head leaning rather downwards; and as they pull'd her up, I cried, *Hold, hold, hold, you hurt her Arm*; and so they kneel'd down and took her Arm from the Stakes.

Mr. Cowper. Did you see any Spot upon her Arm?

R. Dew. Yes, Sir.

Mr. Cowper. What sort of Spot was it?

R. Dew. It was reddish; I believe the Stakes did it; for her Arm hit upon the Stake where she lay.

Mr. Cowper. Pray, how do these Stakes stand about the Bridge of the Mill?

R. Dew. I suppose they stand about a Foot asunder; they stand slanting, leaning down the Stream a little.

Mr. Cowper. Could you discern her Feet?

R. Dew. No, nothing like it, nor the striped Petticoat she had on.

Mr. Cowper. Might not her Knees and Legs be upon the Ground, for what you could see?

R. Dew. Truly, if I were put upon my Oath, whether they were so, or not, I durst not swear it; sometimes the Water there is four Feet, sometimes three and a half; I believe her Feet were very near the Bottom.

Mr. Cowper. Are not the Stakes nail'd with their Head against the Bridge?

R. Dew. They are nail'd to the Side of the Bridge.

Mr. Cowper. Pray, describe the Manner in which they took her up?

R. Dew. They stoop'd down, and took her up.

Mr. Cowper. Did they take her up at once?

R. Dew. They had two Heavings, or more.

Mr. Cowper. What was the Reason they did not take her up at once?

R. Dew. Because I cried out, *They hurt her Arm*.

Mr. Cowper. Was she not within the Stakes?

R. Dew. No, this Shoulder kept her out.

Mr. Cowper. When you complain'd *they hurt her Arm*, what Answer did they make you?

R. Dew. They stoop'd down and took her Arm out from between the Stakes; they could not have got her out else.

Mr. Cowper. After she was taken out, did you observe any Froth or Foam come from her Mouth or Nose?

R. Dew. There was a white Froth came from her, and as they wiped it away, it was on again presently.

Mr. Cowper. What was the Appearance of her Face and upper Parts at that Time?

R. Dew. She was so much disfigur'd, I believe that scarce any of her Neighbours knew her, the Slime of the Water being upon her.

Mr. Cowper. Did you see her Maid *Sarah Walker* at that Time?

R. Dew. No.

Mr. Baron *Hatsell*. Mr. Cowper, do you intend to spend so much Time with every Witness? I don't see to what Purpose many of these Questions are ask'd.

Mr. Cowper. I have done with him, call *Young*.

Mr. Baron *Hatsell*. Mr. Cowper, I would not have you straiten your self, but only ask those Questions that are pertinent.

Mr. Cowper. Pray, give an Account of what you know of the Matter.

Young. On Tuesday Morning, between Five and Six a-Clock, last Affizes—

Mr. Cowper. What Officer was you?

Young. I was Constable.

Mr. Cowper. Was you employed by the Coroner?

Young. Not by him in Person. Between Five and Six a-Clock some of the Men that came into my Yard to work told me a Woman was drowned at the Mill; I staid a little and went down to see, and when I came there I saw a Woman, as they had told me, and I saw part of her Coat lie on the Top of the Water to be seen, and I look'd strictly and nicely within the Bridge, and saw the Face of a Woman, and her left Arm was on the Outside the Stakes, which I believe kept her from going thro'; so I look'd upon her very wishfully, and was going back again; and as I came back I met with R. Dew and two of my Neighbours, and they ask'd me to go back with them, and said they were going to take her up; and being Constable, I told them I thought it was not proper to do it, and they said they had Orders for it; so I being Constable, went back with them, and when I came there I found her in the same Posture as before; we view'd her very wishfully; her Coat that was driven near the Stakes was seen, but none of her other Coats, or her Legs; and after we had look'd a little while upon her, we spake to *Dell* and *Ulse* to take her up, and one of them took hold of her Coat till he brought her above Water; and as her Arm drew up, I saw a black Place, and she laid sideway, that he could not take her up till they had let her down again, and so they twist'd her out sideway; for the Stakes were so near together that she could not lie upon her Belly, or upon her Back; and when they had taken her up, they laid her down upon a green Place, and after she was laid down, a great Quantity of Froth (like the Froth of new Beer) work'd out of her Nostrils.

Mr. Baron *Hatsell*. How much do call a great Quantity?

Young. It rose up in Bladders, and run down on the Sides of her Face, and so rose again; and seeing her look like a Gentlewoman, we desired one *Ulse* to search her Pockets, to see if there were any Letters, that we might know who she was; so the Woman did, and I believe there was twenty or more of us that knew her very well when she was alive, and not one of us knew her then; and the Woman search'd her Pockets, and took out six Guineas, ten Shillings, Three-pence halfpenny, and some other Things; and after that I desired some of my Neighbours to go with me and tell the Money; for when it came to be known who she was, I knew we must give an Account on't, and I laid it upon a Block and told it, and they ty'd it up in a Handkerchief, and I said I would keep the Money; and they should seal it up to prevent any Que-

Question about it; and during all this while of Discourse, and sealing up the Money, the Froth still work'd out of her Mouth.

Mr. Cowper. Have you measured the Depth of the Water? What Depth is it there?

Young. I measured the Water this Morning, and 'twas so high that it ran over the Floodgate, and the Height of it was about four Foot two Inches; but sometimes 'tis pent up to a greater Height than 'tis to Day.

Mr. Cowper. Was it higher to Day than when the Body was found?

Young. To the best of my Remembrance 'twas as high to Day as it was then.

Mr. Cowper. Was any Part of the Body above Water?

Young. No, nor nothing like the Body could be seen.

Mr. Cowper. Could you see where her Legs lay?

Young. No, nor nothing but her upper Coats, which were driven against the Stakes.

Mr. Cowper. Pray give an Account how long she lay there, and when she was convey'd away.

Young. I stay'd a quarter of an Hour, and then I went and sealed up the Money at my own House, so that I did not see her removed.

Mr. Jones. Was any Body there besides your self at this time?

Young. Yes, twenty People at the least.

Mr. Jones. Now here is Ten of them that have sworn that the Body was above the Surface of the Water.

Mr. Baron Hatfield. No, her Cloaths, they say, were, but the Body was something under the Water.

Mr. Cowper. Now I will trouble your Lordship no more with that Fact, but I will give you an Account of the Coroner's Inquest, how diligent they were in their Proceedings, and produce a Copy of the Inquisition it self, that she was found to have drowned herself.

Mr. Baron Hatfield. Mr. Cowper, that is no Evidence, if it be produced in order to contradict what these Witnesses have said, that have been examined for the King; but if you will prove, that they have sworn otherwise before the Coroner than they now do, then you say something, otherwise the Coroner's Inquest signifies nothing as to the present Question.

Mr. Cowper. Call *Thomas Wall*. I am loth to be troublesome; but if you please to favour me, I desire to know of them, whether they do admit there was an Inquisition, and that she was found *Non Compos Mentis*, and did kill her self.

Mr. Jones. We do admit it.

Jury-man. We desire it may be read.

Mr. Baron Hatfield. Why, won't you believe what they agree to on both Sides?

Jury-man. If they do agree so, I am satisfied.

Mr. Cowper. *Thomas Wall*, pray do you give an Account of what you know of Mrs. Stout's being taken up.

Wall. My Lord, I was one of the Jury, that view'd her at the Place where she was laid when she was taken up, and there was no Marks upon her, only a little Mark about her Ear, and something near her Collar-bone; that was all I see upon her.

Mr. Cowper. Do you know any thing of any Surgeons being employ'd to view those Marks?

Wall. My Lord, we had several Persons that

came before us that we examin'd; we had a Dispute concerning these Marks what might effect them, and we desir'd Mr. *Dimsdale* and Mr. *Camlin* to see them, that we might be the better satisfied; and they both went down and view'd the Body after it was brought down to Mrs. Stout's, and they came back, both of them, and Mr. *John Dimsdale* told us, that these Marks were no more than were usual in such Cases, and it was only the Stagnation of Blood.

Mr. Cowper. Was it the old Man or the young Man?

Wall. It was the young Man.

Mr. Cowper. Usual did he say?

Wall. I can tell the very Words, I have them writ down.

Mr. Cowper. Pray do so, for he has denied it here.

Wall. (*Looks on his Paper.*) Here 'tis. Mr. *Dimsdale* and Mr. *Camlin* came to us, and Mr. *Dimsdale* spake and said these Marks are usual, or might be usual; or if they were Marks, it was no more than was usual in such Cases; and that it was the Stagnation of Blood.

Mr. Cowper. Now you have your Notes in your Hand, pray, what did *Sarah Walker* say to you as to the Time I went from Mrs. Stout's?

Wall. *Sarah Walker* said, it was about Eleven a-Clock when she took up Coals to warm the Bed, but she said she could not, nor did not know when Mr. Cowper went out, for she warm'd the Bed, and Mr. Cowper not coming up, she took up some more Coals, and tarried a little longer, and no Body coming up, she went down, and found Mr. Cowper was gone, and she look'd into the Parlour, and her Mistress was gone.

Mr. Baron Hatfield. The Woman said the same Thing.

Mr. Cowper. 'Tis necessary in this Particular as to the Time.

Mr. Baron Hatfield. She told you the Clocks did differ.

(*Then Mr. Bowden was called.*)

Mr. Cowper. Well, what do you know of the taking up of Mrs. Stout?

Bowden. I went with the rest of the Neighbours to view her, and I did perceive it was Mrs. *Sarah Stout's* Body, tho' some question'd it: I do believe I was the second Person that discover'd it was she; and, my Lord, I did see a great deal of Froth that came out of her Mouth and Nostrils.

Mr. Cowper. Did you go about to wipe it away?

Bowden. No, but some other Persons did; it came out in a great Quantity.

Mr. Jones. How much do you call a great Quantity?

Bowden. Her Mouth and Nostrils were very full of it.

Mr. Jones. Was not her Mouth shut?

Bowden. I did not observe that.

Mr. Cowper. How long had she lain there before you came?

Bowden. I believe I was there in half an Hour; as soon as I heard the Report of it I went down.

Mr. Cowper. Call Mr. *Shute*.

Mr. Baron Hatfield. Well, what can you say to this Matter?

Shute. Sir, I was summoned upon the Jury upon the Coroner's Inquest; and I perceiv'd when I was there, that the same Stuff worked out of Mrs. Stout's Nostrils as worked out of the Child's.

Mr.

Mr. Baron *Hatfield*. What Child is that you speak of? Is it the Child that was drowned in the same Place as Mrs. *Stout* was?

Shute. Yes.

Mr. *Cowper*. My Lord, I am very tender how I take up your Lordship's Time; and therefore I will not trouble you with any more Witnesses upon this Head; but, with your Lordship's Leave, I will proceed to call some Physicians of Note and Eminence, to confront the Learning of the Gentlemen on the other Side.—Dr. *Sloane*, you were in Court when these Gentlemen delivered their Opinion concerning Mrs. *Stout*'s having no Water in her; I desire you would give your Opinion in that Matter.

Dr. *Sloane*. I have not heard them very particularly or distinctly, because of the great Crowd; some of them I have; Cases of this kind are very uncommon, and none of them have fallen directly under my own Knowledge. As to my Opinion of drowning, it is plain, that if a great Quantity of Water be swallowed by the Gullet into the Stomach, it will not suffocate or drown the Person: Drunkards, who swallow freely a great deal of Liquor, and those who are forced by the Civil Law to drink a great Quantity of Water, which in giving the Question (as 'tis called) is poured into them by way of Torture to make them confess Crimes, have no Suffocation or Drowning happen to them: But on the other hand, when any Quantity comes into the Wind-pipe, so as it does hinder or intercept the Inspiration, or Coming-in of the Air, which is necessary for Respiration or Breathing, the Person is suffocated. Such a small Quantity will do, as sometimes in Prescriptions, when People have been very weak, or forced to take Medicines, I have observ'd some Spoonfuls in that Condition (if it went the wrong Way) to have choaked or suffocated the Person. I take Drowning in a great measure to be thus; and though it is very likely when one struggles he may (to save himself from being choaked) swallow some Quantity of Water, yet that is not the Cause of his Death, but that which goes into the Wind-pipe and Lungs. Whether a Person comes dead or alive into the Water, I believe some Quantity will go into the Wind-pipe; and I believe, without Force after Death, little will get into the Stomach, because that it should, swallowing is necessary, which after Death cannot be done.

Mr. Baron *Hatfield*. Pray, Doctor, I understand you say this; that in case a Person is drowned, that there may be but little Water in the Stomach?

Dr. *Sloane*. That it is accidental, my Lord.

Mr. Baron *Hatfield*. But what do you say to this; if there had been Water in the Body, would it not have putrified the Parts after it had lain six Weeks?

Dr. *Sloane*. My Lord, I am apt to think it would have putrified the Stomach less than the Lungs, because the Stomach is a Part of the Body that is contrived by Nature partly to receive Liquids; but the Contrivance of the Lungs is only for the receiving of Air; they being of a spongy Nature, the Water might sink more into them than the Stomach; but I believe it might putrify there too after some time. I am apt to think, that when a Body is buried under Ground, according to the Depth of the Grave, and Difference of the Weather and Soil, the Fermentation may be greater or lesser, and that according to the several Kinds of Meats or Liquids in the Stomach the Putri-

faction will likewise vary; so that it seems to me to be very uncertain.

Mr. Baron *Hatfield*. But when they are in a Coffin, how is it then?

Dr. *Sloane*. No doubt there will be a Fermentation more or less, according as the Air comes more or less to the Body. Indeed it may be otherwise, where the Air is wholly shut out, which is supposed to be the Way of Embalming, or preserving of dead Bodies of late, without the Use of any Spices, which is thought in a great measure to be brought about by the Closeness of the Coffin, and hindering of the Air from coming in to the Body.

Mr. *Cowper*. Is it possible, in your Judgment, for any Water to pass into the Thorax?

Dr. *Sloane*. I believe 'tis hardly possible that any should go from the Wind-pipe into the Cavity of the Thorax, without great Violence and Force; for there is a Membrane that covers the Outside of the Lungs, that will hinder the Water from passing through it into any Part without them.

Mr. *Cowper*. Now, do you think it possible to find Water in a drowned Body after six Weeks time?

Dr. *Sloane*. I am apt to think if there was any Quantity in the Lungs, the Sponginess of the Part would suck up some Part of it. As to the Stomach, I have not known it tried; but 'tis like, if there was a great Fermentation, a great deal of it would rise up in Vapours or Steams, and go off that way.

Mr. *Cowper*. Dr. *Garth*, I can't tell whether you were in Court when the Surgeons who are Witnesses for the King gave their Evidence.

Dr. *Garth*. Yes, I was.

Mr. *Cowper*. Then I desire you, Sir, to give your Opinion as to those Particulars.

Dr. *Garth*. I observed in this Trial the first Gentleman call'd for the King that spoke to this Matter was Mr. *Coatsworth*: He saith he was sent for to open her, upon an Aspersion of her being said to be with Child. I agree with him in what he speaks to that Point, but must differ with him where he infers she was murdered, because he found no great Quantity of Water in her, as also her Head extremely mortified, but not her Lungs (Lungs and Bowels I think were used promiscuously.) Now, my Lord, as to the Matter of Putrifaction, I think 'tis not much material whether there be any Water or no in the Cavities of the Body; if Water would hasten Putrifaction, it would do it as well in the Lungs as otherwise; there is always some Water in the Lympheducts there, the Breaking of which may be one Occasion of Catarrhs. As to what relates to the Putrifaction of the Head, it may happen from a Stoppage of the reflux Blood, which is staid there in a great Quantity, through the Suffocation in the Water, or from the Nearness of the Brain, which is observed often to mortify first.

The next was Mr. *Dimsdale* (I would speak to them all in order if my Memory would permit) I think he was of the same Opinion as Mr. *Coatsworth*; he laid the Stress of his Suspicion upon the Mortification of the Head, which I think is not at all material, no more than what they infer from her floating; it being impossible the Body should have floated, unless it had rested, or had been entangled among the Stakes, because all dead Bodies (I believe) fall to the Bottom, unless they be prevented by some extraordinary Tumour. My Lord, we have not only Philosophy, but Experiments for this. The Witnesses all agree she was

found upon her Side, which to suppose her to float in this posture, is as hard to be conceived, as to imagine a Shilling should fall down and rest upon its Edge rather than its broad Side; or that a Deal Board shou'd rather float Edgeways than therwise; therefore 'tis plain she was entangled, or else the Posture had been otherwise.

As to the Quantity of Water, I do not think it necessary it should be very great. I must own the Water will force itself into all Cavities where there's no Resistance. I believe when she threw herself in, she might not struggle to save herself, and by consequence not sup up much Water. Now there's no direct Passage into the Stomach but by the Gullet, which is contracted or purs'd up by a Muscle in Nature of a Sphincter: For if this Passage was always open, like that of the Wind-pipe, the Weight of the Air would force it self into the Stomach, and we should be sensible of the greatest Inconveniencies. I doubt not, but that some Water fell into her Lungs, because the Weight of it would force itself down; but if we consider the Wind-pipe with its Ramifications as one *Cylinder*, the Calculation of its Contents will not amount to above twenty-three or twenty-four solid Inches of Water, which is not a Pint, and which might imperceptibly work and fall out. I remember I offered a Wager at *Garaway's* Coffee-House to a Gentleman here in Court.

Mr. Baron *Hatfield*. Pray, Doctor, tell us your Opinion as to what the Seaman said, and also as to what Dr. *Sloane* said, whether Water in the Body will putrify it.

Dr. *Garth*. I say not; for in some Places they keep Flesh-Meat from corrupting by preserving it in Water, and 'tis well known 'twill putrify less so, than when exposed to Air.

Mr. Baron *Hatfield*. But what do you say as to the sinking of dead Bodies in Water?

Dr. *Garth*. If a strangled Body be thrown into the Water, the Lungs being filled with Air, and a Cord left about the Neck, 'tis possible it may float, because of the included Air, as a Bladder wou'd; but here is neither Cord, nor any Mark of it, nor nothing but a common Stagnation.

Mr. Baron *Hatfield*. But you don't observe my Question; the Seaman said, that those that die at Sea, and are thrown overboard, if you don't tye a Weight to them, they will not sink: What say you to that?

Dr. *Garth*. My Lord, no doubt in this they're mistaken. The Seamen are a superstitious People, they fancy that whistling at Sea will occasion a Tempest: I must confess I never saw any Body thrown overboard, but I have tried some Experiments on other dead Animals, and they will certainly sink; we have tried this since we came hither. Now, my Lord, I think, we have Reason to suspect the Seaman's Evidence; for he saith, that threescore Pound of Iron is allowed to sink the dead Bodies, whereas six or seven Pounds would do as well. I cannot think the Commissioners of the Navy guilty of so ill Husbandry; but the Design of tying Weights to their dead Bodies, is to prevent their floating at all, which otherwise wou'd happen in some few Days: Therefore what I say is this, that if these Gentlemen had found a Cord, or the Print of it, about the Neck of this unfortunate Gentlewoman, or any Wound that had occasioned her Death, they might then have said something.

Mr. *Cowper*. Do you apprehend that any Quantity of Water can enter into the Cavity of the Thorax.

Dr. *Garth*. 'Tis impossible there should till the Lungs be quite rotten; there is no Way but by the Lungs, which are invested with so strong a Membrane, that we cannot force Breath with our Blow-pipes through it; and there's a great Providence in such a Texture, for if there were any large Pores in the Membrane, the Air would pass thro' it into the Cavity of the Thorax, and prevent the Dilatation of the Lungs, and by consequence there would be an End of Breathing.

Mr. *Cowper*. Dr. *Morley*, pray be pleased to give your Opinion of these Matters.

Dr. *Morley*. Those which seem to be Questions of greatest Moment, are whether there was a Necessity for this Body (if drown'd) to have a great Quantity of Water in it, and whether Bodies thrown dead into the Water float. To the first I answer positively, that there is no absolute Necessity that she should have a great Quantity of Water in her; and I think the Question Mr. *Cowper* ask'd Dr. *Coatsworth*, whether he had like to have been drowned by Accident or Design, suits with my Assertion; for if this Gentlewoman did voluntarily drown her self, she then, in all likelihood, threw herself into the Water, with a Resolution of keeping her Breath for a speedy Suffocation; and then if upon the first Endeavours for Respiration (which naturally must be) she drew into her Lungs two Ounces of Water, it was the same Thing to drowning of her, as if there had been two Tun. We see the same Thing done by Divers in order to save themselves, as it happened to this unfortunate Gentlewoman, in her Design of destroying her self: If a Diver, before he comes to the Surface of Water, should so far mistake his Power of holding his Breath, that he should be forced to endeavour Respiration, the little Water he drew into his Lungs by this Attempt to respire, may drown him. We last Night drown'd a Dog, and afterwards dissected him, and found not a Spoonful of Water in his Stomach, and, I believe, about two Ounces in his Lungs; while we were doing this, we drowned another, and he lay at the Bottom and did not float; no more would he have done, if he had been hang'd before thrown into the Water: We took him up, and opening him, we found much about the same Quantity of Water in his Lungs, and little or none in his Stomach. They both froth'd at Nose and Mouth, because the Water coming into the little Bladders of the Lungs, and there meeting with Air, a Commotion arose between the Water and Air, which caused the Froth. To the second Question, I think if Bodies new killed swim, 'tis by Accident; for the Reason that Bodies swim, is because by Putrification they rarify, by Rarification they grow lighter, which brings them to the Top of the Water.

Mr. *Cowper*. I desire to know if any Man of Skill in Prudence would give his Opinion?

Mr. Baron *Hatfield*. This is not a proper Question.

Mr. *Cowper*. Then I will ask it thus: Do you think, Doctor, it is to be known six Weeks after, if a Person was drowned?

Dr. *Morley*. I think it is morally impossible.

Mr. *Cowper*. Can there be any Water in the Thorax?

Dr. *Morley*. By an Imposthume or some Violence to Nature possibly; but I think no otherwise.

Mr.

Mr. Cowper. Dr. Woollaston, what is your Opinion if a Person be drowned, whether it can be discover'd six Weeks after?

Dr. Woollaston. My Lord, I think it is impossible to be known; for if there had been never so much Water in the Body at first, it could not lie there so long, but must of necessity have forced its way out. We see in Persons that die of Dropsies, that the Water will work it self out (and sometimes burst the Body) before it is buried; and, I am sure, if it do so in Dropsies, where there are no visible Passages for it to get out at, it must do so much more in drowned Persons, where the Water lies only in the Stomach and Guts, and has nothing to hinder its working out when it ferments, as it always doth.

Mr. Cowper. Have you ever made any Experiments in that nature, Doctor?

Dr. Woollaston. I have made no Experiments, but I have seen a very particular Instance.

Mr. Bar. Hatfell. That is very well; pray let us hear it, Doctor.

Dr. Woollaston. My Lord, about three Years since, I saw two Men that were drowned out of the same Boat. They were taken up the next Day after they were drowned: One of 'em was indeed prodigiously swell'd, so much that his Cloaths were burst in several Places of his Sides and Arms, and his Stockings in the Seams; his Hands and Fingers were strangely extended; his Face was almost all over black; but the other was not in the least swell'd in any Part, nor discolour'd; he was as lank, I believe, as ever he was in his Lifetime; and there was not the least Sign of any Water in him, except the watery Froth at his Mouth and Nostrils. My Lord, this I saw my self, and took very particular Notice of it.

Mr. Jones. Did you see these Bodies taken out of the Water your self, Doctor?

Dr. Woollaston. No, Sir.

Mr. Jones. How long had they been taken out when you saw them?

Dr. Woollaston. I enquir'd, and to the best of my Memory, it was that same Day.

Mr. Bar. Hatfell. But what do you think, Doctor, of a Person's being drowned without taking in any Water?

Dr. Woollaston. My Lord, what is taken in is, I believe, chiefly at the Surface of the Water, when they open their Mouths for Breath, and the Water that rushes in they are forced to drink down, to keep it from the Lungs: But when the Head is quite under Water, I don't think 'tis possible for any quantity to get down into the Stomach; because it being Breath they open for, the very first Water they take in would of necessity fill the Lungs; and, when the Breath is stopp'd, I don't see how they can swallow.

Mr. Cowper. Dr. Gelfrop, what is your Opinion of this Matter?

Dr. Gelfrop. I don't think they can make any Judgment of Persons being drowned after Six Weeks time.

Mr. Cowper. Can any Water get into the Thorax?

Dr. Gelfrop. No, not unless the Lungs be putrified.

Mr. Cowper. Is a great quantity of Water necessary to Persons dying by drowning?

Dr. Gelfrop. No; only so much as may hinder Respiration.

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Mr. Cowper. Now, my Lord, I would call Mr. William Cowper; and because of his Name, I must acquaint your Lordship; that he is not at all related to me, tho' I should be proud to own him if he were so: He is a Man of great Learning, and, I believe, most People admit him the best Anatomist in Europe. Mr. Cowper, pray will you give your Opinion of this Matter?

Mr. W. Cowper. My Lord, I hope what I shall say will not be suspected because I am of the same Name, for this Gentleman is an utter Stranger to me.

Mr. Bar. Hatfell. Pray, Mr. Cowper, without any Apology, give your Opinion concerning Persons drowned; and how 'tis with them in their inward Parts.

Mr. W. Cowper. I will give you a short Account, I hope to your Satisfaction too, my Lord. I will not only speak from Reason, but give you the Testimony of the Experiments I have made upon this Occasion. My Lord, I heard it made a mighty Argument, that this Person had no Water that seem'd to flow out, but the Witnesses agree that there was a Froth. Now, my Lord, it was not reasonable to expect any thing but Froth. My Lord, had she been thrown into the Water, and made her utmost Efforts, which she would then have done to have saved her self, and been often buoy'd up to the Top of the Water, no doubt but she would have swallow'd a considerable quantity of Water before she had been drowned; and it may be expected to flow from her, if her Head had been inclined downwards.

This is a Truth that no Man can deny who is acquainted with any Thing of this nature, That when the Head of an Animal is under Water, the first time 'tis oblig'd to inspire (or draw in Air) the Water will necessarily flow into its Lungs, as the Air would do if it were out of the Water; which quantity of Water (if the Dimensions of the Windpipe, and its Branches in the Lungs, be consider'd) will not amount to three Inches square, which is about three Ounces of Water. Nor is a greater quantity of Water in the Windpipe necessary to choak any Person, if we do but reflect what an Ebullition is caused by its meeting with the Air which remain'd in the Lungs, whereby a small quantity of Water is converted into Froth, and the Chancel of the Windpipe, and those of the Bronchia, are fill'd with it, infomuch that no Air can enter the Lungs for the Office of Respiration. After a Suffocation is thus commenced (I am apt to think) all regular animal Actions are perverted, and particularly that of swallowing (or Deglutition); and what Water flows into the Lungs at the Instant, or after this Suffocation, is from its own Weight, which is more or less as the Body is farther under, or nearer the Surface of the Water. My Lord, I don't speak this by way of Conjecture or Hypothesis, but I have made Experiments, which have suggested what I here offer. I shall by the by tell you how fallacious the first Experiment was, when I propos'd to satisfy my self, whether a dead Body would float in Water: It happen'd that a Spaniel, that had a great deal of long Hair, was hang'd for this Purpose, which I found to swim on the Surface of the Water; but when I consider'd that his Hair might buoy him up, I caus'd another Dog, which had shorter and less Hair, to be hang'd and put into the Water, which (agreeable to what I had always conceiv'd

of a Human Body) sunk directly to the Bottom. In order to satisfy my self what quantity of Water was necessary to enter the Body of an Animal, and cause a Suffocation in Water, I caused three Dogs, when alive, to be suddenly plunged under Water till they were stifled; one was before I left London, the other two I made the Experiment on last Night, in the Presence of Dr. *Sloane* and Dr. *Morley*, and we could not compute there was more than three Ounces of Water in their Lungs, and none that we could perceive in their Stomachs.

Dead Bodies necessarily sink in Water, if no Distention of their Parts buoy 'em up; this Distention sometimes happens before Death, at other times soon after, and in Bodies that are drowned after they lie under Water: This Enlargement of them is caused by a Rarefaction of the Humours within the Cavities, and the Bodies necessarily rises to the Surface of the Water. Your Lordship may infer this from what the Seaman told you, and the great Weight they use to fasten to their Bodies that die of Diseases, was not of such use to sink them, as it was to prevent their floating afterwards; so that the Weight was necessary for those that were kill'd, as well as those that died of Diseases.

It is so commonly known that the Contents in the Stomach of a dead Body are discharg'd by the Mouth and Nostrils, so soon as it begins to ferment, and the Belly becomes distended, that it is no Wonder that Water, if the greatest quantity of that had been in the Stomach, or any thing else that was fluid, must be forced from thence six Weeks after Death.

My Lord, I can't but think it ridiculous to expect Water in the Cavity of the *Thorax*; 'tis such a Conceit as nothing in Nature can account for, unless the Lungs had suffer'd some Aposthumation, or the like, whereby the Water my pass their outward Membranes into that Cavity.

Mr. *Cowper*. With your Lordship's Favour, I now think it a proper Time to make this Observation. The Witnesses that have given Evidence for the King do say, They believe she was not drowned; but they have not pretended to say how she died otherwise.

Mr. Bar. *Hatsell*. That is very true.

Mr. *Cowper*. Dr. *Crell*, I desire you will be pleased to give an Account of this Matter.

Dr. *Crell*. My Lord, I have little to say in this Affair, the Physicians that have been examin'd already having made it out, that Persons who are drowned may have but little Water in their Bodies; but I have taken what Pains I could, upon so short Warning, and I will tell you the Opinion of several eminent Authors. My own Opinion is, That a very small quantity of Water, not exceeding three Ounces, is sufficient to drown any Body; and I believe that the Reason of the Suffocation, or of any Person's being stifled under Water, is from the intercepting of the Air, that the Person can't breathe, without which he cannot live. Now, my Lord, I will give you the Opinion of several ancient Authors.

Mr. Bar. *Hatsell*. Pray, Doctor, tell us your own Observations.

Dr. *Crell*. My Lord, it must be Reading, as well as a Man's own Experience, that will make any one a Physician; for without the reading of Books of that Art, the Art itself cannot be attain'd to; besides, my Lord, I humbly conceive; that in such

a difficult Case as this, we ought to have a great Deference for the Reports and Opinions of learned Men: Neither do I see any Reason why I should not quote the Fathers of my Profession in this Case, as well as you Gentlemen of the Long-Robe quote *Coke* upon *Littleton* in others: But I shall not trouble the Court long; I shall only insist upon what *Ambrose Parey* relates in his Chapter of Renunciations. He was chief Surgeon to *Francis* the First, employ'd by him in most of his Sieges and Battles against the Emperor *Charles* the Fifth, and consequently must observe, and could not be ignorant of such like Casualties in such great Bodies of Men. He tells us, That the certain Sign of a Man's being drowned, is an Appearance of Froth about his Nostrils and Mouth. Now, my Lord, I think that every one of the King's Evidences observ'd it in the present Case, and a Woman swore, that she saw her purge at the Nose; which could not be, as he declares, if the Person had been strangled, or otherwise kill'd before.

As to the Quantity of Water requisite to drown a Person, I believe that three Ounces, or less, is enough; to wit, as much as will fill the Windpipe, and so stop the breathing of the Person drowning. I am not now to descant upon Matter of Fact, whether she drowned her self; but my firm Opinion is, that she was drown'd; for tho' sometimes, not always, there is Water found in the Bodies of such Persons; yet where-ever it be, besides the Lungs, it is superfluous as to this End, and accidental upon violent Strugglings.

Mr. *Cowper*. I desire Mr. *Harriot* may be ask'd what Observations he hath made concerning this Matter.

Mr. *Harriot*. My Lord, when I was a Surgeon in the Fleet, I made it always my Observation when we threw Men over-board that were kill'd, some of them swam, and some sunk; and I remember particularly, when the *Sandwich* was burnt, we saw abundance leap off from on board, and they sunk directly, but in a little time I observ'd some swim again.

Mr. Bar. *Hatsell*. When a dead Body is thrown over-board, does it sink or swim?

Mr. *Harriot*. I always observ'd that it did sink: When we were in the Channel, and in Time of Peace, we never threw any over-board but we put some Weight to them; but it was not to make them sink, but for Decency sake, that they might not be driven to Shore when they began to float.

Mr. *Cowper*. I desire that Mr. *Bartlet* may be ask'd to the same Purpose.

Mr. *Bartlet*. I have been in several of the King's Ships of War that have been disabled and forced to lie by, in several Engagements between the *French* and *English*, and I never saw any Bodies float, either of the Men that were kill'd in our Ship, or in the Ships that have been near us; I have not seen a Body upon the Surface of the Water.

Mr. Bar. *Hatsell*. Another Witness said, That after an Engagement he saw them swimming.

Mr. *Bartlet*. I can't tell what he saw, my Lord; but what I say I am ready to make Oath of.

Mr. *Cowper*. Dr. *Camlin*, will you please to give my Lord and the Jury an Account whether you were employ'd by the Coroner's Inquest to view the Body of Mrs. *Stout* after she was drowned, and the Marks upon it, and tell my Lord your Opinion of it.

Mr. *Camlin*. I was sent for by the Coroner and the

the Jury that sat upon the Body of Mrs. Sarah Stout, the Coroner being then at her Mother's House, and the Coroner desired Mr. Dimsdale and me to go and take notice of the Marks upon her Neck, and upon her Breast: We view'd all about, and perceiv'd a Mark under her left Ear; we look'd to see if there was any Contusion, and we perceiv'd a Settlement of Blood upon her Breast, and another upon her Arm; and when we came back, Mr. Dimsdale made a Report, I flood by him at that time, That it was only a common Settlement.

Mr. Cowper. Pray, Mr. Camlin, was the Spot above or below the Collar-bone?

Mr. Camlin. Below the Collar-bone.

Mr. Cowper. What did Mr. John Dimsdale say then concerning this Matter?

Mr. Camlin. I understood that he was of Opinion, that it was only a common Stagnation of Blood, that happens in the Case of drowned People.

Mr. Bar. Hatsell. Did he say so to the Jury?

Mr. Camlin. Mr. Dimsdale spake for us both, and I understood him, that it was a Stagnation that did commonly happen to drowned People; and that was my Opinion of it too.

Mr. Cowper. And that you agreed to be your Report?

Mr. Camlin. Yes.

Mr. Cowper. Pray, Mr. Camlin, was you present when the Child that was drowned in the same Place was taken up?

Mr. Camlin. Yes; it was taken up some time after, near the same Place, as I was told, and there was more and greater Signs of the Stagnation of Blood on the Body of this Child, than on the Body of Mrs. Stout; the Child's Face was black and discolour'd.

Mr. Bar. Hatsell. How old was the Child?

Mr. Camlin. Between Ten and Eleven, as near as I could guess.

Mr. Bar. Hatsell. Had Mrs. Stout any Signs of being strangled when you saw her first?

Mr. Camlin. Nothing at all, that I could discern.

Mr. Cowper. My Lord, I will give you no more Trouble upon this Head; I shall go now to the next Thing I opened, and shall prove substantially that this Gentlewoman is not only more to be suspected to have murder'd her self, than to be murder'd by any Body; but 'tis almost a Certainty that she was the Cause of her own Death. Mr. Firmin I would begin withal, if he be here.

(But he not presently appearing.)

Mr. Cowper. Then, my Lord, if you please, I will desire Mr. Bowd in the mean time to give your Lordship an Account of what he knows of the Melancholy of this Gentlewoman.

Mr. Bowd. 'Twas much about this time Twelve-month I had some Business in London, and she sent to me, to know when I should go to London, and I waited upon her before I went, and she desired me to do some Business for her; and when I return'd, I acquainted her with what I had done; and sitting together in the Hall, I asked her, What's the Matter with you? Said I, There's something more than ordinary; you seem to be melancholy. Saith she, You are come from London, and you have heard something or other: Said I, I believe you are in Love. In Love! said she, Yes, said I, Cupid that little Boy hath struck you home: She took me by the Hand; Truly, said

she, I must confess it, but I did think I should never be guilty of such a Folly; and I answered again, I admire that should make you uneasy; if the Person be not of that Fortune as you are, you may, if you love him, make him happy, and your self easy. That can't be, saith she; the World shall not say I change my Religion for a Husband. And some time after I had been in London, having bought some India Goods, she came to my Shop and bought some of me for a Gown, and afterwards she came to pay me for it, and I asked her, How do you like it? Have you made it up? No said she, and I believe I shall never live to wear it.

Mr. Cowper. Pray how long is it since?

Mr. Bowd. It was about February or January before her Death. I ask'd her why she did not come to my House oftener? she said, She had left off all Company, and apply'd herself to Reading, and Company was indifferent to her.

Mr. Cowper. Mr. Firmin, will you please to inform my Lord and the Jury what you know of Mrs. Sarah Stout's being melancholy?

Mr. Firmin. I did observe about three quarters of a Years ago, that she was melancholy; I can't say that she acknowledg'd her self to be so, but I have charg'd her with it.

Mr. Cowper. Did you believe she was melancholy when you charg'd her with it?

Mr. Firmin. Yes, I did.

Mr. Cowper. Mrs. Bendy, if you please to inform the Court what you know of this Gentlewoman's being melancholy.

Mrs. Bendy. Sir, I can say she always acknowledg'd her self extremely melancholy; and when I have ask'd her how she did, she has said, Pretty well in Health, but so much troubled with Melancholy she could not tell what to do with her self.

Mr. Cowper. Did she tell you any Thing particularly?

Mrs. Bendy. It disorder'd her so, she said, that she had rather have chosen Sickness than so much Disorder in her Mind.

Mr. Cowper. Have you any Thing more to recollect?

Mrs. Bendy. Nothing but what I heard from Mrs. Cowper.

Mr. Bar. Hatsell. How old was this Gentlewoman?

Mrs. Bendy. About Six and twenty.

Mr. Cowper. Call Mrs. Jane Low, Mariba Grub and Mrs. Cowper. Mrs. Low, pray do you inform my Lord and the Jury what you know concerning the Melancholy of Mrs. Sarah Stout, and when you first observ'd it.

Mrs. Low. 'Twas a Week before Whitsuntide was Twelve-month.

Mr. Cowper. What did she say then?

Mrs. Low. She often complain'd to me, that she was very melancholy and uneasy; one Time particularly, as we were walking together in the Fields, I ask'd her the Occasion of it, and she told me, That was a Secret; but she said, she led a very melancholy Life: Said I, I am apt to believe you are in Love; she did not disown it, and with a little more speaking she own'd she was. I ask'd her who the Person was; she said, That should be a Secret, but it would end her Days: Said I, a Woman of your Fortune may command any Body: She shook her Head and said, No: Perhaps, said I,

he

he may not be a *Quaker*, and you may be afraid of disobliging your Mother; but if you tell your Mother that your Life depends upon it, your Mother (rather than lose her only Child) will consent to it: She said, No; 'twas a Person she could not marry; and shook her Head, and look'd very melancholy.

Mr. Cowper. When was this?

Mrs. Low. This was the Week before *Whitsuntide*; and in *Whitsun-week* she saw me often, and said, She would take her full swing of Melancholy when her Mother was away; and she used to lie a-Bed that Week.

Mr. Cowper. Have you observ'd any Melancholy in her since?

Mrs. Low. Yes, at several times.

Mr. Cowper. Do you remember any thing of an intermitting Fever?

Mrs. Low. Yes; she told me her Melancholy had occasion'd an intermitting Fever; and I mention'd Dr. Eales to her, and she said her Distemper lay in her Mind, and not in her Body, and she would take nothing, and the sooner it did kill her the better.

Mr. Cowper. Did she say any thing of her Disposition to Reading?

Mrs. Low. She said, nothing delighted her now, neither Reading nor any thing else.

Mr. Cowper. My Lord, *Sarah Walker*, when I ask'd her if she did not observe the Melancholy of her Mistress, and whether she had not said that her Mistress had been melancholy? deny'd that she had said so: Pray have you heard her say any thing to that Purpose?

Mrs. Low. I have often ask'd her how her Mistress did, and she would answer, Very much indispos'd, but not otherwise.

Mr. Cowper. Mrs. Cowper, what do you know of Mrs. Stout's Melancholy?

Mr. Cowper. My Lord, this is my Brother's Wife.

Mrs. Cowper. About Spring was Twelve-month she came up to London, and I believe it was not less than once or twice a Week I saw her; and I never had an Opportunity to be an Hour alone with her at any time, but I perceiv'd something of her Melancholy. I have ask'd her the Reason of it several times, and sometimes she seem'd to dislike her Profession, being a *Quaker*; and sometimes she would say, that she was uneasy at something that lay upon her Spirits, which she should never out-live; and, that she should never be well while she was in this World. Sometimes I have endeavour'd to persuade her out of it seriously, and sometimes by Raillery, and have said, Are you sure you shall be better in another World? And particularly I remember I have said to her, I believe you have Mr. Marshall in your Head; either have him, or do not trouble your self about him; make your self easy either one way or another; and she hath said, No, in an indifferent way, I cannot make my self easy: Then I have said, Marry him; No, saith she, I can't. Sometimes with Company she would be diverted, and had frequently a way of throwing her Hands, and shew'd great Disturbance and Uneasiness. This time Twelve-month, at the Summer Assizes, I was here six Days, and I saw her every Day; and one time, among other Discourse, she told me she had receiv'd great Disturbance from one *Theophilus*, a Waterman and a *Quaker*, who coming down to old Mrs. Stout, that was then lame, she had gather'd about 20 or 30

People together to hear him preach, and she said he directed his Discourse to her, and exasperated her at that rate, that she had thoughts of seeing no Body again, and said, she took it heinously ill to be so us'd; and particularly, that he told her that her Mother's falling outwardly in the Flesh should be a Warning that she did not fall inwardly; and such *Canting Stuff*, as she call'd it; and she said, that *Theophilus* had so used her, that she was ashamed to shew her Head. Another time, the same Week, she had a Fever, and she said, she was in great hopes it would end her Days, and that she neglected her self in doing those Things that were necessary for her Health, in hopes it would carry her off, and often wish'd her self dead. Another time, which I think was the last time I saw her, 'twas at my Sister's Lodgings, and I sent for her to drink a Dish of Tea with us, and she came in a great Toss and Melancholy: Said I, What is the Matter you are always in this Humour? Saith she, I can't help it, I shall never be otherwise. Saith my Sister, for God sake keep such Thoughts out of your Head as you have had, don't talk any more of throwing your self out of Window: Saith she, I may thank God that ever I saw your Face, otherwise I had done it, but I can't promise I shall not do it.

Mr. Bar. Hatsell. What is your Name, Madam?

Mr. Cowper. 'Tis my Brother's Wife, my Lord. I desire Mrs. Toller may give an Account of what she knows as to her being melancholy.

Mrs. Toller. My Lord, she was once to see me, and she look'd very melancholy, and I ask'd her what was the Matter? and she said, Something had vex'd her that Day; and I ask'd her the Cause of it, and she stopp'd a little while, and then said, She would drown her self out of the Way.

Mr. Bar. Hatsell. How long ago was this?

Mrs. Toller. About three quarters of a Year ago.

John Stout. I desire to know whether she has always said so, or not told another Story.

Mrs. Toller. I told you no Story; it may be I did not say so much to you, but I said she talk'd something of drowning. I have been with her when Mr. Cowper's Conversation and Name has been mention'd, and she said she kept but little Company, that sometimes she went to Mrs. Low's, and that she kept none but civil modest Company, and that Mr. Cowper was a civil modest Gentleman, and that she had nothing to say against him.

Mr. Cowper. This is Mrs. Eliz. Toller, my Lord.

Mrs. Eliz. Toller. My Lord, she came to see me some time after Christmas, and seem'd not so cheerful as she us'd to be; said I, What is the matter? Why are you not so merry as you us'd to be? Why do you not come often to see me? Saith she, I don't think to go abroad so much as I us'd to do, and said, It would be as much a Rarity to see her go abroad, as to see the Sun shine by Night.

Mr. Cowper. Mrs. Grub, what do you know concerning Mrs. Stout's pulling out a Letter at her Brother Mr. John Stout's? Give an Account of it, and what she said upon that Occasion.

Mrs. Grub. I have a Daughter that lives at *Guernsey*, and she sent me a Letter, and I pray'd Mrs. Sarah Stout to read the Letter; and while she was reading it I cry'd; saith she, Why do you cry? Said I, Because my Child is so far off. Said she, If I live till Winter is over, I will go over Sea as far as I can for the Land.

Mr. Bar. Hatsell. What was the Occasion of her saying so?

Mrs.

Mrs. Grub. I was washing my Master's Study, Mrs. Sarah Stout came in, and I had a Letter from my Daughter at Guernsey, and I pray'd Mrs. Sarah Stout to read it, and she read my Letter, and I cry'd, and she ask'd me why I cry'd; said I, because my Child is so far off: Saith she, if I live to Winter, or till Winter is over, I will go over Sea as far as I can for the Land.

Mr. Cowper. Now, my Lord, to bring this Matter of Melancholy to the Point of Time, I will call one Witness more, who will speak of a remarkable Instance that happen'd on Saturday before the Monday when she did destroy her self.

Call Mr. Joseph Taylor. Pray, will you inform the Court and Jury of what you observ'd on Saturday before the Monday on which Mrs. Stout destroy'd her self.

J. Taylor. I happen'd to go in at Mr. Firmin's Shop, and there she sat the Saturday before this Accident happen'd, the former Affizes, and I was saying to her, Madam, I think you look strangely discontented; I never saw you dress'd so in my Life: Saith she, the Dress will serve me as long as I shall have occasion for a Dress.

Mr. Cowper. In what Posture did she appear in the Shop?

J. Taylor. She appear'd to be very melancholy.

Mr. Cowper. What Part of her Dress did you find fault with?

J. Taylor. It was her Head-cloaths.

Mr. Cowper. What was the Matter with them?

J. Taylor. I thought her Head was dawb'd with some kind of Grease or Charcoal.

Mr. Cowper. What Answer did she make?

J. Taylor. She said, they would serve her Time.

Mr. Cowper. As to this Piece of Evidence, if your Lordship please, I desire it may be particularly taken notice of; 'twas her Head-dress that she said would serve her Time.

Pray, Mr. Taylor, was you at Mr. Barefoot's when I came there on Monday Morning?

J. Taylor. Yes; I went up Stairs with you into your Chamber.

Mr. Cowper. Pray what did I say to Mr. Barefoot?

J. Taylor. You ask'd him if they had received a Letter from your Brother, and he said, No, not that he knew of, but he would call his Wife; and he did call his Wife, and ask'd her if she had receiv'd a Letter, and she said, No; then said you, I will take up this Lodging for mine; and accordingly you went up Stairs, and I went with you, and staid there about four times as long as I have been here.

Mr. Cowper. Are you very sure that I said I would take up my Lodgings there?

J. Taylor. Yes, I am very sure of it.

Mr. Baron Hatsell. What Time of the Day was it?

J. Taylor. 'Twas the fore Part of the Day: while I was there, my Lord, Mrs. Sarah Stout's Maid came to invite Mr. Cowper to her House to Dinner.

Mr. Cowper. Did you know any thing of my sending to the Coffee-house?

J. Taylor. You sent to the Coffee-house for your Things.

Mr. Baron Hatsell. Did Mr. Cowper use to lie at Mrs. Barefoot's?

J. Taylor. His Brother did, but I do not know whether this Gentleman did; but at that Time he took up that Place for his Lodging, and said, it was all one, my Brother must pay for't, and therefore I will take it up for my self.

Mr. Cowper. Call Mrs. Barefoot and her Maid.

(But they not presently appearing.)

Mr. Cowper. My Lord, in the mean time I will go on to the other Part of my Evidence, in opening of which I shall be very short.

My Lord, my Wife lodging at Hertford, occasion'd me frequently to come down. Mrs. Stout became well acquainted with her: When Business was over in the long Vacation, I resided pretty much at Hertford, and Mr. Marshall came down to pay me a Visit, and this introduced his Knowledge of Mrs. Stout. When she was first acquainted with him she receiv'd him with a great deal of Civility and Kindness, which induced him to make his Addresses to her, as he did, by way of Courtship. It happen'd one Evening that she and one Mrs. Crook, Mr. Marshall, and my self, were walking together, and Mr. Marshall and Mrs. Crook going some little Way before us, she took this Opportunity to speak to me, in such Terms, I must confess, as surpriz'd me. Says she, Mr. Cowper, I did not think you had been so dull. I was inquisitive to know in what my Dulness did consist. Why, says she, do you imagine I intend to marry Mr. Marshall? I said, I thought she did, and that if she did not, she was much to blame in what she had done: No, says she, I thought it might serve to divert the Censure of the World, and favour our Acquaintance. My Lord, I have some original Letters under her own Hand, which will make this fully manifest: I will produce the Letters after I have call'd Mr. Marshall. Mr. Marshall.

Mr. Marshall. If your Lordship please, it was in the long Vacation I came down to spend a little of my leisure Time at Hertford; the Reason of my going thither was, because Mr. Cowper was there at that Time. The first Night when I came down I found Mrs. Sarah Stout visiting at Mr. Cowper's Lodgings, and there I first came acquainted with her; and she afterwards gave me frequent Opportunities of improving that Acquaintance: And by the Manner of my Reception by her, I had no Reason to suspect the Use it seems I was design'd for. When I came to Town, my Lord, I was generally told of my courting Mrs. Stout, which I confess was not then in my Head; but it being represented to me as a Thing easy to be got over, and believing the Report of the World as to her Fortune, I did afterwards make my Application to her, but, upon very little Trial of that sort, I receiv'd a very fair Denial, and there ended my Suit; Mr. Cowper having been so friendly to me, as to give me notice of some Things, that convinc'd me I ought to be thankful I had no more to do with her.

Mr. Baron Hatsell. When did she cast you off?

Mr. Marshall. I can't be positive as to the Time, my Lord, but it was in Answer to the only serious Letter I ever writ to her; as I remember, I was not over-impertunate in this Affair, for I never was a very violent Lover.

Mr. Baron Hatsell. Well, but tell the Time as near as you can.

Mr. Marshall. I believe 'twas the second or third time I came down to Hertford, which is about a Year and half since; and, during the Whole of my Acquaintance with her, I never till then found her averse to any Proposal of mine; but she then telling me, her Resolution was not to comply with what I desir'd, I took her at her Word, having partly by my own Observation, but more by Mr. Cowper's Friendship, been pretty well able to guess at her Meaning.

Mr.

Mr. Cowper. Because what you say may stand confirmed beyond Contradiction, I desire you to say whether you have any Letters from her to yourself.

Mr. Marshall. Yes, I have a Letter in my Hand which she sent me, upon occasion of some Songs I sent her when I came to Town, which she had before desired of me; and this is a Letter in Answer to mine; 'tis her Hand-writing, and directed to me.

Mr. Baron Hatsell. How do you know 'tis her Hand-writing?

Mr. Marshall. I have seen her write, and seen and receiv'd several Letters from her.

Mr. Cowper. Pray shew it Mr. Beale.

Mr. Beale. I believe it to be her Hand; I have seen her write, and have a Receipt of hers.

Clerk of Arr. 'Tis directed to Mr. Thomas Marshall, at Lyons-Inn, and dated Sept. 26, 1697.

S I R,

Sept. 26, 1697.

*Y*ours came very safe; but I wish you had explain'd your Meaning a little more about the Accident you speak of; for I have been puzzling my Brains ever since; and without I shall set my self to conjuring, I cannot imagine what it should be, for I know of nothing that happen'd after you went away, nor no Discourse about you, only when we were together, the Company would sometimes drink your Health, or wish you had been there, or the like; so that I fancy it must be something Mr. ——— has invented for Diversion; tho' I must confess we have a sort of People here, that are inspir'd with the Gift of Foreknowledge, who will tell one as much for nothing as any Astrologer will have a good Piece of Money for. But, to leave jesting, I cannot tell when I shall come to London, unless it be for a Night and away, about some Business with my Brother, that I must be obliged to attend his Motions; but when I do, I shall remember my Promise, altho' I do not suppose you are any more in earnest than my self in this Matter. I give you Thanks for your Songs and your good Wishes, and rest

Your loving Duck.

Mr. Cowper. Have you any more Letters?

Mr. Marshall. Yes, I have another Letter here; but, before 'tis read, I think 'twill be proper to give the Court an Account of the Occasion of its being writ. I waited on Mrs. Stout one Evening at her Lodgings in Houndsditch, and at our parting she appointed to meet me the next Day; and to excuse her not coming according to that Appointment, she sent me this Letter.

Clerk of Arr. 'Tis directed to Mr. Thomas Marshall; 'tis without Date.

Mr. Marshall,

I Met unexpected with one that came from H——d last Night, who detain'd me so long with relating the most notorious Inventions and Lyes that are now extant amongst those People, that I could not possibly come till 'twas late; and this Day was appointed for Business, that I am uncertain when it will be finish'd; so that I believe I cannot see you whilst I am in Town. I have no more at present, but that I am your obliged Friend.

Mr. Cowper. Now, my Lord, if your Lordship please, I proceed to shew you, that I went not so much voluntarily as press'd by her to come to this House, and for that I will produce one Letter from her to my self; and, my Lord, I must a little inform you of the Nature of this Letter. It is on

the Outside directed to Mrs. Jane Ellen, to be left for her at Mr. Hargrave's Coffee-house. For her to direct for me at a Coffee-house, might make the Servants wonder, and the Post-man might suspect, and for that Reason she directed it in that manner. There was Mr. Marshall by when I received it, and I can prove the Hand by Mr. Beale.

Mr. Marshall. My Lord, I verily believe I was by, and that Mr. Cowper shew'd me this Letter immediately on receipt of it, as he had done several others from the same Hand.

Cl. of Arr. This is directed for Mrs. Jane Ellen. 'Tis dated March the 5th, without any Year.

S I R,

March the 5th.

I Am glad you have not quite forgot that there is such a Person as I in being; but I am willing to shut my Eyes, and not see any Thing that looks like Unkindness in you, and rather content my self with what Excuses you are pleas'd to make, than be inquisitive into what I must not know. I should very readily comply with your Proposition of changing the Season, if it were in my Power to do it, but you know that lies altogether in your own Breast: I am sure the Winter has been too unpleasant for me to desire the Continuance of it; and I wish you were to endure the Sharpness of it but for one Hour, as I have done for many long Nights and Days, and then I believe it would move that rocky Heart of yours, that can be so thoughtless of me as you are: But if it were design'd for that End, to make the Summer the more delightful, I wish it may have the Effect so far, as to continue it to be so too, that the Weather may never overcast again; the which if I could be assur'd of, it would recompense me for all that I have ever suffer'd, and make me as easy a Creature as I was the first Moment I receiv'd Breath. When you come to H——d pray let your Steed guide you, and don't do as you did the last time; and be sure order your Affairs to be here as soon as you can, which cannot be sooner than you will be heartily welcome to

your very sincere Friend.

For Mrs. Jane Ellen, at Mr. Hargrave's near Temple-Bar, London.

Mr. Cowper. Tho' it is directed to Mrs. Jane Ellen, it begins in the Inside, Sir; and 'tis dated the 5th of March next before the 13th.

Mr. Baron Hatsell. What March was it?

Mr. Marshall. I kept no Account of the Time, but I am very positive, by the Contents, that Mr. Cowper shew'd me this Letter, and I read it, but by my now Remembrance, it should be longer since than March last.

Mr. Cowper. It was March last. That which will set Mr. Marshall's Memory to rights is this other Letter, which I received at the Rainbow, when he was by, and he read it; and it importuning me to a Matter of this kind, I did produce it to my Brother and him; they both knew of it, and both read it, and that will refresh his Memory concerning the Date of the other.

Mr. Marshall. My Lord, I was in the Coffee-house with Mr. Cowper when he receiv'd this Letter; and he afterwards shew'd it to Mr. William Cowper, at the Covent-garden Tavern, when I was by.

Cl. of the Arr. This is dated the 9th of March, and directed to Mrs. Jane Ellen, at Mr. Hargrave's.

S I R,

March 9.

I Writ to you by Sunday's Post, which I hope you have receiv'd; however, as a Confirmation, I will assure you I know of no Inconveniency that can attend your cohabiting

habiting with me, unless the Grand Jury should thereupon find a Bill against us; but I won't fly for't, for come Life, come Death, I am resolv'd never to desert you; therefore according to your Appointment I will expect you, and till then I shall only tell you, that I am,

For Mrs. Jane Ellen at
Mr. Hargrave's near
Temple-Bar, London.

Yours &c.

Mr. Cowper. If your Lordship please, I will further prove this Letter by my Brother.

Mr. W. Cowper. I can bear my Brother Witness, that when he has been advis'd to make these Letters Part of his Defence, he hath express'd great Unwillingness, and has said, nothing but the Life of these Gentlemen could incline him to it.

My Lord, all I can say to this Matter is this: I do remember, that when she was one time in London, I think it was about a Year and a half since, I am not positive as to the Time, but when she was in London, my Brother came in the Morning to my Chamber in the Temple, and after some Discourse, he told me he had receiv'd a Letter from Mrs. Stout that Day, wherein he said, she intended him a Visit at his Chamber that Afternoon; he told me at the same time, that his Friend Mr. Marshall had some Thoughts of her, and therefore for that, as well as other Reasons, he would decline receiving the Visit intended him; and upon Consideration, this was the Method agreed upon: At that Time I lived with my Father in Hatton-Garden; and this Gentlewoman having writ in the same Letter I now speak of, that she designed to dine there, and to come from thence in the Afternoon; says my Brother, you may casually, as it were, take occasion to say at Dinner, that my Business obliges me to go to Deptford in the Afternoon, as in good earnest it did, as he then told me, and from that she may take a Hint of my not being at home, and so save her self the Disappointment of coming to my Chamber. I told him I would find an Opportunity of doing it if I could. At Dinner my Father happen'd to ask me, as he often did, when I saw my Brother? I took this Hint, and said I had seen him at my Chamber in the Morning, and that he was gone to Deptford that Afternoon about some Law Business. My Lord, Mrs. Stout was then at the Table. I no sooner said it, but I observ'd she chang'd Colour presently, and rose with her Napkin, and went into the Back-yard, and we saw her through a Sash-window fall into a Woman's Fit of Swooning, and they gave her the Assistance that is usual in such Cases.

My Lord, the next Thing I can speak to is this: The Parliament sitting late the Friday before the Monday of the last Affizes at Hertford, I came late from Dinner, I had din'd about Seven a-Clock, as I remember, and having occasion to speak with my Brother, I found him out by Enquiry at the Covent-Garden Tavern, and there was Mr. Marshall of Lions-Inn with him. I had not drunk above a Glass or two of Wine, but my Brother began with me, and said, I seldom trouble you with Affairs of mine, but now I do not know well how to avoid it. I have receiv'd an importunate Letter, which I will shew you; it came from a Lady, whose Name I believe you will guess; so he pull'd it out of his Pocket and read it so often, because of the Oddness of the Expression, that I can say, I am sure this is the very Letter he shew'd me at the Covent-Garden Tavern the Friday before the last Affizes;

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faith he, the Occasion of my shewing it, is not to expose a Woman's Weakness, but I would not willingly lie under too many Obligations, nor engage too far; nor on the other hand, would I be at an unnecessary Expence for a Lodging. Upon this Subject there was some Discourse, I think, foreign to this Purpose, and therefore I would not trouble your Lordship with a Repetition of it; that which is material is this; I did undertake to write to Mr. Barefoot's to dispose of his Lodgings, where I us'd to be at the Time of the Affizes, and my Brother with me. I said I would write the next Day, being Saturday; but when I should have writ, it was very late, and I was weary, being then tied down to the Business of Parliament, and partly for that Reason, and partly in point of Discretion, which I had upon my second Thoughts, that 'twould be better for my Brother's Business to be at Mr. Barefoot's, which is near the Court, and in the Market-place, I did neglect writing; and tho' I thought of it about Eleven a-Clock, yet, as I said, partly for one Reason, and partly for the other, I did not write that Time. My Lord, my Brother could know nothing of this Matter; for I did not see him from the Friday he shew'd me the Letter, till he went to the Affizes; so that he could not know before he was at Hertford, that I had not writ. My Lord, I say as to this Letter, I am sure he shew'd me the Friday next before the last Affizes.

Mr. Baron Hatsell. Let me see that Letter. *(Which was shewn his Lordship.)*

Mr. Cowper. My Lord, one or two of the Jury seem to question whether the Letters are sufficiently prov'd; for their Satisfaction, I will further prove them. Call Mr. John Beale, William Oaker, and Mrs. Low. My Lord, Mr. Beale is one of their own Sect.

(The Witnesses prov'd her Hand.)

Jury. My Lord, we are satisfied.

Mr. Baron Hatsell. I believe you may ask her Mother, she will tell you whether it be her Daughter's Hand.

Mrs. Stout. How should I know! I know she was no such Person, her Hand may be counterfeited.

Mr. Baron Hatsell. But if it were written in a more sober Stile, what would you say then?

Mrs. Stout. I shan't say it to be her Hand, unless I saw her write it.

(Then the Letter was shewn to Mr. Stout.)

Mr. Stout. 'Tis like my Sister's Hand.

Mr. Bar. Hatsell. Do you believe it to be her Hand?

Mr. Stout. No, I don't believe it; because it don't suit her Character.

Mr. Bar. Hatsell. But do you think she might not conceal from you what were her inward Thoughts.

Mr. Stout. Not in such a Degree as this.

Mr. Cowper. Call Mrs. Barefoot and her Maid. I desire they may be ask'd what they know about my taking of Lodgings at their House.

Mr. Baron Hatsell. This is taken for granted.

Mrs. Barefoot. When you came to my House, you ask'd me, if I had receiv'd a Letter from your Brother, and I told you, No.

Mr. Cowper. What did I say to that?

Mrs. Barefoot. Then you ask'd me if I expected you? and I told you, Yes, by reason I had heard nothing from you.

Mr. Cowper. Where did I lodge that Night?

G g

Mrs.

Mrs. Barefoot. I had prepar'd the Lodging before you came, expecting you or Mr. Cowper your Brother.

Mr. Cowper. And I did come?

Mrs. Barefoot. Yes, as you us'd to do.

Mr. Cowper. Did I send for my Things from the Coffee-house?

Mrs. Barefoot. Yes, you did, and I carried them up in your Chamber as I us'd to do.

Mr. Baron Hatfell. Where did Mr. Cowper dine that Day?

Mrs. Barefoot. Mrs. Stout sent her Maid to desire him to come to Dinner at their House; whether he went thither or no I can't say, but he went out.

Mr. Cowper. What Time did I come into my Lodging that Night?

Mrs. Barefoot. It was a little after Eleven.

Mr. Cowper. You are sure I came in a little after Eleven.

Mrs. Barefoot. Yes.

Mr. Jones. By what Clock? By the Town-Clock?

Mrs. Barefoot. Yes.

Mr. Cowper. Did I go out any more that Night?

Mrs. Barefoot. No.

Mr. Cowper. Is your Maid there?

Mrs. Barefoot. Yes.

Mr. Baron Hatfell. What is your Name?

Mrs. Hanwell. Mary Hanwell.

Mr. Cowper. Pray, what Time was it I came to my Lodging?

Mrs. Hanwell. You came in a little after Eleven a-Clock.

Mr. Cowper. Are you very positive in that?

Mrs. Hanwell. Yes, I am very positive.

Mr. Cowper. What was done before I went to Bed?

Mrs. Hanwell. My Lord, I went up and made a Fire, and then I came down again, and then I went up and warm'd Mr. Cowper's Bed, and then he desir'd another Blanket, and I came down for it; and all this took up a considerable Time; and Mr. Cowper was in Bed before Twelve a-Clock.

Mr. Cowper. Did I go out again that Night?

Mrs. Hanwell. No, you went out no more.

Mr. Cowper. Now, if your Lordship pleases, I would explain that Part of *Sarah Walker* the Maid's Evidence, where she says her Mistress order'd her to warm the Bed, and I never contradicted it. Your Lordship observes the Words in the last of the two Letters, *No Inconvenience can attend your cobabiting with me; and afterwards, I won't Fly for it: For come Life come Death, I am resolv'd, and so on*—

I had rather leave it to be observed, than make the Observation myself, what might be the Dispute between us at the Time the Maid speaks of. I think it was not necessary she should be present at the Debate; and therefore I might not interrupt her Mistress in the Orders she gave; but as soon as the Maid was gone, I made use of these Objections; and I told Mrs. Stout, by what Accident I was obliged to take up my Lodging at Mr. Barefoot's, and that the Family was sitting up for me: That my staying at her House under these Circumstances, would in probability provoke the Censure of the Town and Country; and that therefore I could not stay, whatever my Inclination otherwise might be; but, my Lord, my Reasons not prevailing, I was forced to decide the Controversy by going to my Lodging, so that the Maid may swear true, when she says I did not contradict her Orders.

Mr. Baron Hatfell. I believe you have done now, Mr. Cowper.

Mr. Cowper. No, my Lord, I have more Evidence to give. Call *Elizabeth Spurr*.

If your Lordship pleases to observe, I have already proved by two Witnesses that I was actually at Mr. Barefoot's a little after Eleven; so that if I was to rest upon this Proof, here is not the least Article of Time, in which it can be supposed I was employ'd in this Matter: But, says *Sarah Walker*, the Maid, to obviate (I presume) this Evidence of mine, our House-Clock went faster than the Town-Clock. Now to answer this too, I shall further prove to your Lordship, that before I came to my Lodging, I was at the *Glove* and *Dolphin* Inn, where I had a little Account of about six or seven Shillings, as I remember, for Horse-keeping, and which I then paid.

Mr. Cowper. Do you remember my coming to your House, and at what Time?

E. Spurr. The Clock struck Eleven, just as you came into the Door.

Mr. Cowper. How long did I stay at the *Glove*?

E. Spurr. About a Quarter of an Hour.

Mr. Cowper. How far is it from the *Glove* and *Dolphin* to Mrs. Stout's House?

E. Spurr. About a Quarter of a Mile, or not quite so far.

Mr. Cowper. Call *Mary Kingitt*, and *George Man*, (who not then appearing) in the mean time, I would observe to your Lordship, that to go from Mrs. Stout's House to the Place where she was drown'd, and to return from thence to the *Glove* and *Dolphin*, will take up at least half an Hour, as I shall prove, and then the Matter will stand thus: Says *Sarah Walker*, you went about a Quarter after Eleven; but our Clock went half an Hour too fast: Then according to her Account, I went three Quarters after Ten by the Town-Clock; and if it requires (as I say, I shall prove it does) half an Hour to go to the Place where she was drown'd, and to return from thence to the *Glove* Inn, that would make it a Quarter past Eleven when I came to the Inn by the Town-Clock, which it was not; and if I staid there a Quarter of an Hour (which is proved I did not) it must be half an Hour after Eleven when I came to my Lodging by the same Clock, which it was not; so that I think this Matter as to the Time is very clear. My Lord, to prove the Time it requires to go from Mrs. Stout's to the Place where she drown'd her self, and to return to the *Glove*, I desire Sir *William Ashurst* may be called.

Sir *William Ashurst*. My Lord, I can't say I walk'd as fast as I could, but I went with a Gentleman I see here to satisfy my self about the Probability of this Matter; I walk'd as People usually do, and I found it took up half an Hour and a Minute, when I walk'd with that Gentleman.

Mr. Baron Hatfell. Who was with you, Sir?

Sir *William Ashurst*. Mr. *Thompson* was with me the Time I mention. I walk'd it before with Sir *Thomas Lane*.

Mr. *Thompson*. My Lord, indeed it will take a compleat half Hour.

Mr. Cowper. I desire Sir *Thomas Lane* may give you an Account of the Distance between one Place and the other.

Sir *Thomas Lane*. Sir *William Ashurst* and I did walk to the Place mentioned, and we were careful to take notice of the Time, and it took up about three Quarters of an Hour, according to my Observation; and we did not stay at all by the Way, except just to look upon the Hospital.

Mr.

Mr. Cowper. Now, my Lord, *Mary Kingitt* and *George Man*, the Servants at the *Glove*, are come : Pray, Mrs. *Kingitt*, do you remember my coming into the *Glove and Dolphin* ?

Mary Kingitt. Yes.

Mr. Cowper. How long did I stay there ?

Mary Kingitt. About a quarter of an Hour.

Mr. Cowper. What was my Business there ?

Mary Kingitt. You came and enquir'd what you ow'd.

Mr. Bar. *Hatfield*. What a-Clock was it then ?

Mary Kingitt. I thought it was about Eleven ; our t'other Maid told it Eleven.

Mr. Jones. How came you to take Notice of the Time ?

Mary Kingitt. She heard the Clock go Eleven, but I did not.

Mr. Cowper. Was there any Dispute about the Account ?

Mary Kingitt. You ask'd the Hostler how that came to stand in the Book, concerning the Horse; for you told him, You thought you had paid some Part of it, and he told you, You had not.

Mr. Cowper. My Lord, with your Lordship's Favour, I would ask *George Man* a Question to the same Point. Do you remember my coming into the *Glove and Dolphin* ?

G. Man. Yes.

Mr. Cowper. How long did I stay there ?

G. Man. You staid but a quarter of an Hour, as near as I can guess.

Mr. Cowper. I will now call a Witness to prove that this Maid *Sarah Walker* is not so cautious and careful how she swears, as I think she ought to be.

Call Mrs. Mince.

Mr. Bar. *Hatfield*. Pray wherein hath *Sarah Walker* said any Thing that is false ?

Mr. Cowper. In this; I ask'd her when she gave Evidence, Whether she went out to see for her Mistress all that Night, and whether her Mistress did not use to stay out a-Nights, and whether she herself had not used to say so ? If your Lordship pleases to remember she said No. Pray Mrs. *Mince*, what have you heard Mrs. *Stout*'s Maid say concerning her Mistress, particularly as to her staying out all Night ?

Mrs. *Mince*. She hath said, That her Mistress did not love to keep Company with *Quakers*; and that she paid for her own Board and her Maid's; and, that when she entertain'd any Body, 'twas at her own Charge. And she hath said, that Mrs. *Stout* used to ask, Who is with you, Child? and she would not tell her; and, that she did entertain her Friends in the Summer-house now and then with a Bottle of Wine; and when her Mother ask'd who was there, her Mistress would say, Bring it in here, I suppose there is none but Friends: And after the Company was gone, she us'd to make her Mother believe that she went to Bed, but she us'd to go out and take the Key with her, and sometimes she would go out at the Window; and she said particularly, One time she went out at the Garden Window, when the Garden Door was lock'd, and, that she bid her not sit up for her, for she would not come in at any Time.

Mr. Bar. *Hatfield*. Did ever *Sarah Walker* tell you that Mrs. *Stout* staid out all Night ?

Mrs. *Mince*. She hath said, She could not tell what Time she came in, for she went to Bed.

Mr. Cowper. Now, if your Lordship please, I will prove to you, if it may be thought material, that *Gurrey*, at whose House these Gentlemen lodg'd,

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should say, That if I had visited Mrs. *Stout* none of all this had been (upon so little an Omission it seems did this Prosecution depend). To which I give this Answer, my Lord; I never did once go to visit her in my Life, she knows it. Now, for a Man officiously to make a new Visit in the Time of the Affizes, one engag'd in Business as I was, and especially upon so melancholy an Occasion, I say, for me to go officiously to see a Woman I never had the least Knowledge of, would have been thought more strange (and justly might have been so) than the Omission of that Ceremony. For my Part, I cannot conceive what Mr. *Gurrey* could mean, this being the Case, by saying, That if I had visited Mrs. *Stout*, nothing of this had happen'd.

Mr. Bar. *Hatfield*. Mr. Cowper, he is not the Prosecutor, I think 'tis no matter what he said.

Mr. Cowper. I take it, my Lord, with humble Submission, 'tis material as he is a principal Witness against these Gentlemen; and the rather, for that he now pretends, that what he did was out of Conscience. My Lord, I have only one Thing more to say, I know not whether 'twill be requisite for me, or no, to give some Account of my self. Sir *William Ashurst*, if you please.

Sir *William Ashurst*. My Lord, if I had not had a good Opinion of this Gentleman, I had not come on purpose to hear this Cause, which has made so great a Noise all England over.

Mr. Bar. *Hatfield*. But what do you say as to Mr. Cowper's Reputation, for which you are call'd ?

Sir *William Ashurst*. I always thought Mr. Cowper to be a Gentleman of singular Humanity and Integrity; he is an Officer in London, and as to his Management of his Office, I think no Man ever perform'd it better, or has a better Reputation in the Place where he lives.

Sir *Thomas Lane*. My Lord, I came hither on purpose to own this Gentleman, and indeed he deserves to be own'd by his Friends, and those that know him; his Character is altogether untainted with us, he has gain'd a good Reputation in the Business wherein he is concern'd, he has behav'd himself in his Office which he holds of the City of London very honestly and well; I never knew him discover any ill Nature in his Temper; I think he can't be suspected of this or any other Act of Barbarity.

Mr. Cowper. My Lord, in the next place I would call Mr. *Cox*, who has the Honour to serve in Parliament for the Borough of *Southwark*, and has been my near Neighbour these eight or nine Years. If you please, Mr. *Cox*, give an Account what Reputation and Character I have in that Place.

Mr. *Cox*. My Lord, I live in *Southwark*, where Mr. Cowper lives: I have liv'd by him eight or nine Years; I know him to be a Person of Integrity and Worth, all the Neighbours court his Company. I take him to have as much Honour and Honesty as any Gentleman whatsoever; and, of all Men that I know, he would be the last Man that I should suspect of such a Fact as this is: I believe nothing in the World could move him to entertain the least Thought of so foul an Act.

Mr. Cowper. Mr. *Thompson*, I desire you would be pleas'd to give an Account of what you know of me.

Mr. *Thompson*. If you please, my Lord, the first Acquaintance I had with Mr. Cowper was in our Childhood, I had the Honour to go to *Westminster* School with him; I did not renew my Acquaintance with him till about five Years ago; since that Time I have been often with him, and have several

Times had Occasion to ask his Advice in Matters relating to his Profession; and I think no Man more faithful in the Service of his Client than he is, and I am sure he is very deserving of the Esteem of any Man, and I believe he never entertain'd a Thought of so foul and barbarous a Fact as this, of which he is accused.

Mr. Bar. *Hatfield*. Mr. *Marson*, you have heard the Evidence, what do you say to it?

Mr. *Marson*. My Lord, our Business at *Hertford* was this: Mr. *Ellis Stevens* and I went down, he is Clerk of the Papers of the *King's-Bench*, and Mr. *Rogers* is Steward of the *King's-Bench*, and it was their Duty to wait upon my Lord Chief-Justice, with the Marshal of the *King's-Bench*, out of Town; and on Monday Morning we went to my Lord Chief-Justice's House in *Lincoln's-Inn-Fields*, as we us'd to do, and there set out; but I, being an Attorney of the Borough Court, could not with any Convenience go farther with them than to a Place which I think is call'd *Kingsland*, and therefore I return'd to my Business in *Southwark*, where I attended the Court, as was customary and necessary for me to do, and set forth from thence at past Four in the Afternoon: By the way, as I remember, about *Waltham-Crofts*, I met one Mr. *Hanks*, a Clergyman of my Acquaintance, who had been likewise to attend my Lord Chief-Justice to *Hertford*, and was returning from thence; with some Persuasion I prevail'd with him to go back again with me to *Hertford*, telling him, I did not know the Way; and we gallop'd every Step of it, because Night was coming on, it was about Eight a-Clock when we came in. Mr. *Hanks* and I found the Marshal, Mr. *Stevens*, Mr. *Rogers*, Mr. *Rutkin*, and others of the Marshal's Acquaintance, at the Coffee-house; and truly when I came in, I might, for ought I know, be in a Sweat with riding so hard as we did, but even then I was not in such a Sweat as the Witness would have it. My Lord, we went from thence to the *Glove and Dolphin*, and stay'd there till about Eleven a-Clock. Mr. *Rogers* and I had a Dispute who should lie with Mr. *Stevens* at the now Witness Mr. *Gurrey's*; at last 'twas agreed between us to go to *Gurrey's* to see what Convenience he could make for us, and to drink a Glass of Wine at our Lodging; but afterwards it came in Mr. *Rutkin's* Head that he was to lie with the Marshal, and for that reason, he said, he would go back again; and accordingly he went, and Mr. *Hanks* with him, after they had seen us into our Lodgings, and Mr. *Stevens*, Mr. *Rogers* and I drank three Bottles of Wine together, Mr. *Gurrey*, our Landlord, was sent to fetch it; and afterwards in jocular Conversation, I believe Mr. *Stevens* might ask Mr. *Gurrey* if he knew one Mrs. *Sarah Stout*? and the Reason why he ask'd that Question our Witnesses will explain. I believe he might likewise ask what sort of Woman she was? and possibly I might say the Words, *My Friend may be in with her*, tho' I remember not I did say any thing like it, but I say there is a Possibility I might, because I had heard she had deny'd Mr. *Marshall's* Suit, and that might induce me to say, *My Friend may be in with her*, for all that I remember. I confess Mr. *Rogers* ask'd me what Money I had got that Day, meaning at the Borough-Court? I answer'd, Fifty Shillings; faith he, We have been here a spending our Money, I think you ought to treat us, or to that purpose. As to the Bundle mention'd, I had no such, except a Pair of Sleeves and a Neckcloth. As to the Evidence which goes to Words spoken, the Witnesses

have fruitful Inventions; and as they have wrested and improv'd the Instances I have been particular in, so have they the rest, or otherwise forg'd them out of their own Heads.

Mr. Bar. *Hatfield*. Mr. *Rogers*, what do you say to it?

Mr. *Rogers*. We came down with the Marshal of the *King's-Bench*, it rain'd every Step of the Way, so that my Spatterdash and Shoes were fain to be dry'd; and it raining so hard, we did not think Mr. *Marson* would have come that Day, and therefore we provided but one Bed, tho' otherwise we should have provided two, and were to give a Crown for our Night's Lodging. We went from the Coffee-house to the Tavern, as Mr. *Marson* has said, and from the Tavern the next Way to our Lodging, where there was some merry and open Discourse of this Gentlewoman, but I never saw her in my Life, nor heard of her Name before she was mention'd there.

Mr. *Stevens*. We never stirr'd from one another, but went along with the Marshal of the *King's-Bench*, to accompany my Lord Chief-Justice out of Town, as is usual.

Mr. Bar. *Hatfield*. I thought it had been as usual for him to go but half the Way with my Lord Chief-Justice.

Mr. *Rogers*. They generally return back after they have gone half the Way, but some of the Head-Officers go throughout.

Mr. *Stevens*. 'Twas the first Circuit after the Marshal came into his Office, and that's the Reason the Marshal went the whole Way.

Mr. Bar. *Hatfield*. Did not you talk of her Court-ing-days being over?

Prisoners. Not one Word of it; we absolutely deny it.

Mr. *Stevens*. I never saw her.

Mr. *Jones*. Mr. *Marson*, did you ride in Boots?

Mr. *Marson*. Yes.

Mr. *Jones*. How came your Shoes to be wet?

Mr. *Marson*. I had none.

Call Mr. *Heath*, Mr. *Hunt*, and Mr. *Foster*.

Mr. *Marson*. Mr. *Hunt*, will you please to acquaint my Lord and the Jury with what Discourse we had on Sunday Night before the Assizes, at the *Old Devil Tavern* at *Temple-Bar*.

Mr. *Hunt*. On Sunday Night I happen'd to be in Company with Mr. *Marson*, and three or four more of *Clifford's-Inn*, and there was a Discourse of the Marshal's attending my Lord Chief-Justice out of Town to *Hertford*, and Mr. *Marson* said, *It may be the Marshal may require my waiting upon him too*; and the whole Company being known to Mr. *Marshall*, and there being a Discourse of Mr. *Marshall's* court-ing of Mrs. *Stout*, faith one of the Company, *If you do go to Hertford, pray enquire after Mr. Marshall's Mistress, and bring us an Account of her*.

Mr. *Jones*. Who was in Company?

Mr. *Hunt*. There was Mr. *Heath*, Mr. *Foster*, Mr. *Marson*, Mr. *Stevens*, Mr. *Bevor*, and Mr. *Marshall*.

Mr. *Marson*. Now 'twas this Discourse that gave us an Occasion to talk of this Woman at *Gurrey's* House, which we did openly and harmlessly. Mr. *Forster*, do you remember any Thing of our talking of this Gentlewoman on Sunday Night?

Mr. *Foster*. Yes; I and they were talking, that they should go to *Hertford* the next Day, to wait on the Marshal, in Compliment to my Lord Chief-Justice, and go as far as *Hertford*; and there being a Report, that Mr. *Marshall* courted this Woman,

man, we put it in a jesting Way, *Pray enquire after Mr. Marshall's Mistress, how the Match goes on; for there was some Wagers between him and the Company, who should be married first:* And so, in a jocular way it went about, and Mr. Marson or Mr. Stevens said, *They would do their Endeavour, and they would enquire after the Lady, and give as good an Account of her as they could.*

Mr. Stevens. If you please, my Lord, we will call another to this Purpose.

Mr. Bar. Hatfell. No, I think you need not, for it seems not material.

Then Mr. Hanks was call'd.

Mr. Hanks. I came as far as *Waltham's-Cross* to wait upon my Lord Chief-Justice; I stay'd there 'till about Four or Five a Clock, and then set out for *London*; and I met with Mr. Marson, who importun'd me to go back with him to *Hertford*, and accordingly I did so, and we came in about Seven or Eight at Night, and we enquir'd after the Marshal of the *King's-Bench*, and where he had set up his Horses, and we found him in the Coffee-house just by the Court, and we went and set up our Horses, and came again to him; from thence we went to the *Glove and Dolphin Tavern*; these three Gentlemen and the Marshal, and one Mr. Rutkin came afterwards to us, and we stay'd till about Eleven at the *Glove and Dolphin*.

Mr. Marson. Do you remember how we rid?

Mr. Hanks. Yes, very hard.

Mr. Bar. Hatfell. What Time did you come in to the Tavern?

Mr. Hanks. Between Seven and Eight, as I remember.

Mr. Bar. Hatfell. And did you stay there till past Eleven?

Mr. Hanks. 'Till about Eleven, little more or less; we went away together in order to drink a Glass of Wine with them at their Lodging; but Mr. Rutkin considering that he was to drink a Glass of Wine, and lie with the Marshal, thought it would disturb the Marshal; So, saith he, *I will not go in*; but we saw them go into their Lodgings, and return'd to the *Bull*, where we eat Part of a Fowl, and I was never out of Mr. Marson's Company all that Time.

Mr. Marson. When you took your leave of me, don't you remember that the Door was clap'd to?

Mr. Hanks. I can't remember that.

Mr. Marson. Mr. Gurrey saith, I never went out after I came home. Mr. Rutkin, pray give an Account to my Lord, and the Gentlemen of the Jury, of what you know of my coming to *Hertford*.

Mr. Rutkin. My Lord, I came to wait on the Marshal of the *King's-Bench* to *Hertford*, and when we were come to *Hertford* we put up our Horses at the *Bull*, and made our selves a little clean; we went to Church, and dined at the *Bull*, and then we walk'd in and about the Court, and diverted our selves till about Seven a-Clock; and between Seven and Eight a-Clock came Mr. Marson and Dr. Hanks to Town, and then we agreed to go to the *Dolphin and Glove* to drink a Glass of Wine: The Marshal went to see an ancient Gentleman, and we went to the *Dolphin and Glove*, and stay'd there till past Ten a-Clock, and after the Reckoning was paid we went with them to their Lodging, with a Design to take a Glass of Wine; but then I consider'd I was to lie with the Marshal, and for that Reason I resolv'd not to go in, but

came away, and went to the *Bull-Inn*, and drank Part of a Pint of Wine, and afterwards went to the next Door to the *Bull-Inn*, where I lay with the Marshal.

Mr. Jones. What Time did the Gentlemen go to their Lodging?

Mr. Rutkin. I am not positive as to that, but I believe 'twas about Eleven a-Clock.

Mr. Marson. If your Lordship pleases, now I'll call some Persons to give an Account of me.

Mr. Cox.

Mr. Cox. I have known Mr. Marson a long time, and had alway a good Opinion of him; I don't believe 5000*l.* would tempt him to do such a Fact.

Mr. Marson. Captain Wife, I desire you would please to speak what you know of me.

Mr. Cowper. My Lord, because these Gentlemen are Strangers in the Country, I think, if in taking an Account of any Evidence for my self there is any Thing occurs to me that they may have a just Advantage of, I think I ought not to conceal it, for I am as much concern'd to justify their Innocence as my own. The principal Witness against them is one *Gurrey*; and I will prove to you, that since he appear'd in this Court, and gave his Evidence, he went out in a triumphant Manner, and boasted, That he, by his Management, had done more against these Gentlemen than all the Prosecutor's Witnesses could do besides. To add to that, I have another Piece of Evidence that I have been just acquainted with: My Lord, 'tis the Widow *Davis*, *Gurrey's* Wife's Sister, that I would call.

Major Lane. My Lord, I have known Mr. Marson ever since he was two Years old; and never saw him but a civiliz'd Man in my Life; he was well bred up among us, and I never saw him given to Debauchery in all my Life.

Mr. Bar. Hatfell. Where do you live?

Major Lane. In *Southwark*, my Lord.

Mr. Bar. Hatfell. Well, what do you say, Mrs. *Davis*?

Mrs. *Davis*. I came to the House where these Gentlemen lodg'd; I was in about half an Hour, and my Sister ask'd me to air two or three Pair of Sheets: When I had air'd the Sheets, she ask'd me to go up and help to lay them on; and, before I had laid them on, these Gentlemen came into the Room.

Mr. Bar. Hatfell. What Hour?

Mrs. *Davis*. By the Time of my going out again, I believe it might be about Ten, or something better, and they drank three Quarts of Wine, and they had some Bread and Butter and Cheese carried up, and so they went to Bed; and after my Brother went to fetch Mr. *Gape*, that lay at his House, from *Hockley's*.

Mr. Cowper. I only beg leave to observe, that *Gurrey* deny'd that he went for him.

Mr. Bar. Hatfell. Ay; but this signifies very little, whether it be true or false.

Mrs. *Davis*. The next Day after, these Gentlemen were about the Town; and she said, She did believe they were come to clear a young Man (a Minister's Son) that was try'd at the Bar for robbing the Mail: I ask'd why she thought so? she said, She was sure of it: And I ask'd her, how she could be sure of it, when she was never told so? Why, said I, do they accuse these Gentlemen? They ought rather to take up the Gentleman that was with Mrs. *Stout's* Maid; and she said, If they took up Mrs. *Stout's* Maid, they should have never a Witness.

Mr.

Mr. Bar. *Hatfell*. Who was That that was talking with Mrs. *Stout*'s Maid?

Mrs. *Davis*. I don't know, but she said she did not like their Actions; and therefore she ought to have been examined who she was with.

Capt. *Wife*. I have known Mr. *Marson* several Years, and he is a Person of as fair Reputation as any in the *Borough*.

Mr. *Reading*. I have been acquainted with Mr. *Marson* Twenty Years, he lives near the House where I now do: He has a general good Character among his Neighbours, for a fair Man in his Practice, an honest Man, and a Man of good Conversation.

Mr. Bar. *Hatfell*. Well, Mr. *Stevens*, What do you say?

Mr. *Stevens*. I desire Sir *Robert Austin* to give an Account of me.

Sir *Robert Austin*. I have known Mr. *Stevens* many Years; his Brother is Captain in a neighbouring Country; he is reckon'd not only an honest Man in his Practice, but has the general Character of a good-natur'd Man; and he is so far from being a Person likely to do such an Action, that, for a younger Brother, he was very well provided for; his Father left him a Thousand Pounds, and he is Clerk of the Papers, which is reputed worth a Hundred Pounds a Year, and is in good Practice besides.

Juryman. I have known him several Years, and he has the same Reputation Sir *Robert* has given him.

Sir *John Shaw*. I know Mr. *Stevens*, and his Brother Captain *Stevens*: As to this Gentleman, he hath always behav'd himself well in our Country, and hath the Character of an honest Gentleman.

Mr. *Evans*. I have known him for these eight Years, and to be a very civil Person, and well educated, and never heard but a good Character of him: I have also known Mr. *Marson* these ten Years, and never saw any Ill by him, and do believe, that he or the other would not have done such an ill thing to have gain'd this Country.

Mr. *Menlove*. My Lord, Mr. *Stevens* was my Clerk, and he behav'd himself very honestly with me. And since that, I have kept a Correspondence with him, and I believe he would not do such a Thing for all the World.

Mr. Bar. *Hatfell*. Call some Body to speak for Mr. *Rogers*, if there be any.

Mr. *Evans*. My Lord, Mr. *Rogers* hath a general Character in *Southwark*, for a very honest Man.

Mr. *Rogers*. Pray call Mr. *Lygoe*. Sir, please to give my Lord and the Court an Account what you know of me.

Mr. *Lygoe*. My Lord, I have known all the three Gentlemen at the Bar, but particularly Mr. *Rogers* and Mr. *Stevens*, from their Infancy. I have employ'd them both in Business several times, and always found them fair Practisers; and believe neither of them would be guilty of doing an ill Act.

Mr. *Rogers*. Call Mr. *Thurlby*. Sir, Pray give the Court an Account how I behaved my self in your Service.

Mr. Bar. *Hatfell*. Come, Mr. *Thurlby*, What do you say of Mr. *Rogers*?

Mr. *Thurlby*. My Lord, Mr. *Rogers* lived with me about eight Years, in which Time I frequently trusted him with very great Sums of Money, I

ever found him just and faithful, and can't believe, that any Money could tempt him to do an Act of this Kind.

Mr. *Jones*. My Lord, we insist upon it, That Mr. *Cowper* hath given a different Evidence now from what he did before the Coroner; for there he said he never knew any Distraction, or Love-fit, or other Occasion she had to put her upon this extravagant Action. Now, here he comes, and would have the whole Scheme turn'd upon a Love-fit. Call *John Mason*. (*Who was sworn.*)

Mr. Bar. *Hatfell*. What do you say, Sir, to this Matter?

Mr. *Stout*. When Mr. *Cowper* was examin'd before the Coroner, he was ask'd, if he knew any Reason why she should do such a Thing? and he said, She was a very modest Woman, and he knew no Cause why she should do such a Thing as this. *John Mason*, Was you by when Mr. *Cowper* gave Evidence before the Coroner?

Mason. Yes.

Mr. *Jones*. What did he say?

Mason. He said he did not know any Thing was the Cause of it, but she was a very modest Person.

Mr. *Jones*. Was he upon his Oath?

Mason. Yes, he was.

Mr. Bar. *Hatfell*. When did he say this?

Mason. It was the same Day she was found.

Mr. *Jones*. Did they ask him any Question, if he knew any Person that she was in Love with?

Mason. He said he knew but of one, and his Name was *Marshall*, and Mr. *Marshall* told him, That he was always repulsed by her.

Mr. *Stout*. I desire *John Archer* may be asked the same Question. (*Who was sworn.*)

Mr. *Jones*. Was you present with the Coroner's Inquest?

J. Archer. Yes.

Mr. *Jones*. Was Mr. *Cowper* examin'd by them?

J. Archer. Yes, he was?

Mr. *Jones*. What did he say concerning Mrs. *Stout* then?

J. Archer. They ask'd him, If he knew any Occasion for Mrs. *Stout*'s Death? and he said, He knew nothing of it, or of any Letters?

Mr. *Cowper*. Then I must call over the whole Coroner's Inquest to prove the contrary.

Mr. Bar. *Hatfell*. Did they ask him concerning any Letters?

J. Archer. They ask'd him if he knew of any Thing that might be the Occasion of her Death.

Mr. Bar. *Hatfell*. I ask you again, if they ask'd him if he knew of any Letters?

J. Archer. My Lord, I don't remember that.

Mr. *Stout*. I would have called some of the Coroner's Inquest, but I was stopp'd in it.

Juryman. We have taken Minutes of what has pass'd: If your Lordship please, we will withdraw.

Mr. Bar. *Hatfell*. They must make an End first.

Mr. *Jones*. If your Lordship please, we will call one Witness to falsify one Piece of their Evidence, and that is one Widow *Larkin*. (*Who was sworn.*)

Mr. *Jones*. Do you remember one Mr. *Rutkin* being at your House?

Larkin. Yes.

Mr. *Jones*. At what Time did he come in?

Larkin. Between Nine and Ten of the Clock.

Mr. *Jones*. Was the Marshal then in the House?

Lar-

Larkin. No; the Marshal did not come till near an Hour after.

Mr. Jones. Did not he go out afterwards?

Larkin. Not that I know of.

Mr. Rutkins. I am satisfied it was past Eleven when I came in.

Mr. Baron Hatfell. It is likely it may be true; for, I believe they did not keep very good Hours at that Time.

Mr. Stout. I desire to call some Witnesses to my Sister's Reputation.

Mr. Jones. My Lord, they would call Witnesses to this Gentlewoman's Reputation; I believe the whole Town would attest for That, that she was a Woman of a good Reputation. Indeed they have produced some Letters without a Name, but if they insist upon any thing against her Reputation, we must call our Witnesses.

Mr. Baron Hatfell. I believe no Body disputes That; she might be a virtuous Woman, and her Brains might be turn'd by her Passion, or some Distemper.

Gentlemen of the Jury, you have heard a very long Evidence. I am sure that you can't expect that I should sum it up fully; but I will take Notice of some Things to you, that I think are most material; and if I omit any Thing that is material, I would desire *Mr. Jones* (that is Counsel for the King) and *Mr. Cowper* to put me in mind of it.

The Indictment against the Prisoners at the Bar is for a very great Crime, it is for Murder, which is one of the most horrid of all Crimes: You are to consider first what Evidence you have heard to prove it; and tho' there be no direct Proof, you are to consider what is circumstantial.

They do begin with *Sarah Walker*, who was *Mrs. Sarah Stout's* Maid, and she tells you, that *Mr. Cowper*, when he came to this Town on Monday the 13th of March last, came to *Mrs. Stout's* House and dined there, and went away about Four of the Clock in the Afternoon; but she tells you, that the Friday before, there came a Letter from *Mr. Cowper's* Wife to *Mrs. Stout*, to let her know that *Mr. Cowper* would come and lodge at their House at *Hertford* at the Affizes; so that when he came, she thought that he had intended to have done according to that Letter. She saith, that after Dinner *Mr. Cowper* went away, and came again at Nine at Night, and there he supped; he was desir'd so to do, (and indeed had been invited to Dinner also that Day) and she doth say, that after Supper there was a Fire made in his Chamber (for this young Gentlewoman, *Mrs. Stout*, press'd him to lie at their House) and she order'd the Maid to warm his Bed, and I believe, says she, *Mr. Cowper* heard her say so, for he was nearer to her than I at that time, and he doth not deny but that he heard it. She says, that accordingly she went up to warm the Bed, and having stay'd there a while, she heard the Door clap; and when she came down into the Parlour, where she had left them, they were both gone, and that she could not tell what the Meaning of it was; and they waited for her all Night, old *Mrs. Stout* and this Maid, and she did not come in all Night, nor was afterwards seen alive; but *Mr. Cowper* was the last Person seen in her Company.

The other Witnesses that came afterwards, speak concerning the finding of the Body in the River, and tell you in what Posture it was. I

shall not undertake to give you the Particulars of their Evidence, but they tell you she lay on her right Side, the one Arm up even with the Surface of the Water, and her Body under the Water; but some of her Cloaths were above the Water; particularly one says, the Ruffles of her left Arm were above the Water. You have heard also what the Doctors and Surgeons said on the one side and the other, concerning the Swimming and Sinking of dead Bodies in the Water; but I can find no Certainty in it; and I leave it to your Consideration.

Another Circumstance they build on, and which seems to be material is, of her Belly being lank, and, that there was no Swelling; whereas, say they, when a Person is drown'd, there is a great deal of Water goes in, and makes the Belly to swell; but here was no Swelling that Morning she was taken out, and no Water came out of her Mouth and Nostrils, only a little Froth there was, and her Belly was lank. But, say they, on the other Side, that may very well be; for, perhaps she might be choak'd immediately, as soon as she was in the Water; and, say they, you may not wonder at That; for if she went to drown her self, she would endeavour to be choak'd as soon as she could; for those Persons that are drown'd against their own Consent do swallow a great deal of Water, but those that drown themselves don't swallow much Water, for they are choak'd immediately by the Water going into the Windpipe; that we commonly call going the wrong Way. The Doctors and Surgeons have talk'd a great deal to this Purpose, and of the Water's going into the Lungs or the Thorax; but unless you have more Skill in Anatomy than I, you won't be much edified by it. I acknowledge I never studied Anatomy; but I perceive that the Doctors do differ in their Notions about these things. But, as to Matter of Fact, 'tis agreed to by all the Witnesses for the King, that her Body was lank, her Belly was thin, and there was no Sign of any Water to be in it: They on the other Side tell you, that her Stays was on, and she was strait-laced, and that might occasion her Belly's being so small, and hinder the Water from going in.

Gentlemen, I was very much puzzled in my Thoughts, and was at a Loss to find out what Inducement there could be to draw in *Mr. Cowper*, or these three other Gentlemen, to commit such a horrid, barbarous Murder. And, on the other hand, I could not imagine what there should be to induce this Gentlewoman, a Person of a plentiful Fortune, and a very sober good Reputation, to destroy her self.

Now, Gentlemen, I must confess, the Evidence that the Defendants have given by these Letters, if you believe them to be this Gentlewoman's Hand-writing, do seem to fortify all that *Mr. Cowper's* Witnesses have said, concerning her being melancholy: It might be a Love-distraction, and she might have been a virtuous Woman for all that; for it might be a Distemper which came upon her, and turn'd her Brains, and compos'd her Mind, and then no Wonder at her writing thus, in a Manner different from the rest of the Actions of her Life. Gentlemen, you are to consider and weigh the Evidence, and I will not trouble you any more about that Matter.

As to these three other Gentlemen that came to this Town at the Time of the last Affizes, what

what there is against them you have heard : They talk'd at their Lodging at a strange rate, concerning this Mrs. *Sarah Stout*, saying, her Business is done, and, that there was an End of her Court-ing-Days, and that a Friend of theirs was even with her by this Time. What you can make of it, That I must leave to you ; but they were very strange Expressions ; and you are to judge, whether they were spoken in jest, as they pretend, or in earnest. There was a Cord found in the Room, and a Bundle seen there, but I know not what to make of it. As to Mrs. *Stout*, there was no Sign of any Circle about her Neck, which, as they say, must have been, if she had been strangled : Some Spots there were ; but it is said, possibly those might be occasion'd by rubbing against some Piles or Stakes in the River. Truly, Gentlemen, these three Men, by their Talking, have given great Cause of Suspicion ; but whether They, or Mr. *Cowper*, are guilty or no, that You are to determine. I am sensible I have omitted many Things ; but I am a little faint, and cannot repeat any more of the Evidence.

Jury. We have taken Minutes, my Lord.
Mr. Baron *Hatsell*. Well then, Gentlemen, go together, and consider your Evidence ; and I pray God direct you in giving your Verdict.

[Then One was sworn to keep the Jury, and in about half an Hour, the Jury return'd.]

Cl. of Arr. Gentlemen, are you all agreed in your Verdict ?

Omnes. Yes.

Cl. of Arr. Who shall say for you ?

Omnes. Foreman.

Cl. of Arr. *Spencer Cowper*, hold up thy Hand. (Which he did.) Look upon the Prisoner. How say you ? Is he guilty of the Felony and Murder whereof he stands indicted, or not guilty ?

Foreman. Not guilty.

[In like Manner the Jury did give their Verdict, that John Marson, Ellis Stevens, and William Rogers were Not guilty.] *

* See the Case of *Spencer Cowper*, Esq; *John Marson*, *Ellis Stevens*, and *William Rogers*, Gentlem. in the *State Trials*, Vol. VIII. p. 466, 467, 468, and Mrs. *Stout's* Case, 469, 470, 471, and several Observations relating to this Trial.

CLXVII. *The TRIAL of MARY BUTLER alias STRICKLAND, at the Old Bailey, for Forging a Bond of 40000*l.* in the Name of Robert Clayton, Octob. 12, 1699. II Will. III.*

Cl. of Arr. BRING Mary Butler to the Bar.



[Accordingly she was brought.]

Mary Butler alias Strickland, you stand indicted by the Name of Mary Butler alias Strickland, late of London, Widow ; for that you endeavouring, and maliciously intending, to deceive and oppress Sir Robert Clayton, Knight and Alderman of London, the First Day of December, in the Seventh Year of his now Majesty's Reign, at London aforesaid, in the Parish of St. Mary Woolnoth, in the Ward of Langborne, a certain false Writing, sealed in Form of a Bond, bearing Date the Fourteenth Day of April, 1687, in the Name of the said Sir Robert Clayton, for the Payment of the Penal Sum of Forty Thousand Pounds, to be made by the said Sir Robert Clayton to you Mary Butler alias Strickland, with Condition there under-written ; concerning, among other Things, the Payment of Twenty Thousand Pounds, to be made to you Mary Butler alias Strickland, after the Death of the said Sir Robert Clayton, by his Heirs, Executors, and Administrators ; falsely, knowingly, unlawfully, and subtilly did make, counterfeit and write, and cause to be made, counterfeited, and written : And further, that you Mary Butler alias Strickland, afterwards, viz. the First Day of December, in the Seventh Year aforesaid, at London aforesaid, in the Parish and Ward aforesaid, a certain false and forged Writing, sealed in Form of a Bond, in the Name of the said Sir Robert Clayton, for the Payment of

the penal Sum of Forty Thousand Pounds by the said Sir Robert Clayton, to you Mary Butler alias Strickland, with Condition under-written, concerning, among other Things, the Payment of Twenty Thousand Pounds, to be made to you Mary Butler alias Strickland, after the Death of the said Sir Robert Clayton, by his Heirs, Executors, or Administrators, as a true Bond of the said Sir Robert Clayton, as if really made by him ; falsely, subtilly, and deceitfully, did publish, you Mary Butler alias Strickland well knowing the said Writing to be false, forged, and counterfeited, and not the Deed of the said Sir Robert Clayton, to the great Damage of the said Sir Robert Clayton, to the evil Example of all others in the like Case, offending against the Peace of our Sovereign Lord the King, his Crown and Dignity.

Cl. of Arr. How say'st thou, Mary Butler alias Strickland, art thou guilty of this Forgery whereof thou standest indicted, or not guilty ?

Prisoner. Not guilty.

Cl. of Arr. Prisoner, look to your Challenges. Cryer, swear the Jury, which follow :

JURY sworn.

William Clark,	}	George Ludlam,
William Christopher,		Richard Kemble,
Thomas Wharton,		John Clarke,
George Kimble,		Stephen Broughton,
James Church,		Joseph Sheppard,
John Whistler,		Thomas Wickham.

Clerk

Clerk of Arr. You of the Jury that are sworn, look upon the Prisoner, and hearken to her Cause. She stands indicted, &c.

Mr. Montagu. May it please your Lordship, and you Gentlemen of the Jury, this Indictment does charge the Prisoner at the Bar, *Mary Butler*, *alias Strickland*, with a Fraud and intended Cheat. It sets forth, that the Prisoner at the Bar intending to cheat *Sir Robert Clayton*, did counterfeit a certain Writing, purporting to be the Bond of *Sir Robert Clayton*, for payment of Twenty Thousand Pounds, and that it was to be paid to the said *Mary Butler*, *alias Strickland*, after the Death of the said *Sir Robert Clayton*. Likewise, that she did publish this Writing as *Sir Robert Clayton's* Deed. To this Indictment she has pleaded not guilty. If we prove the Fact, I do not question but you will find her guilty, that she may have her due Punishment.

Mr. Serj. Wright. My Lord, I am Counsel for the King in this Cause. You hear what sort of Crime it is that is charged on the Prisoner. It is for Forging a Bond of no less Penalty than Forty Thousand Pounds, for the Payment of Twenty Thousand Pounds. This is made in the Name of *Sir Robert Clayton*, and the Twenty Thousand Pounds were to be paid a little after his own Death, by his Executors or Administrators: And that in the mean time Twelve Hundred Pounds a Year were to be paid for the Interest of this Sum. But, my Lord, the Prisoner did not rest here, (a second Contrivance will be opened to you.) That which she is now charged with, is the Forging of a Bond of the Penalty of Forty Thousand Pounds.

My Lord, the Prisoner for some Years had a great Intimacy with a great Peer, the late Duke of *Buckingham*. And she either had, or pretended to have, a Bond from him for Five Thousand Pounds, payable to herself after his Death, and an Annual Interest in the mean time, till the Principal was paid. *Sir Robert Clayton* being a Trustee of the Duke's Estate for the Payment of his Debts, the Prisoner came frequently to *Sir Robert Clayton*, to solicit his Favour and Interest for the Payment of this Debt. On this Account she insinuated herself into his Company and into his Family. Sometimes she pretended to be a great Penitent, and that she was sorry for the Conversation she had with the Duke; that her own Relations were Papists, and if she should go to them, they would send her into a Nunnery. All which was but counterfeit, and in order to win upon *Sir Robert Clayton*; and he finding she was an ill Woman, notwithstanding all her Pretences, he at last, about twelve Years ago, forbid her his House, and since that she never was there.

About the Year 1695, *Sir Robert Clayton* had some private Intimation given him, that the Prisoner had a great Demand on him, no less than Twenty Thousand Pounds. Upon this *Sir Robert Clayton* took the best Course he could to find it out, and exhibited a Bill in *Chancery* against her, and some of her Accomplices, to discover whether they had any Pretences upon him or his Estate. To this Bill the Prisoner put in an Answer, that she had no Claim or Demand against him upon any Account whatsoever. While this was in Agitation, the Prisoner came to *Mr. Woodward*, an Attorney of this City, and brought him a Writing, purporting a Bond, with the Name *Robert Clayton* subscribed to it, sealed and attested by

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four Witnesses, as the Bond of *Sir Robert Clayton*, and told *Mr. Woodward*, "That Bond was given to her by *Sir Robert Clayton*, upon some good Considerations; but it having taken Air, some Uneasiness had risen about it in *Sir Robert Clayton's* Family; and (as she pretended) upon this Account he had exhibited a Bill in Equity against her, therefore this Bond must be delivered up; and *Sir Robert* had promised to give her a new Bond for Twenty Thousand Pounds, and that all the Money in Arrears for Interest, was to be turned to Principal, and put into the new Bond: But this was to be done very privately, so as not to be known by any of *Sir Robert Clayton's* Family, and therefore none of his Servants were to be privy to it." Thereupon she gives to *Mr. Woodward* the Bond, desiring him to make a new Bond by it, and to turn all the Interest that was due into Principal. Upon this *Mr. Woodward* made her a Bond of the Penalty of Fifty-four Thousand Pounds, conditioned for Payment of Twenty-seven Thousand Pounds after *Sir Robert Clayton's* Death, and Interest in the mean time. This Bond she took away with her, and likewise the first Bond; but what she did with them since, we are not privy to. And a great Charge she laid upon *Mr. Woodward*, to carry it with all possible Privacy, that no Notice might be taken by *Sir Robert's* Family.

Some few Months ago there was another Intimation sent to *Sir Robert Clayton*, that this Gentlewoman pretended to have a great Claim upon him of a great Sum of Money that was to be paid her, either at present, or after his Death; and that *Mr. Woodward* made the Bond, and he could give an Account of it. Upon this *Sir Robert Clayton* sent to *Mr. Woodward*, who, like a very honest Man, told the whole Business, in what manner it was the Prisoner came to him, and how he came to make the Bond; and that he was desired to be silent in it, *Sir Robert Clayton* having desired this Bond should be made out of his own House, that none of his Family might take notice of it. *Sir Robert Clayton* having this notice, and finding from *Mr. Woodward*, the Prisoner had taken this Course to carry on this Design to charge his Estate, he got a Warrant from the Lord Chief-Justice to have her before him, to be examined before his Lordship. Where being brought, she upon her Examination, has confessed the whole Matter, her having the first Bond, and where it was made. What is become of the latter Bond, we cannot get out of her, nor whether she ever affixed the Name of *Sir Robert Clayton* to that. But we will produce credible Witnesses to prove her guilty of Forging the first Bond for the Payment of Twenty Thousand Pounds; and that it had the Name and Seal of *Sir Robert Clayton* affixed to it, and that she affirmed it to be a good Bond, well executed by *Sir Robert Clayton*, and that there was Interest due upon it from *Sir Robert Clayton*, and that the Interest was in the second Bond to be turned into Principal. We will call Witnesses to prove this, and then I hope she shall have such Punishment as she deserves.

Mr. Northey. My Lord, what the Nature of our Evidence will be, I shall inform you. It cannot be expected from us to produce the Bond, for that she carried away from *Mr. Woodward*, so that we cannot give the Writing itself in Evidence; but, if she insist on it, we hope she will produce the

H h

Bond

Bond. We have the Copy (taken by Mr. Woodward) of the first Bond, which he had from her, that he might draw the Second Bond by it. But we can prove from that which agrees with our Record, that she affirmed, that the first Bond that she produced was Sir Robert Clayton's: That that Bond which she produced, of which this is the Copy, she affirmed to be Sir Robert Clayton's Deed. We shall do that, and afterwards prove her publishing it; for our Indictment is against her for Forging a Bond, and publishing that forged Bond, knowing it to be such, and close all with her own Confession. And, my Lord, there is this to shew there could be nothing in the Bond; that from the Time she pretended to have this Bond, when she was to have Twelve Hundred Pounds a Year, she remained a Prisoner all that Time, and got her self out by swearing she was not worth Five Pounds in all the World. Call Mr. Woodward. (*Who appeared, and was sworn.*)

Mr. Serj. Wright. Mr. Woodward, you hear what the Charge is; pray give an Account of what you know in reference to it.

Mr. Woodward. My Lord, Mrs. Butler has been my Client many Years. About two or three Years ago, more or less, Mrs. Butler came to me, and brought me a Bond; she gave it me to peruse, and told me another must be drawn by it. When I had perused the Bond, I found it was signed Robert Clayton, and four Witnesses Names set to the Bond. It was a Bond of the Penalty, as I remember, of Forty Thousand Pounds, and I think it was in the Year 1687, for to pay, I think, Twelve Hundred Pounds a Year, by four quarterly Payments yearly, during Sir Robert Clayton's Life, and Twenty Thousand Pounds within six Months after his Death. There were some other Things in that Bond, which will appear by the Copy, which indeed I did take; for Mrs. Butler desired it might be a Secret, being of a very great Concern. And I asked her why such a Bond should be given. I thought it must be great Generosity, and not for Money lent. But she told me the Forty Thousand Pound Bond was to be delivered up to Sir Robert. I asked her why, since she had it, she did not keep it? she said, that he would give her another Bond. She told me it had taken Air, and my Lady Clayton had some Disquiet about it; and for my Lady's Satisfaction, a Bill in Chancery was exhibited against her, to which she was to put in her Answer, and thereby disclaim any sort of Bond, or Interest, or any Pretence that she had upon Sir Robert Clayton.

Mr. Serj. Wright. She told you this her self?

Mr. Woodward. Yes; and when she gave me the Bond, she told me it was Sir Robert Clayton's Bond, or to that Purpose. But there being about nine or ten Years Arrears of Interest, she desired me to cast up the Interest that was in Arrear, and that it might be put to the Principal in the new Bond, saying, that Sir Robert would give her a Bond for the Whole together.

Mr. Serj. Wright. Was the whole Interest pretended to be in Arrear?

Mr. Woodward. I cannot say, all the Interest.

Mr. Serj. Wright. How did you compute it, from the Date of the Bond, or from what she told you?

Mr. Woodward. She said she had received some Money, and I computed the rest, rather under than over, and so made the Interest to come to Seven Thousand Pounds (the Interest payable by the Bond being Twelve Hundred Pounds a Year.) Whereupon she desired I would draw a Bond for

it my self; and accordingly she left the first Bond with me. I took some Time, and drew it; and made the Penalty thereof Fifty-four Thousand Pounds, conditioned for the Payment of Twenty-seven Thousand Pounds. And it was to be made in the same Nature as the former was, in respect of the Principal, and in the mean time to continue the Payment of the Interest yearly, by proportionable Quarterly Payments.

Mr. Montagu. What Discourse had you with her about it?

Mr. Woodward. I did draw a Bond, and did take Notice, That whereas Sir Robert Clayton had given her this Bond of Forty Thousand Pounds, and at his Request, she had delivered it up to him; and upon an Account stated, there did remain Seven Thousand Pounds in Arrears for Interest, which in all amounted to Seven and Twenty Thousand Pounds, or thereabouts; when I gave it her, I said, it is a very great Sum, it concerns you to have Witnesses of Credit, for no body will believe Sir Robert Clayton did give you this Bond, especially after his Death, unless it be very well attested. I told her, if she pleased, I would go and be a Witness for her to see it executed. So she went away. And when she came to me again, she told me, that Sir Robert knew me very well, but did not think fit to have me for a Witness. I answered, I do not care; but it being a very great Sum, take care it be well executed. I gave her both the Bonds, and from that Time heard no more of it till about two Months since.

Mr. Northey. Was there anybody came to discourse with you of making a new Bond, besides her self?

Mr. Woodward. Not that I know of, I do not remember any. It was an extraordinary Sum, I did take a Copy of the Bond.

Mr. Northey. Have you it here?

Mr. Woodward. Yes, I have it here.

Mr. Northey. He swears he took a Copy of it, and delivered it to the Prisoner again. We desire it may be read.

Mr. Mallet. Is it a true Copy?

Mr. Woodward. I cannot say I examined it.

Mr. Northey. Did you write it from the Bond?

Mr. Woodward. I did.

Mr. Northey. Do you believe it is a true Copy?

Mr. Woodward. I believe it is. The Reason why I did not examine it, was because it was to be a Secret.

Mr. Mallet. Do you look upon your self to be infallible?

Mr. Serj. Wright. Had you any Direction from the Prisoner to take a Copy?

Mr. Woodward. I cannot say that.

L. C. J. Holt. Why did you write it out, for your Direction to draw the new Bond?

Mr. Woodward. I did write it out, because it is a special Condition, more than is usual in Bonds: for it is expressed, that there should be no Prosecution against her, by Sir Robert Clayton, or his Executors, either at Law or in Equity, for the 20000 l. or the Interest, or to do any Act to obstruct her in receiving the same.

L. C. J. Holt. When did you take a Copy of it?

Mr. Woodward. At the same time, and before I returned it.

L. C. J. Holt. Did you make the new Bond by this Copy, or by the former Bond?

Mr. Woodward. Very likely I might use both.

L. C. J. Holt. Did you keep them both?

Mr. Woodward. I did keep 'em both by me till I deliver'd the new Bond.

Mr. Serj. *Wright*. Is the Copy your own Hand-writing?

Mr. *Woodward*. Yes.

Mr. *Montagu*. What did you take it from?

Mr. *Woodward*. From the Original.

Mr. *Wright*. And do you take that to be a true Copy?

Mr. *Woodward*. I believe it is a true Copy.

Mr. *Hall*. Did you read it over at that Time?

Mr. *Woodward*. I did read it over.

L. C. J. *Holt*. Did you write it?

Mr. *Woodward*. I did write it.

Mr. *Mallet*. And did you examine it afterward?

Mr. *Woodward*. No, I did not examine it, it was not to be taken Notice of.

Mr. *Hall*. Can you say you read it carefully over at that Time?

Mr. *Cutts*. It may not be the very same Bond, if he did not examine it by the Original, sign'd by Sir *Robert Clayton*.

Mr. *Northey*. They may shew the Bond.

Mr. *Mallet*. Did the Prisoner bring the Bond to you, of which this is the Copy, and tell you This was her Bond?

Mr. *Northey*. We will prove it by her own Confession.

Mr. *Mallet*. If it be not the same Bond, she cannot be convicted.

Mr. *Northey*. No doubt of it.

Mr. Serj. *Wright*. Produce the Copy; and, if your Lordship please, it may be read.

L. C. J. *Holt*. Let it be read.

Noverint Universi per presentes me Robertum Clayton, Militem & Decurionem Anglice, Kt. & Alderman de London, teneri & firmiter obligari Mary Butler alias Strickland, de South-street in Parochia de Edmon-ton, in Comitatu Middlesex, vidue, Quadraginta mille libris bone & legalis moneti Anglie, solvend' eidem Mary Butler alias Strickland, aut suo certo Attornat' Executor' vel Administrator' suis, ad quam quidem solutionem bene & fideliter faciendam obligo me, heredes, Executores & Administratores meos, firmiter per presentes. Sigillat' dat' decimo quarto die Aprilis, Anno Regni Domini nostri Jacobi Secundi, Dei Gratia Anglie, &c. Regis, tertio, Annos; Domini 1687.

THE Condition of this Obligation is such, that if the above bounden Sir *Robert Clayton*, or his Assigns, do, and shall well and truly pay, or cause to be paid unto the above-named *Mary Butler* alias *Strickland*, her Executors, Administrators, or Assigns, or any of them, yearly and every Year, during the Term of his natural Life, the full and just Sum of 1200 l. of lawful Money of *England*, by four equal Quarterly Payments, being the just and legal Interest, to grow due of and for the Principal Sum of Twenty thousand Pounds herein after-mention'd, in Manner and Form following; that is to say, 300 l. on the 14th of *July* next ensuing the Date of these Presents; 300 l. on the 14th of *October* next coming; 300 l. on the 14th of *January*, which shall be in the Year of our Lord 1688, and 300 l. on the 14th of *April* following; and so on every the said 14th Day of the said Months in every Year, one next, and consequently coming after another, the like Sum of 300 l. during the Time and Term of the natural

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Life of the said Sir *Robert Clayton*: And also, if the Heirs, Executors, and Administrators of the said Sir *Robert Clayton* do, and shall, on or before the End and Expiration of Six Months next after the Death or Decease of him the said Sir *Robert Clayton*, not only well and truly pay, or cause to be paid, unto the said *Mary Butler* alias *Strickland*, her Executors, Administrators, or Assigns, the full and just Sum of Twenty thousand Pounds of lawful Money of *England*, above express'd; but also all such Interest thereof, after the Rate aforesaid, as shall be in arrear and unpaid at the Death of the aforesaid Sir *Robert Clayton*, and also all such as shall grow due to be paid for the same, for so long time of the said Six Months as the said Sum of Twenty thousand Pounds shall be unsatisfied and unpaid after the Death or Decease of the said Sir *Robert Clayton*, without Coven, Fraud, or Deceit; nor shall not commence any Suit, either in Law or Equity, against the said *Mary Butler* alias *Strickland*, her Heirs, Executors, or Administrators, for, concerning, or in respect of the said Twenty thousand Pounds and Interest, or any Part thereof; and shall not do any Act or Thing to obstruct, molest, or hinder her, them, or any of them, from receiving, having, or enjoying the same; then this Obligation to be void, and of none effect, or else to remain in full Force.

Robert Clayton.

Seal'd and delivered in the Presence of us,

*J. Pennington,
Edw. Spencer,
John Hebden,
Eliz. Rivers.*

Mr. Serj. *Wright*. Did the Prisoner bring you the Bond, of which this is a Copy, as a true Bond?

Mr. *Woodward*. Yes, my Lord.

Mr. Serj. *Wright*. I ask you this, Had you a Charge from her to keep this Matter secret?

Mr. *Woodward*. Yes; and that I would write the Bond with my own Hand.

Mr. Serj. *Wright*. She giving you this Charge, how came this Matter to be known then?

Mr. *Woodward*. Mr. *Nicholas Baker* came to me from Sir *Robert Clayton*, and ask'd me if I did not know the Prisoner, and particularly about a Bond, and whether I did not make one for her. It was not in my Memory at first, till further Discourse occasion'd me to remember it; and I told him, that I did do some Business for her. He told me Sir *Robert Clayton* had some Information given him, that there was such a Bond drawn by me: Then I told him, I did remember there was such a Bond brought to me, and that I had made a Bond for Mrs. *Butler*, and had taken a Copy of the first Bond, which I had by me; and also of the second Bond, in which I had left out a material Word in the Obligation, and was fain to write it over again, and had the first Draught by me till about a Month before that Time, when meeting with it among my Papers, I threw it into the Fire in my Closet, but this Copy did remain by me.

Mr. *Hall*. You say this Copy is all your own Hand-writing?

Mr. *Woodward*. Yes, it is.

Mr. *Hall*. Was it Seal'd or Cancell'd?

Mr. *Woodward*. No; 'twas Seal'd, I am very positive.

H h 2

Mr.

Mr. Hall. Are you positive the Seal was on it at that Time?

Mr. Woodward. Yes, Sir.

Mr. Mallet. Did she tell you that Bond was to be cancell'd?

Mr. Woodward. She told me, she was to deliver up that Bond to Sir Robert Clayton; and, that he would give her another instead of it.

Mr. Mallet. Was the Bond then deliver'd up or no?

Mr. Woodward. I cannot say she did?

Mr. Cutts. Did you never hear any Bill in Chancery? To what End was this Bond deliver'd to you? For what Reason?

Mr. Woodward. I ask'd her why the Bond was to be deliver'd up, and she told me, There was some Uneasiness in the Family, and my Lady Clayton had got the Air of it; and therefore, to satisfy her, there was a Bill prefer'd against her in Chancery, and she was to put in her Answer; and, that he would give her another Bond, and that was to be deliver'd up.

Mr. Noribey. We have other Witnesses to prove the Forging of it. Call Mr. Baker. (*Who appear'd and was sworn.*)

Mr. Serj. Wright. Mr. Baker, were you present when the Prisoner Mrs. Butler was before my Lord Chief-Justice concerning this Bond? Look on that Copy.

Mr. Baker. I was present at my Lord Chief-Justice's Chamber, when the Prisoner was brought before his Lordship; and she did there acknowledge, that the Bond, of which she was accus'd, she had order'd to be made.

Mr. Serj. Wright. Was that the Bond in question?

Mr. Baker. Yes, she did confess she caused Sir Robert Clayton's Name to be set to it, and the Witnesses Names; and, that it was done by one Mr. Lewkar, a Scrivener in Bishopsgate street.

Mr. Serj. Wright. She said so?

Mr. Baker. Yes, Sir.

Mr. Hall. Did she confess it? Where was it?

Mr. Baker. At my Lord Chief-Justice's Chamber; she confess'd it was her own Act, she caused it to be made, and directed the Scrivener to set Sir Robert Clayton's Name, and the Witnesses Names to it.

Mr. Mallet. Was there not at that Time a Discourse of a Bond that she had on the late Duke of Buckingham?

Mr. Baker. I cannot be positive in that; but this was the Fact she was charg'd with, and she did confess that she caused it to be done, and, that the Persons as Witnesses were innocent of it, and, that she did direct Mr. Lewkar to set Sir Robert Clayton's Name to it.

Mr. Hall. How do you know This is the very same Bond?

Mr. Baker. Mr. Woodward shew'd me this very Bond when I went to him from Sir Robert Clayton, to know whether he was acquainted with the Prisoner; who, after some Discourse with him relating to this Bond, very frankly and ingenuously told me the whole Matter of Fact, as he has done here.

Mr. Mallet. But we ask you about her Confession; Did you shew her that Copy? Did she confess that?

L. C. J. Holt. What was the Discourse of at that Time?

Mr. Baker. It was about the Bond of Forty thousand Pounds, with which she was charg'd before your Lordship, to have counterfeited.

Mr. Noribey. Did he give an Account then of this Bond?

Mr. Baker. Yes, Mr. Woodward produced this Copy before my Lord Chief-Justice, and she own'd she had order'd Mr. Lewkar to make it, and to put Sir Robert Clayton's Name to it.

Mr. Serj. Wright. Now, my Lord, we will shew you, that she is going on still, and that very lately she has own'd it, and that she is going about to make the Bond of 50000*l.* a very good Bond.

Mr. Mallet. When it is in Question, you may then invalidate it.

Mr. Serj. Wright. Mr. Woodward has told you he did make the Bond of 54000*l.* but, I think, we have no need of it.

Mr. Hall. They have fail'd in the Indictment, so that it can't be supported by this Bond; it should be laid specially, according to the Condition of the Bond to be paid; for it is a Bond of Forty thousand Pounds, to be paid by his Heirs after his Death Twenty thousand Pounds. Now the Bond, whereof they produce a Copy, is of other Things.

Mr. Noribey. It is for the same.

Mr. Hall. It is a different Thing.

L. C. J. Holt. Not at all.

Mr. Mallet. It is laid in the Indictment, to be paid by Sir Robert Clayton: In the Bond 'tis said, it is not to be paid till after his Death.

Mr. Serj. Wright. 'Tis laid in the Indictment, that the Bond was of the Penalty of Forty thousand Pounds to be paid by Sir Robert Clayton, with Condition thereto under-written, concerning, among other Things, the Payment of Twenty thousand Pounds to the Prisoner, after the Death of Sir Robert Clayton, by his Executors.

L. C. J. Holt. Let your Exceptions proceed from the Indictment; it is to be paid after the Death of Sir Robert by his Executors.

Mr. Serj. Wright. Have you any more to say for your selves?

Mr. Hall. We have a great many Witnesses here to prove her Reputation. 'Tis a strange Thing any one should go to forge a Bond on such an eminent Person.

L. C. J. Holt. It is strange indeed; but the Question is, whether it be true.

Mr. Hall. Her Confession is prov'd by Mr. Baker, but we have many Witnesses as to her Reputation.

Mr. Mallet. This Bond is not in the Indictment. The Bond of Forty thousand Pounds is several Years since. Now there are two Bonds. Now that of Fifty four thousand Pounds is not in this Indictment, and this of Forty thousand Pounds is several Years since that it was shewn to him. It is strange he should be so very exact, and yet did not examine it. And probably he might mistake in the Copy, and it may not be the very Bond in the Indictment. Now, as to Mr. Baker, 'tis true, we have a Bond of Five thousand Pounds from the Duke of Buckingham, and we are suing Sir Robert Clayton for this Money, and hope to have it, now after so many Years. And Sir Robert Clayton did prefer a Bill in Chancery against us, and we in Answer did disclaim having any such Bond. And now, when we are like to have a Decree for this Sum against the Trustee of the Duke of Buckingham's Estate, he comes and would take off our Credit in this Matter. We did, in the Year 1695, disclaim any such Bond.

Mr. Noribey. Then you do admit that she own'd the Bond. [*Then her Witnesses were call'd.*]

Mr.

Mr. Mallet. Mr. Glover, do you know Mrs. Butler?

Mr. Glover. Yes.

Mr. Mallet. Give an Account of what you know, as to her Reputation.

Glover. I have known her fifteen or sixteen Years. All that I know of her is fair and clear.

L. C. J. Holt. Where do you live?

Glover. In *Red Lyon-street*.

L. C. J. Holt. What Profession are you of?

Glover. I belonged to *Lincoln's-Inn*.

L. C. J. Holt. A Gentleman of *Lincoln's-Inn*.

Glover. I was brought up at the University, but have not resided there lately.

L. C. J. Holt. How do you live? Are you a House-keeper?

Glover. I live privately at present.

L. C. J. Holt. Who knows you?

Glover. I cannot tell who knows me here. I believe Mr. Northey does.

Mr. Northey. I do not intend to give any Character of you, I do not use to give Characters of my Clients.

L. C. J. Holt. How long have you lived in *Red Lyon street*?

Glover. Ten or Eleven Years.

Mr. Mallet. How did she live?

Glover. I knew her live in *Devonshire-Square* very reputably, I always thought so.

Mr. Serj. Wright. Had she any Estate of her own?

Glover. I cannot say so certainly; it was thought so. She paid every body very punctually.

Mr. Hall. Acquaint my Lord how long you have known her, and whether you think she would be guilty of such a Forgery.

Glover. I have known her fourteen or fifteen Years. I cannot believe she would.

Mr. Montagu. Have you heard the Evidence?

Glover. Yes.

Mr. Montagu. What do you think of it then?

Glover. I know not what to think.

Mr. Montagu. Do you think she would confess her self guilty of a Forgery, if she were not?

Glover. I cannot tell what to say to that. I suppose no Body would confess, if they were not guilty.

Mr. Serj. Wright. Do you know one *Hebden*?

Glover. I know *Hebden*.

Mr. Serj. Wright. He is a Witness to the Bond. Was he Sir *John Hebden's* Son?

Glover. I can give no Account of that, but he has had a very honourable Character.

Mrs. Rodum called, and appeared.

Mr. Hall. Mrs. Rodum, do you know Mrs. Butler?

Rodum. Yes.

Mr. Hall. How long have you known her?

Rodum. Five or Six Years.

Mr. Hall. What do you know of her Character?

Rodum. I am the Widow of one of them that kill'd one another by the *Temple*. I never knew of any Bond, nor ever heard her lay claim to any such Bond. She lived in good Reputation. She was in my House when my Husband was killed. She lived in my House about a Year; I never heard she made any such Pretension. She liv'd honestly and decently. She owes me upwards of three hundred Pounds.

L. C. J. Holt. For what? How came she to owe you three hundred Pounds?

Rodum. I kept a Shop in the *Exchange*, and my Husband was a Broker. She owed it me partly for Goods out of my Shop, and partly for Goods out of *Scotland*. He was killed about half a Year ago, and I have kept the Shop still. About three or four Months ago she left me, and I never heard of any Bond.

Mr. Serj. Wright. Did you never hear of a Bill in *Chancery* against her?

Rodum. No, Sir.

Mr. Mallet. Did you hear of any Money that was due to her from the Duke of *Buckingham*?

Rodum. I was told she was suing Sir *Robert Clayton* for Money that was to be paid her on the Duke of *Buckingham's* Account, and upon the Credit of that I trusted her.

Shaw called.

Mr. Hall. How long have you known Mrs. Butler?

Shaw. About sixteen Years.

Mr. Hall. Do you think she would forge a Bond?

Shaw. Indeed I cannot give an Account of that.

Mr. Hall. How has she behaved her self?

Shaw. I never knew her guilty of any Rudeness.

Mr. Serj. Wright. Put up more Witnesses, if you have any?

Mr. Hall. We have done.

L. C. J. Holt. Mrs. Butler, will you say any Thing for your self?

Mrs. Butler. I am altogether innocent in the Matter, I never wrong'd Sir *Robert Clayton*, nor any Body else, in my Life.

L. C. J. Holt. Gentlemen of the Jury, This Mrs. Butler, alias *Strickland*, stands indicted for forging a Bond in the Name of Sir *Robert Clayton*, in the Penalty of Forty thousand Pounds, the Condition for the Payment of Twenty thousand Pounds, among other Things, within six Months after the Death of Sir *Robert Clayton*. And also, That she did publish this Bond as the true Bond of Sir *Robert Clayton*. You have heard what Evidence has been given, to prove her guilty of this Forgery, and the Publication of it.

It seems, some Time since, as is proved to you by Mr. Woodward, this Gentlewoman came to him with this Bond of Forty thousand Pounds. And it was upon this Account, as she said: To wit, Sir *Robert Clayton* having given her this Bond, it had taken Air, and was come to the Lady *Clayton's* Ear; which occasioned some Difference between Sir *Robert Clayton* and his Lady. She said, That this Bond, by Direction from Sir *Robert*, was to be deliver'd up to him to be cancell'd; and that Sir *Robert Clayton* had engaged to enter into a new Bond in the Penalty of Fifty four thousand Pounds, for the Payment of Twenty six thousand Pounds (there being at that Time supposed an Arrear of Interest for Twenty thousand Pounds) payable after Sir *Robert's* Death, and Interest in the mean Time. She delivered this Bond to Mr. Woodward. He takes a Copy of it, which is produced and read. And so, according to her Direction, Mr. Woodward does draw another Bond, with the Penalty of Fifty four thousand Pounds. And she then told Mr. Woodward Sir *Robert* would seal this Bond upon the Delivery up of the Bond of Forty thousand Pounds. Mr. Woodward having considered, that it was an extraordinary Sum for Sir *Robert* to engage himself in, and he being a very considerable Man,

Man, he advised her to have this new Bond well attested; and to be sure to get Witnesses of unquestionable Credit to see it executed. And thereupon he offered himself to go with her to Sir Robert, to be a Witness to this new Bond. No, says she, Sir Robert is not willing that this should be known; you are not a proper Person to be a Witness to it; therefore, says she, I will get some other Witnesses to attest it. Whereupon he gives her this first Bond for Forty thousand Pounds, which she brought to him, for the Payment of Twenty thousand Pounds, and gave her also the Draught of the new Bond. He says, this Bond that she brought to him was attested by four Witnesses. Sir Robert, it seems, upon her Answer in Chancery, not imagining any Thing of this, she having disclaimed in Chancery the having of any; some Time after he had heard a Report as if she was setting up of a new Bond, and that Mr. Woodward could give an Account of it. Wherefore he sends Mr. Baker to Mr. Woodward, who gave him the same Account that he has done here. Then Sir Robert makes a Complaint, and has her brought before me; and there was Mr. Woodward with this Copy. And this was objected to her, as if she had forged this Bond. And it seems, when she was there under Examination, and is proved to you by Mr. Baker, she did plainly confess, that she had forged this Bond of Forty thousand Pounds, and that she had procured one Lewkar to do it for her, who set Sir Robert's Name to it; and said, that the Witnesses, whose Names were set to it, were innocent, and knew nothing of the Matter.

Now what is said for her on the other Side? They bring some Persons for her, that say they have known her. One, that says he belonged to *Lincoln's-Inn*, and had been acquainted with her fourteen or fifteen Years, and did look upon her as a civil Woman; and for his Part, he does not believe she would be guilty of such a Forgery. Another, who is a Woman, says, she has known her some Time, and she says, she has trusted her much, and did never hear her say any Thing of this Bond,

but she behaved her self civilly, and she took her to be a very sober Person. Another Witness says, she look'd on her to be a very honest Person. This is the Sum of the Evidence.

There is a very strong Evidence to induce you to believe that she did forge the Bond. Such a Bond she had, that is plain. She does give no Account what is become of it; and she does not shew any manner of Pretence of having so much Money from Sir Robert Clayton due to her; she does not make it appear why Sir Robert should give her a Bond upon any Account. Now for any to say that they knew her, and they do not believe she would forge a Bond, that is no Evidence; no Body ought to believe ill of Mrs. Butler, or any one else, unless it be made to appear. But the Question is not, what they do believe; but whether the Matter be not proved to you to your Satisfaction, that she has forged this Bond? And if you are satisfied that she did forge it, you ought to find her guilty; and if you do not believe the Evidence to be satisfactory, you ought to acquit her.

Then the Jury withdrew, and being returned, gave their Verdict as follows.

Cl. of Arr. Are you agreed of your Verdict?

Jury. Yes.

Cl. of Arr. Who shall say for you?

Jury. Foreman.

Cl. of Arr. Bring Mary Butler to the Bar. How say ye? Is the Prisoner at the Bar guilty of the Forgery whereof she stands indicted, or not guilty?

Foreman. Guilty.

The Judgment which the Court pronounced against her was, That she should pay a Fine of Five hundred Pounds to the King, and continue in Prison till she paid it.



CLXVIII. *The Proceedings in Parliament upon the Bill of Divorce between His Grace the Duke of NORFOLK and the Lady MARY MORDANT, February and March, 1669.*
12 Will. III. *

V I Z.

- I. *The Journal of the House of LORDS, together with the BILL.*
- II. *The Depositions before their LORDSHIPS.*
- III. *The Examination and Evidence of the DUKE's Witnesses.*
- IV. *The State of the Case on both Sides.*
- V. *Bishop Cousens's Argument, proving that Adultery causes a Dissolution of Marriage.*
- VI. *The Pleadings of the Learned Council, before the Honourable House of Commons and the Committee, with other Matters thereto relating.*

Die Jovis 15 Februarij, 1699.



PON Reading the Petition of Henry Duke of Norfolk, praying Leave to bring in a Bill to dissolve his Marriage with the Lady Mary Mordant, and to enable him to Marry again; he having certain Proof of his Wife's living in Adultery with Sir John Germaine: It is ordered by the Lords Spiritual and Temporal in Parliament assembled, That the said Petition shall be taken into Consideration To-morrow, at Eleven of the Clock, and all the Lords summon'd to attend.

Die Veneris 16 Februarij, 1699.

After reading the Order for resuming the Consideration of the Duke of Norfolk's Petition, and Debate thereupon;

Hodie prima vice lecta est billa, entitled, An Act to dissolve the Duke of Norfolk's Marriage with the Lady Mary Mordant, and to enable him to Marry again. In the Words following,

Humbly sheweth, and complaineth to Your most Excellent Majesty, your true and faithful Subject Henry Duke of Norfolk, and Earl-Marshal of England, That he did, some Years since, marry the Lady Mary Mordant, his now Wife; and, that she hath, for divers Years, lived in Separation from the said Subject, and hath had unlawful Familiarity and adulterous Conversation with Sir John Germaine, Bar. and is guilty of Adultery on her part, and hath broken the Bond of Matrimony. Forasmuch therefore as your said Subject hath no Issue, nor can hope for any other than spurious Issue to succeed him in his Honours, Dignities, and Estate, unless the said Marriage be declar'd void, and annull'd by Parliament, and your said Subject be enabled to marry any other Woman. May it please Your most Excellent Majesty, out of your Princely Goodness and

Compassion to your said Subject's Misfortune and Calamity, and for the future Support and Comfort of himself and Family, that it may be enacted: And be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and of the Commons in this present Parliament assembled, and by the Authority of the same, That the said Bond of Matrimony being violated and broken by the manifest open Adultery of the said Lady Mary Mordant, &c. and is hereby enacted, declared, and adjudged to be from henceforth wholly dissolved, annulled, vacated, and made void to all Intents, Constructions, and Purposes whatsoever: And, that it shall and may be lawful to and for the said Henry Duke of Norfolk, at any time or times hereafter, to contract Matrimony, and to marry (as well in the Life-time of the said Lady Mary, as if she were naturally dead) with any other Woman or Women with whom he might lawfully marry in case the said Lady Mary was not living: And, that such Matrimony, when had and celebrated, shall be a good, just, and lawful Marriage, and so shall be adjudged, deemed, and taken to all Intents, Constructions, and Purposes; and, that all and every Child and Children born in such Matrimony, shall be deemed, adjudged, and taken to be born in lawful Wedlock, and to be legitimate and inheritable, and shall inherit the said Dukedom of Norfolk, Office of Earl-Marshal of England, and all other Earldoms, Dignities, Baronies, Honours, and Titles of Honour, Lands, Tenements, and other Hereditaments from and by their Fathers, Mothers, and other Ancestors, in like manner and form as any other Child or Children born in lawful Matrimony shall or may inherit or be inheritable, according to the Course of Inheritances used in this Realm; and to have and enjoy all Privileges, Pre-eminencies, Benefits, Advantages, Claims, and Demands, as any other Child or Children born in lawful Wedlock may have or claim by the Laws and Customs of this Kingdom. And be it further enacted, That the said Henry Duke of Norfolk shall be entitled to be Tenant by Courtesie of the Lands and Inheritance of such Wife whom he shall here-

* See *State Trials*, Vol. VIII. p. 7, and 27. &c. for Two former Trials, relating to this Affair.

hereafter marry; and such Wife as he shall so marry shall be entitled to Dower of the Lands and Tenements whereof the said Henry Duke of Norfolk shall be seised of such Estate whereof she shall be dowable, as any other Husband or Wife may or might claim, have, or enjoy. And the Child or Children born in such Marriage shall and may derive and make Title by Descent or otherwise to and from any of their Ancestors, as any other Child or Children may do, any Law, Statute, Restraint, Prohibition, Ordinance, Canon, Constitution, Prescription, or Custom had, made, exercised, or used to the contrary of the Premises, or any of them, in any wise notwithstanding. And be it further enacted by the Authority aforesaid, That the said Lady Mary shall, and is hereby barred and excluded of and from all Dower and Thirds, and of and from all Right and Title of Dower and Thirds unto or out of any the Honours, Manors, Lands, or Hereditaments of the said Duke; and, That all Conveyances, Joyntures, Settlements, Limitations, and Creations of Uses and Trusts of, into, or out of any Honours, Manors, Lands, or Hereditaments, at any time heretofore made by the said Duke, or any of his Ancestors or Trustees, unto, or upon, or for the Use or Benefit of the said Lady Mary, or any the Issue of her Body, or for easing, discharging, or counter-securing any the Manors, Lands, or Hereditaments of the said Lady Mary, or any of her Ancestors, shall be from henceforth, so far as concerns the said Lady Mary, or any Issue of her Body, or any Interest for her or them, utterly void and of none effect; and all and every the said Honours, Manors, Lands, or Hereditaments of the said Duke, or any of his Ancestors or Trustees, shall from henceforth remain and be to and for the Use and Benefit of the said Duke, and such other Person or Persons, and for such Estates and Interests, and in such manner and form as if the said Lady Mary was now naturally dead without any Issue of her Body. And also, That all Limitations and Creations of any Use, Estate, Power, or Trust, made by any of the Ancestors of the said Lady Mary, unto or for the Use or Benefit of the said Duke, his Heirs or Assigns, out of any the Manors, Lands, or Hereditaments of any the Ancestors of the said Lady Mary, shall be from henceforth void, and of none effect. * And be it further enacted by the Authority aforesaid, That the said Duke of Norfolk, his Heirs, Executors, Administrators, or Assigns, shall, on or before the Five and twentieth Day of March, One thousand seven hundred and one, pay, or cause to be paid, unto the said Lady Mary, or her Assigns, the Sum of Ten thousand Pounds of lawful Money of England, which was the Portion in Money paid on her Marriage with the said Duke; and in default of Payment of the said Sum of Ten Thousand Pounds, on or before the said Five and twentieth Day of March, then, and in such case, she the said Lady Mary, and her Assigns, during her Natural Life from the Decease of the said Duke, if she shall survive him, shall be entitled to, and shall and may have and enjoy such Joynture and other Advantages as she might or may have or claim by virtue of a certain Indenture, Quinquartite, made upon and in consideration of the said Marriage, bearing Date the Thirteenth Day of June, Anno Domini One thousand six hundred seventy-seven, and made, or mention'd to have been made, between Henry late Duke of Norfolk, then Earl of Norwich, Father of the said Duke, and the present Duke, by the Name of Henry Lord Howard of the first Part, Henry Earl of Peterborough and the said Dutches, by the Name of the Lady

Mary Mordant, sole Daughter and Heir apparent of the said Earl of Peterborough, of the second Part; Henry Marquis of Worcester, William Earl of Powis, and Henry Lord O-Brian, of the third Part; Arthur Onslow, Esq; and Thomas Dalmatroy, Esq; of the fourth Part; Simon Fox, Esq; and Thomas West, Gent. of the fifth Part: And by virtue of the Agreements contain'd in certain Articles bearing Date the Eight and twentieth Day of April, in the Year of our Lord One thousand six hundred ninety-four, made, or mention'd to have been made, between the said Duke of the one Part, and the said Henry Earl of Peterborough on behalf of the said Dutches; and the said Dutches of the other Part, according to the true Intent and Meaning of the said Quinquartite Indenture and Articles; and also, during the joint Lives of the said Duke and Dutches, shall and may enjoy Five Hundred Pounds per Annum, by virtue of an Indenture Quadrupartite, dated the Fifteenth Day of June, One thousand six hundred ninety-four, made, or mention'd to have been made, between the said Duke of Norfolk of the first Part, the said Earl of Peterborough and the said Dutches of the second Part, William Lord Lemster of the third Part, and Sir John Mordant, Knight and Baronet, and William Longueville, Esq; of the fourth Part. And then, and in such Case, the said Duke of Norfolk, his Heirs, Executors, and Administrators, is and are discharg'd of and from the Payment of the said Sum of Ten Thousand Pounds, any Thing herein contained to the contrary thereof in anywise notwithstanding. But on Payment of the said Ten Thousand Pounds in manner aforesaid, she the said Lady Mary shall be wholly barred and excluded from her said Joynture, and of and from all other Advantages out of the Real and Personal Estate of the said Duke, as aforesaid.

Upon the first Reading of the Bill, entitled, *An Act to dissolve the Duke of Norfolk's Marriage with the Lady Mary Mordant, and to enable him to Marry again*; it is order'd by the Lords Spiritual and Temporal in Parliament assembled, that the Dutches of Norfolk may have a Copy of the said Bill; and, that his Grace the Duke of Norfolk shall be heard by his Counsel, to make good the Allegations of his Bill, on Tuesday next, at Eleven of the Clock in the Forenoon; and, that the Dutches of Norfolk may have Counsel to attend at the same time, if she please.

Die Sabbati 17 Februarij, 1699.

Upon reading the Petition of Mary Dutches of Norfolk, praying to be heard by her Counsel before any further Proceedings be made on the Bill entitled, *An Act to dissolve the Duke of Norfolk's Marriage with the Lady Mary Mordant, and to enable him to Marry again*; it is ordered by the Lords Spiritual and Temporal in Parliament assembled, that the Dutches of Norfolk shall be heard by her Counsel as desired, on Tuesday next, at Eleven of the Clock in the Forenoon.

It is ordered by the Lords Spiritual and Temporal in Parliament assembled, That William Lane and John le Fountain, Gent. do attend this House on Tuesday the Twentieth Day of this Instant February, at Ten of the Clock in the Forenoon, as Witnesses to be examined on the behalf of the Duke of Norfolk.

Die Lunæ 19 Februarij, 1699.

It is ordered by the Lords Spiritual and Temporal in Parliament assembled, That Mr. Daniel Ger-

* This Clause was added after the Bill was brought into the House of Lords.

Germaine, Mr. *Simon Briane* alias *de Brienne*, Mrs. *Anna-Maria Briane* alias *de Brienne*, and Mrs. *Judith Poſſette* alias *Perſode*, do, and they are hereby requir'd, to attend this Houſe, as Witneſſes on the Behalf of his Grace the Duke of *Norfolk*, to-morrow at Eleven of the Clock in the Forenoon.

Die Martis 20 Februarij, 1699.

After hearing Council, upon the Petition of the Dutcheſs of *Norfolk*, purſuant to the Order of the Seventeenth inſtant; as alſo Council for the Duke of *Norfolk*, the following Order was made; viz.

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That this Houſe will hear Witneſſes for the Duke of *Norfolk*, only to Matter of Fact, ſince the rejecting of the firſt Bill, except only Mr. *Daniel Germaine*, Mr. *Simon Briane* alias *de Brienne*, Mrs. *Anna-Maria Briane* or *de Brienne*, Mrs. *Judith Poſſette* or *Perſode*, Mrs. *Elleanor Vaneſs*, who are at liberty to give Evidence to Matters of Fact before that Time, which were not then before the Houſe; and are hereby required to attend this Houſe, as Witneſſes on the Behalf of his Grace the Duke of *Norfolk*, to-morrow Morning at Eleven of the Clock.

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That to-morrow at Twelve of the Clock, this Houſe will proceed to hear Council and Witneſſes for the Duke of *Norfolk*, to make good the Allegations in his Bill; at which Time the Dutcheſs of *Norfolk's* Council ſhall be preſent.

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That *William Bayly* and *Edmund Davies* do, and they are hereby required to attend this Houſe to-morrow at Eleven of the Clock in the Forenoon, as Witneſſes to be examined on the behalf of the Duke of *Norfolk*.

Die Martis 21 Februarij, 1699.

The Houſe being inform'd, That Endeavours had been made to ſerve Orders upon the Duke of *Norfolk's* Witneſſes, and ſeveral of them were ſick, and others could not be found:

Joſeph Whilley being call'd in and ſworn, ſaid as follows:

Daniel Germaine. I went to his Houſe, and was told by a Neighbour no body was within; but they bid me go to the Alehouſe at the next Door, and I might hear of him; and enquiring there, I found one of his Journeymen, *Peter Hercules*, who told me, he had not been at home theſe fix Months, nor could not tell when he would return: But I ſhew'd him the original Order, and ſerv'd him with a Copy, and told him his Maſter was to appear at the Duke of *Norfolk's* Lodgings, at the Houſe of Lords, to-morrow at Eleven a-Clock, as a Witneſs for him.

Mr. *Simon Briane*. I went to his Houſe in *St. James's-ſtreet*, and Mr. *Poſſette's* Man, *Jer. Hoffman*, came to the Door, who told me Mr. *Briane* went to *Kensington* that Afternoon; and no ſooner had he ſaid ſo, but Mr. *Poſſette* came in, who told me the ſame; and I aſk'd him to ſpeak with Mr. *Briane's* Wife, and he told me ſhe was ſo weak, that I could not ſerve her with the Order. Then I aſk'd to ſee Mrs. *Poſſette*, his own Lady; he likewiſe told me ſhe was ſick, and could not be

ſpoke to; ſo I ſhew'd him the original Order, and left the Copy with himſelf for his Lady and Mr. *Briane's* Lady, and forthwith went to *Kensington*, to ſerve the Order upon Mr. *Briane*; but not meeting with him, after a great deal of Enquiry, I left it with his Maid-ſervant at his Lodgings, and ſerv'd her with it, who told me ſhe would give it her Maſter that Night, who waited for the King's coming from *Hampton-Court*. This Morning I went again to his Houſe at *St. James's*, and ſent for his Servant, who told me his Maſter did not come to Town laſt Night; ſo I believe his Maid had given him the Order.

Mrs. *Elleanor Vaneſs*. I enquir'd at every Houſe in *Kensington*, where I was inform'd there were Dutch People, and could not know of any of them of any ſuch Woman; but the Earl of *Albemarle's* Steward, and the Porter of the Lodge going into *Hide-Park (Kensington)* promis'd me they would enquire after her, and ſend me word if they heard of ſuch a Perſon.

Then *George Starkey* being call'd in and ſworn, ſaith as followeth: I ſerved *William Bayly* with the Order of this Houſe, to attend as a Witneſs this Day: He told me he was under a Courſe of Phyſick, and could not ſtir out without Danger of his Life, but any other Day he would attend.

Then a Certificate under the Hands of *John Hutton* and *Theodore Colladon*, Doctors of Phyſick, was produced and read, as follows:

We whoſe Names are under-written, Doctors of Phyſick, do certify, that *Mary*, Wife of *Simon de Brienne*, and *Judith* Wife of *Peter Perſode*, have been for ſome time, and are at this preſent, ſo extraordinary ill in Bed, that neither of them can remove from thence without Danger of their Lives. Witneſs our Hands, at their Dwelling-houſe in *St. James's-ſtreet*, betwixt Ten and Eleven of the Clock in the Morning, the 21ſt Day of February, 1699.

John Hutton.

Theodore Colladon.

After which, the following Order was made; viz.

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That Doctor *John Hutton* and Doctor *Theodore Colladon* (who ſign'd a Certificate delivered and read this Day, of the Illneſs of Mrs. *Mary*, Wife to *Simon de Brienne*, and *Judith* her Siſter, Wife to Mr. *Peter Perſode*) do attend this Houſe to-morrow at Eleven of the Clock, to atteſt upon Oath what they have certified.

Then the Form of the Oath formerly given to Witneſſes, being read out of the Journal, 23 Jan. 1691, the ſame was agreed to with ſome Alteration, and is as followeth;

“ YOU ſhall true Answer make to all ſuch Questions as ſhall be aſk'd you by this Honourable Houſe, in relation to the Charge of Adultery in the Bill brought in by the Duke of *Norfolk* againſt the Dutcheſs of *Norfolk* with Sir *John Germaine*. You ſhall declare your whole Knowledge of this Matter, and ſhall ſpeak the Truth, and nothing but the Truth, as well upon the Matter as you ſhall be examined on behalf of his Grace the Duke of *Norfolk*, as upon ſuch Interrogatories as ſhall be exhibited on behalf of the Dutcheſs of *Norfolk*,

“folk, without Favour or Affection to either
“Party. So help you God, and by the Con-
“tents of this Book.”

Then the Council being called in, they for the Duke having opened the Nature of their Evidence, Mrs. *Elianor Vanefs* was sworn; and being asked some Questions by the Duke's Council, she appeared to be a Dutch Woman, and could not well understand *Englisch*, and an Interpreter being offered by the Duke's Council; Council withdrew, and the House agreed, that the Dutchess's Council should have an Interpreter also; and the Council being called in again, were told so by Order of the House, and that they might proceed to any other Witness. The Duke's Council desired that they might begin with Mrs. *Vanefs*, and withdrew.

Then the following Orders were made.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Agents for the Duke of *Norfolk* do forthwith deliver a List of the Witnesses they intend to examine on the behalf of the Duke of *Norfolk*, to the Dutchess of *Norfolk* or her Agents.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That to-morrow at Twelve of the Clock, this House will proceed to hear Council and Witnesses for the Duke of *Norfolk*, to make out the Allegations in his Bill; at which Time the Dutchess of *Norfolk*'s Council shall be present.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That *Daniel Germaine*, *Simon Briane* alias *de Brienne*, *Anna-Maria Briane* alias *de Brienne*, *Judith Possette* alias *Perfode*, — *Goutaken*, — *Pontack*, *Susanna Barrington*, — *Hicgonee*, Mrs. *Keemer*, *Joseph Berger*, *William Lane*, *John le Fontaine*, *Jonathan Browne*, — *Hater*, and — *Welburne* do, and are hereby required, to attend this House to-morrow at Eleven of the Clock in the Forenoon, as Witnesses to be examined on the behalf of the Duke of *Norfolk*.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That *William Allen* and *John Maitland* do, and they are hereby required, to attend this House, on Service of this Order, as Witnesses to be examined on behalf of the Duke of *Norfolk*.

Die Jovis 22 Februarij, 1699.

This House being informed, that Sir *Theodore Colladon*, and Doctor *Hutton* attended, as ordered yesterday:

Sir *Theodore Colladon* being called in and sworn, says, He saw Mrs. *de Briane* yesterday; she was very ill, fainting in Bed, and scarce able to live. Mrs. *Perfode* he also visited, who having miscarried by a Fright, could not stir out of her Bed without hazard of her Life.

Doctor *Hutton* being called in and sworn, says, He visited Mrs. *Mary de Briane* this Morning; she hath been sick three Months, is in an ill Condition of Health, and will endanger her Life if she comes abroad. Mrs. *Perfode* is very ill, she cannot come out of her Bed without endangering her Life.

Then the Council were called for the Duke and Dutchess of *Norfolk*.

The Dutchess's Council moved to have the

Witnesses Christian Names, and Place of their Abode, and said they had not the Names till this Morning.

Then the two Interpreters took the following Oath.

You shall well, truly, and faithfully interpret between the House and Elianor Vanefs, the Witness, touching the Matters she shall give in Evidence.

Council being withdrawn, the House agreed to tell the Duke's Council, that they might proceed to examine Witnesses that were named the Day before: And that if the Dutchess's Council had any Exception, they might now make it against them or their Testimony, and that the Duke's Agents should give the Christian Names of their Witnesses, and as much as they can of the Places of their Abode to the Agents of the Dutchess.

The Council being called in again, were told what was agreed on by the House touching the Witnesses: Then the Duke's Council proceeded and called in *Elianor Vanefs*, who being ask'd several Questions by the Duke's Council, the Interpreter ask'd them of her in *Dutch*, and she answered again to the Interpreter, and he declared her Answers to the House in *Englisch*.

Nicholas Hausier being sworn in like manner, gave his Testimony in *French* by an Interpreter.

Then Council being withdrawn, the following Orders were made; viz.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Short-hand Writers, who took the Witnesses Evidence, do dictate to a Clerk, in order to be transcribed what the Witnesses have said; That the Examinations with the Short-hand Writers Book and Papers are to be sealed up and kept by the Clerk until the next Day the House shall proceed on this Matter, and then what is transcribed shall be read at the Bar in the Presence of the Witnesses.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That on *Saturday* next, at Twelve of the Clock, this House will proceed to hear Council and Witnesses for the Duke of *Norfolk*, to make out the Allegations of his Bill; at which Time the Dutchess of *Norfolk*'s Council shall be present.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That *Simon Briane* alias *de Brienne*, shall be, and is hereby required, to attend this House on *Saturday* next at Eleven of the Clock in the Forenoon, to be examined as a Witness on behalf of the Duke of *Norfolk*.

Die Veneris 23 Februarij, 1699.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That *James Berger*, *Susannab Barrington*, *Frances Knight*, and *James Macdonnell*, shall, and they are hereby required, to attend this House to-morrow at Eleven of the Clock in the Forenoon, as Witnesses to be examined on the behalf of the Duke of *Norfolk*.

Die Sabbati 24 Februarij, 1699.

The House being moved, That Mr. *Simon Briane* or *de Brienne* may be sent for in Custody, for not having attended according to the Order of this House, as a Witness for the Duke of *Norfolk*?

Here-

Hereupon *Thomas Kellett* was called in; and being sworn, ſaid to this Effect, viz.

I went to the Houſe of the Dutcheſs of *Norfolk*, and enquired for Mrs. *Sufannab Barrington*, and if ſhe lived there? A Man ſaid no: I asked if he could tell me where ſhe was? He ſaid, no.

Then I went to ſerve Mr. *Simon Briane* or *de Brienne*; and being at his Houſe, enquired for him: His Man ſaid, his Maſter was gone to *Kensington*. He took the Order, and ſaid he would give it his Maſter.

I went to the Lord *Cutt's* Houſe, and aſk'd for one Mr. *Berger*, but could not hear of him; I went to my Lord's Stables, and aſked his Coachman for Mr. *Berger*, he ſaid he lived in *Hedge-Lane*; there I went and found his Wife, and delivered the Order to her; ſhe ſaid ſhe would have nothing to do with it, and that Mr. *Germaine* gave him Bread. I ſaw him Yeſterday, and he told me he had been with the Duke of *Norfolk*, and would attend him again.

I went again to the Dutcheſs of *Norfolk's* Houſe to ſerve Mrs. *Barrington*, and one told me ſhe was ſeen to look out of a Window, and another told me ſhe was at Home, ſo I could not ſerve the Order on her.

The Houſe being informed upon Oath, That a Copy of the Order for Mr. *Simon Briane* or *de Brienne* to attend this Houſe, as a Witneſs for the Duke of *Norfolk*, was left with his Servant at his Dwelling-place, and he not attending this Houſe, It is Ordered by the Lords Spiritual and Temporal in Parliament Aſſembled, That the Serjeant at Arms, attending this Houſe, do forthwith attach the Body of the ſaid *Simon Briane* or *de Brienne*, and bring him to the Bar of this Houſe, to answer for his Offence: And this ſhall be a ſufficient Warrant on that behalf.

To the Serjeant at Arms attending this Houſe, his Deputy or Deputies, and every of them.

The Houſe was informed that one *Hugonee*, Servant to the Lord *Haversham*, being ſummoned, was ſince gone away. Of which the Lord *Haversham* gave the Houſe an Account to this Effect; That he received a Letter from the Duke of *Norfolk*, wherein he deſired his Servant might attend the Houſe this Day. And his Lordſhip writ an Answer that he ſhould. But when his Lordſhip aroſe in the Morning, his Servant was gone away, and told the Laundry-woman or Servants, he had a Quarrel, and was going for *Holland*.

The Council and Witneſſes being called in for the Duke of *Norfolk*, the Dutcheſs's Council preſent, and Mrs. *Vanefs* at the Bar, the tranſcribed Depoſitions from the Short-hand Writer were read to her, and ſhe ſigned them.

In like manner *Nicholas Hoſier's* Depoſition was read, and he ſigned it.

Then the Council proceeded, and examined *William Bayly*, and his Depoſitions were taken in Short-hand, was left with the Clerk to be tranſcribed, in order to be read to him on *Monday* next.

Council withdrew, and it was ordered that *William Bayly* do attend this Houſe on *Monday* next.

Then the following Orders were made.

It is Order'd by the Lords Spiritual and Temporal in Parliament aſſembled, That on *Monday*

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next at Twelve of the Clock this Houſe will proceed to hear Council and Witneſſes for the Duke of *Norfolk*, at which Time the Dutcheſs of *Norfolk's* Council ſhall be preſent.

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That Mr. Secretary *Vernon* be deſired to ſend to this Houſe, on *Monday* next at Eleven of the Clock, the Books wherein the Entries of Paſſes are in the Months of *January*, *February*, and *March*, One thouſand Six hundred Ninety one.

Die Lune 26 Februarii, 1699.

The Council for the Duke and Dutcheſs of *Norfolk* were called in, and the Examination of *William Bayly* was read to him; and he being croſs-examined by the Dutcheſs's Council, and that Examination read to him, he ſigned them.

Then *John Curry* was called in and sworn, ſaid, I went to ſerve Mr. *La Fountaine*, and Mr. *Lane* with the Order for their Attendance.

Mr. *La Fountaine's* Wife lay in, he ſaid he could not be forced to come, he was not a Subject of *England*, and is the Lady Dutcheſs's Servant.

Mr. *Lane* gave me a Letter to the Clerk of the Parliament, which was read, and in it he deſired further Time, not having Horſes, nor could ride faſt.

The Dutcheſs's Council moved for Copies of the Depoſitions taken, and Time for the Dutcheſs to be heard, and withdrew. Then the following Orders were made, (viz.)

An Order for both Parties to have Copies of the Depoſitions, and ſo much as relates to that Matter in the Journal.

The other for hearing the Dutcheſs by her Council, on *Monday* next, and the Duke's Council then to be preſent.

Depoſitions of *Elleanor Vanefs*.

Die Jovis 22 Februarii, 1699.

Elleanor Vanefs ſworn, Depoſeth as followeth, (viz.)

Queſt. D'ye know Sir *John Germaine* and the Dutcheſs of *Norfolk*?

Ans. Yes.

Q. How long have you known them?

A. Two Years.

Q. When did you firſt come acquainted with them?

A. Sir *John Germaine's* Siſter hired me for a Cook-maid the Summer after the King came for *England*.

Q. In what Month of that Year?

A. In May.

Q. Did you live with either of them as a Servant-maid?

A. I lived two Months with my Lady Dutcheſs, in Sir *John Germaine's* Houſe.

Q. How long did you live in the Houſe with them?

A. Till they went to *Vaux-Hall*.

Q. How long was the Dutcheſs in the Houſe before they went to *Vaux-Hall*?

A. Two Months.

Q. Where was that Houſe?

A. Juſt over *Spring-Garden*.

Ii 2

Q. At

Q. At the Time when the Lady Dutcheſs lived with Sir *John Germaine*, what Company and Converſation did they keep with one another? And in what Manner?

A. Like Man and Wife.

Q. Where was it the Lady Dutcheſs lived when you came firſt into *England*?

A. In Sir *John Germaine*'s Houſe.

Q. Where did ſhe live then?

A. The Dutcheſs lived there then.

Q. How long continued ſhe there?

A. About two Months.

Q. How did they live together during that Time?

A. Like Man and Wife.

Q. Saw you them in Bed together, at any Time, at that Place in the *Cockpit*?

A. Yes.

Q. How often?

A. Many times, as often as Man and Wife ſhe ſaw them in Bed, but did not put them in Bed in thoſe two Months.

Q. Did you think any otherwiſe, but that they had been Man and Wife?

A. She did not at firſt, but afterwards ſhe did; and then they kept her within Doors, for fear ſhe ſhould tell it.

Q. Whither did the Dutcheſs go after that two Months?

A. To *Fox-Hall*.

Q. How long did ſhe live there?

A. About two Years.

Q. Did Sir *John Germaine* uſe to come and keep Company with the Dutcheſs there?

A. Yes; he uſed to come and dine with her ſometimes; and he lay there ſometimes.

Q. What Converſation had Sir *John Germaine* with the Dutcheſs at *Fox-Hall*?

A. They converſ'd together as Man and Wife.

Q. How long?

A. Sometimes one Night, ſometimes two.

Q. How often did he uſe to come thither?

A. Sometimes twice, ſometimes three times a Week, and ſometimes but once.

Q. Had they one Bed, or two?

A. But one.

Q. What Name did the Dutcheſs go by at *Fox-Hall*?

A. By the Name of the Lady *Beckman*.

Q. What Kin was Sir *John Germaine* pretended to be to the Lady Dutcheſs?

A. Her Brother; my Lady Dutcheſs ſaid ſo.

Q. Did you go with them to *Fox-Hall*, or not?

A. She went with the Lady Dutcheſs.

Q. Whoſe Servant was you there?

A. Lady Dutcheſs's.

Q. How long did you ſerve the Lady Dutcheſs?

A. She ſtaid with her till ſhe went to *Mill-bank*.

Q. How came you to leave their Service?

A. They ſent her away upon the account of the late Trial.

Q. Who went with you?

A. Mrs. *Suſannah*, Chambermaid to the Lady Dutcheſs; and Mr. *Nicholas*, that was Gentleman to Sir *John Germaine*.

Q. What's his Name?

A. *Nicholas Hoſier*.

Q. Who took care of your Paſſage?

A. *Nicholas Hoſier*.

Q. Whither was you order'd to go?

A. To *Holland*, to the *Hague*: They paid her

in full, and promiſed fifty Livres beſides.

Q. Was any Part of it paid? And by whom?

A. She receiv'd it in four Quarters, from his Brother *Philip*, at the *Hague*.

Q. Whoſe Brother?

A. Sir *John Germaine*'s Brother.

Q. Who hired you when you came to *England*?

A. Mr. *Briane*'s Wife.

Q. What Kin is ſhe to Sir *John Germaine*?

A. His Siſter; and they promiſed, if Matters did not go for the Dutcheſs, ſhe would come to *Holland* her ſelf, and take her into her Service again.

Q. Have you ſeen Sir *John Germaine* and the Dutcheſs in Bed together at *Mill-bank*?

A. Once or twice.

Q. How long had the Lady Dutcheſs lived at *Mill-bank* e're you left her Service?

A. Nine or Ten Weeks.

Q. How came you to ſee them in Bed together?

A. By reaſon none was ſuffer'd to come into the Room, the Bedchamber, but ſhe and another Maid, to bring Neceſſaries, as, Water to waſh their Hands, and to clean the Room.

Q. Did you ſee them at their undreſſing, when they went to Bed?

A. She undreſs'd them her ſelf, and ſaw them in Bed.

Q. Give an Account how you two came to be admitted into the Chamber, and what you ſaw there.

A. She help'd them to Bed, and ſaw them go to Bed together.

Q. Saw you them next Morning?

A. Yes.

Q. On what Occaſion came you into the Chamber in the Morning?

A. She came with Chocolate, and Water to waſh their Hands.

Q. Did you ever ſee Mr. *Nicholas Hoſier* there?

A. Yes; he did the Buſineſs that ſhe did when ſhe could not be preſent; he was *Valet de Chambre*.

Q. Was he *Valet de Chambre* to Sir *John Germaine*, or to the Dutcheſs?

A. He belong'd to the Dutcheſs at *Fox-Hall*, and afterwards to Sir *John Germaine*.

Q. Came he to Sir *John Germaine* before the Lady Dutcheſs went to *Fox-Hall*, or not?

A. The Dutcheſs was at *Fox-Hall* when he came to Sir *John Germaine*.

Q. Who lived with the Dutcheſs at *Fox-Hall*?

A. Sir *John Germaine*'s Siſter.

Q. Who hired you?

A. Mrs. *Briane*, Mr. *Briane*'s Wife.

Q. Was there no other Relation of Sir *John Germaine*'s that lived there beſides?

A. Mrs. *Judith*.

Q. What Mrs. *Judith*? What's her Name?

A. She does not know.

Q. What kin was Mrs. *Judith* to Sir *John Germaine*?

A. His Siſter.

Q. Did the Dutcheſs uſe to go to no other Place?

A. None, but to the neighbouring Gardens, to gather Flowers.

Q. When you were at *Mill-bank*, did you ever ſee the Dutcheſs's Father?

A. She hath been ſeveral times at the Dutcheſs's Father's, and the Lady Dutcheſs told her Father and Mother, that ſhe brought her from *Holland*; ſhe

ſhe dreſs'd three Diſhes of Meat by order of the Dutcheſs.

Q. Who was the Lady Dutcheſs's Father? Where did he live?

A. He lived at *Mill-bank*, but could not tell his Name; the Lord *Peterborough*, ſhe ſays, but could not think on't before now.

Q. When ſhe lived with *Germaine* at the *Cockpit*, was there no other that lived with them at that Time?

A. No body.

Q. Did Sir *John Germaine*'s Brother-in-Law or Siſter lie in the Houſe at any time?

A. Yes; when they came firſt to *England* they uſed to lie there.

Q. Name them.

A. Mr. *Briane*, and his Wife.

Q. Did you ſee any of Sir *John Germaine*'s Relations, at any time, in the Room during the Time that the Dutcheſs was in Bed with him?

A. Yes, Mr. *Briane* and his Wife.

Q. Was Sir *John Germaine* in Bed at that time with the Dutcheſs?

A. Yes.

Elleanor Vanefs croſs'd-examin'd.

Q. Was it at *Fox-Hall* that the Lady Dutcheſs ſaid, That *Germaine* was her Brother?

A. Yes.

Q. Did the Dutcheſs tell you, that Sir *John Germaine* was her Brother?

A. She gave it out among the Neighbours, but never told her ſo.

Q. Was you Cookmaid?

A. She was hired for Cookmaid.

Q. Did you continue to act as Cookmaid?

A. Yes, at *Fox-Hall*.

Q. Was you at the *Cockpit*?

A. She uſed to clean the Rooms, and no body was ſuffer'd to come into the Room but ſhe, Mrs. *Sufannah*, and *Nicholas*.

Q. Was there no other Woman in the Houſe but you?

A. Yes, Mrs. *Sufannah*.

Q. Where did you ſee Sir *John Germaine* and the Dutcheſs in Bed?

A. At *Fox-Hall*.

Q. When came you from *Holland*?

A. About five or ſix Weeks ago.

Q. Where have you been ſince?

A. She does not know no Place nor Street in *London*.

Q. How came you over?

A. About a Year and half ago ſhe met *Nicholas* at *Amſterdam*; ſhe ask'd him how he did, and if he had got a Place; he answer'd, No, but he believ'd he ſhould very ſoon have one in *England*.

Q. Who ſent for you, or brought you over, from *Holland* this laſt Time?

A. She met Mr. *Nicholas* about a Year ago, and ſaid, She had a great Mind to go and live in *England* again; and he ſaid, He would get a Place for her.

Q. Who ſent for her?

A. Does not know.

Q. When you came over, who paid your Paſſage, and firſt took Care of you?

A. *Nicholas* hath given her what ſhe ſpent ſince.

Q. Who brought you to Town? And who furniſh'd you with Money? And where did you land? What Houſe did you firſt come to?

A. She landed at *Graveſend*.

Q. Who receiv'd her there, or, when ſhe came to Town, brought her to any Place to lodge at?

A. *Nicholas* brought her to a Place where ſhe was ſecure.

Q. What Place is it?

A. She does not know, ſhe never was in *London*.

Q. Did you not live at *Fox-Hall*, and at Sir *John Germaine*'s Houſe in the *Cockpit*?

A. She was no further than thoſe Houſes; ſhe means, ſhe was never in the City of *London*.

Q. Where is the Houſe ſhe has been at theſe ſix Weeks?

A. She can't tell whereabouts it is.

Q. Was you not ſent for back from *Holland* to be a Witneſs?

A. No, knew nothing of it till about ——— Now about eight or nine Weeks ago.

Q. In what Street is the Houſe you have been at?

A. I can't tell.

Q. How long is it ſince you went into *Holland*, ſince you left the Dutcheſs's Service?

A. About eight Years ago.

Q. Did you never tell any body the Occaſion of your going over?

A. Yes, in *Holland*, but not here.

Q. To whom did you tell it?

A. To a great many.

Q. Know you any of thoſe to be in *England*, that you did tell it to?

A. Does not know any.

Q. Did you ever diſcover this Matter of your own accord? or, Was you ask'd to do it?

A. I ſaid, I would tell the Truth if I were asked.

Q. Can you name the Perſon that ask'd you?

A. Mr. *Nicholas*.

Q. Had you any Diſcourſe about this Matter about eight Weeks ago?

A. When I asked Mr. *Nicholas* if he could get me a Place in *England*, I told him, I would ſay the Truth.

Q. What Diſcourſe had you with Mr. *Nicholas* about it?

A. I asked Mr. *Nicholas*, whether there was any danger of any ſuch Thing; he ſaid, He knew nothing of it.

Q. Did you ever diſcover that you were ſent out of the Way, into *Holland*?

A. No.

Q. Whether you and this Gentleman that interprets have not talk'd moſt of this Matter before you came hither?

A. No.

Q. Who have you talk'd to about this Matter, ſince you came into *England*, beſides *Nicholas*?

A. No body.

Q. Are you a Single Woman, or a Married Woman?

A. A Single Woman.

The Duke's Council.

Q. Was it your Buſineſs to look after the Chamber, to keep the Door conſtantly, or on what Occaſion?

A. I uſed to waſh the Dutcheſs's Cloaths, and bring 'em to Sir *John Germaine*'s Houſe, and keep the upper Rooms clean, where Sir *John Germaine* lay.

Q. Did *Susan* go over with you into *Holland*, and come back with you?

A. Mr.

A. Mr. *Nicholas* brought me into a Room where she was kept, and I stayed a while with her.

Q. Did *Susan* go with you, and come with you again?

A. *Nicholas*, and *Susan*, and I, were in a Room together, and Mr. *Germaine* came every Night when the House was broke up, and told us what passed.

Q. Did *Susan* go to *Holland* with you? Whether did you go before *Nicholas*, or with him?

A. Sir *John Germaine* ordered *Nicholas* and she to go into *Holland*, and *Nicholas* went with her.

Signum,

Eliaenor Vanefs.

Depositions of *Nicholas Hofier*.

Die Jovis 22 Februarii, 1699.

Nicholas Hofier sworn.

Q. **W**Hether he knows Sir *John Germaine* and the Dutcheſs of *Norfolk*?

A. Yes, Sir, I understand, I know both.

Q. How long have you been acquainted with Sir *John Germaine*, and upon what Occaſion?

A. The firſt he came to know him was in *Suffolk-Street*.

Q. Whether ever he was a Servant to him?

A. Yes, I was a Servant to him there.

Q. When was it you firſt came into Sir *John Germaine's* Service?

A. It was above half a Year before King *James* went away.

Q. Did you live with Sir *John* or the Dutcheſs?

A. With Sir *John Germaine*.

Q. Where did he dwell at that Time?

A. He had Lodgings at the *Golden Ball*.

Q. Was you with him afterwards when he was at the Cockpit?

A. Yes, and I lived with him at the Cockpit too.

Q. At that Time did you know the Dutcheſs of *Norfolk*?

A. I knew her becauſe they told me ſhe was ſo.

Q. Was there any Lady that lived with Sir *John Germaine* at the Cockpit?

A. At that Time there was Mrs. *Brienne*, Sir *John Germaine's* Siſter.

Q. Was there any body elſe uſ'd to lodge there?

A. There was none there but her at firſt.

Q. Was there any other afterwards?

Q. Yes, about two or three Months after he was there, but I don't juſtly know how long afterwards.

Q. Who was there then?

A. There was his Siſter, by Name Mrs. *Judith Germaine*.

Q. Do you know any thing about the Dutcheſs of *Norfolk* at that Time.

A. Yes.

Q. What Converſation had Sir *John Germaine* and the Dutcheſs of *Norfolk*?

A. She was in the Houſe, and they Eat and Drank together, and lay together.

Q. Where was that?

A. At Sir *John Germaine's* Houſe next the Cockpit.

Q. How came you to know they lay together?

A. Becauſe I was his *Valet de Chambre*, and help'd to undreſs and put him to Bed.

Q. Where was the Dutcheſs at that Time?

A. The Dutcheſs was ſometimes a-Bed, and ſometimes not, according as he came home, early or late.

Q. How long was the Dutcheſs with Sir *John Germaine* at the Cockpit?

A. She was at the Cockpit before I came there.

Q. Whether he went from Sir *John Germaine's* Service, after he came to live there?

A. He left his Service ſeveral times.

Q. When was the firſt time he went from Sir *John Germaine's* Service.

A. The firſt time he left his Service was in *Suffolk-Street*.

Q. How long was it before he came to live with him again?

A. He came into his Service again, the Summer after this preſent King came into *England*.

Q. What Time of the Summer was it?

A. He can't juſtly tell that.

Q. Whether the Dutcheſs was there before he came to the Cockpit or not?

A. She was there before.

Q. How long continued ſhe there?

A. About fifteen Days after he came to Sir *John Germaine*.

Q. In what manner did Sir *John Germaine* and the Dutcheſs live there during thoſe fifteen Days?

A. He ſays he hath already explained that before, he uſed to undreſs him and put him a-bed together with the Dutcheſs.

Q. Where did the Dutcheſs live after ſhe went from Sir *John Germaine's* Houſe?

A. She went and dwelt at *Vaux-Hall*.

Q. By what Name did ſhe go when ſhe was at *Vaux-Hall*.

A. She went by the Name of my Lady *Beckman*.

Q. Whether he went with her, or continued in Sir *John Germaine's* Service?

A. He went with my Lady Dutcheſs for ſome time, by Sir *John Germaine's* Order; he was ſometimes with the one, and ſometimes with the other; ſometimes one paid him, and ſometimes the other.

Q. Whether Sir *John Germaine* went to *Vaux-Hall*?

A. He came there ſometimes; he has ſeen him there ſeveral Nights.

Q. Whether he ſtayed all Night there?

A. Sometimes.

Q. Whether he was alone, or any body was with him?

A. There was ſome body lay with him.

Q. Who, upon his Oath?

A. Madam the Dutcheſs, Madam *Beckman*.

Q. How know you that?

A. Becauſe he undreſs'd him when they lay together.

Q. How often was that?

A. He can't juſtly ſay how often, but it was ſeveral times.

Q. What Service was he in when he went out of *England*, and upon what Occaſion?

A. He

A. He left Sir *John Germaine's* Service at that Time when the Trial was depending between the Duke and the Dutcheſs of *Norfolk*.

Q. By whose Order did you leave that Service?

A. He desired leave.

Q. How came you to leave that Service at that Time?

A. Because he was afraid he should be obliged to speak the Truth of what he had seen.

Q. Whether any went with him, and who went from their Service when he went?

A. There were two Servants of the Dutcheſs's.

Q. What was their Names?

A. One is called *Susannah Barrington*, and the other *Eleanor Vanes*.

Q. Whither did they go?

A. He was ordered by Sir *John Germaine* to hire Lodgings for them, where they should be unknown and private.

Q. What was the Reason why they should be in private?

A. He knows no other Reason, but the Difference before the Parliament between the Duke and Dutcheſs of *Norfolk*; he was obliged to take the Lodgings, because the Wind was contrary for them to go for *Holland*, and took private Lodgings for them by the Order of Sir *John Germaine*.

Q. What became of *Susannah Barrington* after that?

A. She stay'd about three Weeks with him, and then Sir *John Germaine* came and fetch'd her back again, and where he carried her he does not know.

Q. What became of *Vanes*, and your self afterwards?

A. When the Wind favoured, we passed the Seas.

Q. What Time of the Year was it?

A. It was about *Easter* that he came into *Holland*.

Q. What Time he went from his Service, and was ordered to be private?

A. It was about the Time of the Trial.

Q. Whether he hath any Paper under Sir *John Germaine's* Hand for his Discharge? We do not ask it, but only to refresh his Memory.

The Paper was dated Eighth of February, One thousand six hundred ninety-two, reckoning the Year to begin the first of January.

Whether that was the Time he left the Dutcheſs's Service?

A. Yes, about six or eight Weeks after he went to Sea.

Q. Where did you stay in the mean time?

A. In the *Minories* near the Tower.

Q. How came you to stay there so long after you were out of Service, before you went beyond Sea?

A. Because the Wind was contrary.

Q. Who went over with him; what became of *Eleanor Vanes*?

A. She went with him to *Holland*.

Q. Who bare her Charges thither?

A. Sir *John Germaine* gave him seven Guineas to pay for the Expences that he was at here, and to cross the Sea.

Q. How long after that he continued in *Holland*, before he came into *England*?

A. He did not stay long in *Holland*, but went into his own Country.

Q. How long was it before you returned to *England*?

A. The Summer following.

Q. Was he sent for over into *England*, and by whom?

A. Yes, Sir *John Germaine* sent to him often, by himself, and by his Brother in *Holland*.

Q. When he came over in the Summer following (in Ninety-two) whose Service did he come to?

A. He returned to Sir *John Germaine*.

Q. Where did he live at that Time?

A. Where he lives at present, at the *Cockpit*.

Q. Whether after he came back in the Year One thousand six hundred ninety-two, he observed any Conversation between Sir *John Germaine* and the Dutcheſs?

A. Yes, he says he saw them come together at their House.

Q. What more?

A. He again then saw them a-bed together.

Q. Where?

A. In the House of Sir *John Germaine*.

Q. How often may that be?

A. He can't justly tell how often.

Q. Whether it was often or not?

A. No, he can't say very often.

Q. When was the last Time he ever saw them a-bed together?

A. The last Time he saw them a-bed was not at the *Cockpit*.

Q. Where then?

A. It was at the Dutcheſs's own House, where, as he believes, she lives still.

Q. Whereabout in the Town?

A. It was upon a Corner of the Park, near my Lord of *Oxford's*.

Q. How long since he saw them last a-bed together?

A. He can't justly tell the Time, it was about two or three Months before he went away.

Q. Did he mean the first, second, or third Time?

A. It was two or three Months before he went away the last Time.

Q. In what Year did he go away the last Time?

Let him look upon any Note he hath to refresh his Memory.

Accordingly he look'd upon a Paper.

A. 'Tis the Twenty-seventh of *April*, One thousand six hundred ninety-six.

Q. Did you go away then the last Time?

A. Yes, he says, that 'twas the last Time he left his Service.

Q. How long before that did you see them a-bed together?

A. He says it was about two Months and a half before he left the Service.

Q. When my Lady Dutcheſs lived at *Fox-Hall*, whether he can name any body else that was a Servant in the House at that Time?

A. Yes, there was one *Eleanor Vanes*.

Q. What Servant was she?

A. She look'd to the Kitchen.

Q. Whe-

Q. Whether he has seen her in the Chamber when the Dutcheſs was a-bed there?

A. Yes, very often.

Q. How came ſhe that was Cook-maid to be in the Chamber?

A. He ſays he can't tell the Reaſon, or what Buſineſs ſhe had there; but there ſhe was for one Thing or other, beſt known to her ſelf, he does not know.

Q. Whether when the Dutcheſs was at *Fox-Hall*, any Relations of Sir *John Germaine* came to her there?

A. Yes, they would come and ſee her.

Q. Who were they?

A. Mrs. *Brienne* and Mrs. *Judith*; he ſays he does not remember that Mrs. *Brienne* has lain there, but Mrs. *Judith* has.

Q. Where it was, and upon what Occaſion he met with *Elianoſ Vanefs* after he carried her over into *Holland*?

A. I met her in *Amſterdam*.

Q. Whether he came over into *England* with her, and upon what Occaſion?

A. I met her at *Amſterdam*; and ſhe aſk'd me what Buſineſs I had there, whether I had a Maſter; and I ſaid No.

Q. When was that?

A. About a Year and a half, to his Remembrance.

Q. Whether he came over with her the laſt Time?

A. Yes, he came over into *England* with her in Company, about ſix or ſeven Weeks ſince.

Q. Where has ſhe been ſince he came into *England*?

A. She was in Lodgings.

Q. Where?

A. He put her into private Lodgings, that ſhe ſhould be ſecure.

Q. Why did you put her into private Lodgings?

A. Becauſe he was afraid, in the Circumſtances that he is now, that ſome body might give them ſome Affront, or do them an Injury; and therefore he thought it beſt to be in ſome Place of Security.

Q. What particular Reaſon had he why he ſhould take private Lodgings, or have that Fear upon him?

A. He ſays, that when he was laſt here, Sir *John Germaine* came up one Night in a great Paſſion, and ſwore, and ſaid, ſome body would betray him.

Q. I deſire he might repeat that again?

A. Sir *John Germaine* came one Night up Stairs, and ſaid, that *Nicholas*, this Rogue, would betray him.

Q. Who was that?

A. He ſays 'twas one *Nicholas Ruſbett*, that ſerved him or both, he can't tell, but he was in his Service; that he heard theſe Words, and that he thought in theſe Circumſtances, the ſecureſt Way would be to take private Lodgings.

Q. What brought him into *England* the laſt Time? Whether he was ſpoke to, to come, and for what Purpoſe?

A. He ſays, that about two or three Years ago he happened to meet with a Friend, and he deſired him if he heard of a good Place for him in *England*, to let him know of it, for he would go and ſerve there again.

Q. Whether he was ſpoke to, to come over, or was *Elianoſ Vanefs* ſpoke to, and what was the Occaſion?

A. My Lord aſk'd him if he would ſpeak the Truth, and do him any Service; and whether he would bring this Girl along with him.

Q. Who was it that ſpoke to him?

A. My Lord Duke and my Lord *Howard*.

Q. When was that?

A. It was about a Year ago.

Q. Where was he at that Time?

A. He was in *London*.

Q. Did he go over of his own Accord, or was he ſent into *Holland*, who it was that ſent him over, and for what?

A. It was a Friend of his Acquaintance, that he deſired, in caſe he heard of a Place, to ſend for him.

Q. Who ſent for *Elianoſ Vanefs* over?

A. He ſays, that after he had promiſed my Lord Duke and Lord *Howard* to ſpeak the Truth of what he knew, they deſired him, that if he met with *Elianoſ Vanefs*, to deſire her to come over, and ſpeak the Truth of what ſhe knew.

Q. How long after did you meet with *Elianoſ Vanefs*?

A. 'Tis about twelve Months ſince I met with her.

Q. When was the firſt Time that he ſpoke to *Elianoſ Vanefs* about her coming over to ſpeak the Truth?

A. 'Tis about a Year ſince.

Q. How long is it ſince they reſolved to come over?

A. About twelve Months.

Q. Whether he was acquainted with *Elianoſ Vanefs* before he met with her in Sir *John Germaine's* Service?

A. He ſays never.

Q. You ſay you went from Sir *John Germaine's* Service in *Suffolk-ſtreet*, and you ſay when you came to him again he lived in the *Cock-pit*; did you find *Elianoſ Vanefs* there then?

A. He ſays he found her at the *Cock-pit*.

Q. When he waited on Sir *John Germaine* in his Chamber, who waited on the Dutcheſs in her Chamber?

A. There was one *Sufannab Barrington*, and *Elianoſ Vanefs*.

Q. But who waited upon her in her Chamber?

A. *Sufannab Barrington* did, to dreſs her.

Q. Whether he had ſeen any of Sir *John Germaine's* Relations in the Chamber, when this Lady and Sir *John Germaine* were a-bed together?

A. Yes.

Q. Name them?

A. He ſays, he ſaw Mrs. *Brienne*, and Mr. *Daniel Germaine* there.

Q. Did you ſee Mrs. *Judith* there?

A. He does not remember that he ſaw Mrs. *Judith* in the Room while they were a-bed together, but the other he hath ſeen when they were a-bed together, but at different Times.

Q. Whether ever he hath ſeen the Dutcheſs at any other Place?

A. He has been at the Chapel with her, and elſewhere.

Q. Where?

A. At my Lord *Peterborow's*, and in her own Houſe?

Croſs Examined.

Q. I deſire he may reduce this to a Certainty, what Time he went out of England, and look upon his Note again?

He look'd upon his Note, and 'twas dated Eighth February, One thouſand ſix hundred ninety-two.

Q. How long after this went he out of England?

A. He went away as ſoon as the Wind was favourable.

Q. Can he recollect the Time?

A. He ſays 'twas ſome time before Eaſter, for he came into Holland about Eaſter.

Q. When he told his Grace the Duke of Norfolk and Lord Howard he would be true to them, whether he was in any Service at that Time?

A. No, he was in no Service at that Time.

Q. How long had he been out of Employ?

A. He has none yet.

Q. But how long had he been out of Employ, or Service, before he made this Propoſal to the Duke, or my Lord Howard?

A. He ſays, he went away about the Twenty-ſeventh of June.

Q. Is it the ſame Year his Paper ſpeaks of, that he ſpoke to my Lord Duke?

A. No, 'twas not; he ſpoke to my Lord Duke about twelve Months ago.

Q. But how long had he been out of Service when he ſpoke to my Lord Duke? when did he leave Sir John Germaine the laſt Time?

A. 'Tis about three Years and half ago; 'twill be four Years in June next.

Q. Has he been in any Service ſince that Time?

A. No, he hath not.

Q. How has he lived ſince then?

A. He ſays he has ſomething of his own in his own Country, upon which he may ſubſiſt ſome time.

Q. I think he ſaid, he ſaw Sir John Germaine and the Dutcheſs in Bed together, in the Houſe where ſhe now lives?

A. Yes.

Q. Then I deſire he will tell, if he knows any of the Dutcheſs's Servants that were about her at that time?

A. Yes, he does.

Q. Then, that he will name them?

A. Henry Keemer.

Q. What's become of him?

A. They told he was dead; and there was Susan Barrington.

Q. I deſire he will tell of ſome of the Servants that lived with the Dutcheſs at that Time, beſides that Perſon that is dead, and the other which is gone beyond Sea, as they ſay?

Mr. Northey answer'd. We don't ſay ſhe is gone beyond Sea.

A. He does not know any other.

Q. Then, that he will tell what Month he ſaw them in Bed together?

A. He can't remember the Month, or the Day; but if they will aſk him the Reaſon why he remembers it, he will tell it them.

Q. If you can come to any Certainty about the Time of the Year, or the Month?

A. He can't ſay the Month, or any particular Time.

Q. What Servant he ſaw in the Houſe, or who let him in?

A. He had himſelf the Key of the lower Room, and could come in when he pleas'd.

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Q. Whoſe Servant was he at this Time he ſpeaks of? Whether he was a Servant to the Dutcheſs or to Sir John Germaine?

A. He was Servant to Sir John Germaine.

Q. He was ſaying he could tell a Reaſon to fix the Time, let him recollect himſelf of the Time?

A. He can't remember the Time, but he came into the Room to bring a Clyſter, and he was deſired to ſtay a little till my Lady Dutcheſs got up.

Q. That he may be poſitive whether he had a Key to the lower Room of the Dutcheſs's Houſe?

A. He ſays he had a Key of the Door that goes into the Park, and he could come into the Houſe by it, for it was the Key of the Houſe.

Q. What Servant was it that brought him up, for that Key only let him into the lower Room?

A. Sometimes Susan Barrington, and ſometimes Henry Keemer.

Q. What Room the Lady Dutcheſs lay in?

A. 'Tis a Room that looks into the Park.

Q. 'Tis not a Ground-Room, I ſuppoſe?

A. No, 'tis up Stairs.

Q. How many Stories?

A. He can't tell what Degree it was.

Q. Being aſk'd that Queſtion again upon the reading his Depoſitions, he ſays he can't tell how many Stories; but, if you pleaſe, he will deſcribe the coming into the Room as well as he can.

Q. Deſcribe the Coming into the Room?

A. That as you come upon the left Hand, there is a Way to go into the Dutcheſs's Room; when you have paſſed the little Chamber-door, you go into a Place full of China; and, after that, you come to the Dutcheſs's Bed-chamber. On the other ſide, going up Stairs, there is a little Room, where Susan told him ſhe lay; and afterwards you come into a Room where the Chimney is, as he thinks, on the right Hand, and he thinks there are two Windows that look into the Street, he is not very certain; and in the Room upon the left Hand there is a Door into a great Room, and from that great Room you can go into the Lady Dutcheſs's Room. It was ſo at that Time, to the beſt of his Remembrance.

Q. How many Rooms are there upon a Floor?

A. There are a matter of 4 Rooms upon a Floor.

Q. Whether he has ſpoke with any body that he knows is acquainted with this Houſe ſince he was examined here before?

A. He ſays he has ſpoke to nobody ſince, that has given him any Account of the Houſe.

Q. Which Side of the Park does the Window of my Lady Dutcheſs's Room look into?

A. Towards the Pond where the Braſs Statue is.

Q. Does the Bed-chamber look towards the Braſs Statue?

A. He durſt not go to look out at the Window for fear of being diſcovered, but he could ſee the Water.

Q. Whether he knows the Horſe-Guards?

A. Yes.

Q. Whether he knows Arlington-Houſe?

A. Yes.

Q. Whether the Window does look towards Arlington-Houſe, or the Horſe-Guards?

A. He hath been there ſeveral times, but it was not his Buſineſs to go to the Window; but when he was in the Room he could ſee the Water.

Q. Whether he could tell which Way the Window look'd?

A. He did not live in the Houſe, but went there

there sometimes upon Messages; and when he was there, 'twas not his Business to go to the Window, but he could see the Water when he was in the Room.

Q. Whether the Window was on that side of the little Door that he came in, or on t'other side?

A. Upon the left Hand coming in. He says he has explain'd himself as to the entering in, and he can say no more to it.

Q. Was it one or two Pair of Stairs that the Dutchess lay?

A. He can't be positive, whether one or two Pair of Stairs.

Q. Who brought him up that Time he brought the Clyster?

A. Susan Barrington.

Q. Who told him, at the Cock-pit, 'twas the Dutchess of Norfolk?

A. Sir John Germaine, her self, and the whole House told him so.

Q. Did he before that Time know the Dutchess?

A. No.

Q. Did you never see other Women there besides this Lady?

A. Yes.

Q. Did you know all the rest that you saw there?

A. No, he did not know them all.

Q. Whether he was not told the rest of the Women were of great Quality too?

A. He never was told so, nor did he inform himself whether they were or no.

Q. At Fox-hall, and at the Cock-pit, I think, he spake as if he undress'd Sir John Germaine and the Dutchess; whether he undress'd them both?

A. Not the Dutchess.

Q. What Year was it they were at Fox-Hall?

A. It was before he went to Ireland, and after he came from Ireland; but he can't precisely tell the Time.

Q. Whether he has been in any Service since One thousand six hundred ninety-six, when he left Sir John Germaine's?

A. No.

Q. Whether when he came, about a Year ago, into England, there was Application made to him in order to make a Discovery; or, whether he offer'd of himself to make it?

A. He never did offer himself.

Q. Who was it that first ask'd him the Question?

A. 'Twas my Lord Howard.

Q. Where did you meet my Lord Howard? and upon what Occasion?

A. He says, That 'twas that Person that he had address'd himself to, to get him into Service here, that was the Occasion of their meeting together.

Q. Did you know the Lord Howard before?

A. No.

Q. Where was the Place they met?

A. He call'd him to his House.

Q. My Lord, or that Person?

A. He says, That Person to which he address'd himself to get a Place, told him he had found one.

Q. Name that Person.

A. Richardson.

Q. Where does he live?

A. I don't know.

Q. Were you acquainted with him before?

A. Yes.

Q. Where had you been acquainted with him?

A. At London; 'tis a Woman.

Q. Whether he can describe the Room, or the Furniture of the Room, where this Noble Lady and Sir John Germaine were a-bed together, where she lives now?

A. He can't remember any thing of the Furniture.

Q. Was it hung or wainscoted?

A. He says, he can't tell, and yet was there often.

Q. Pray, who was the Clyster for?

A. For Mr. Germaine.

Q. Where was it to be administred?

A. A-bed.

Q. Who was a-bed?

A. My Lady Dutchess was a-bed too.

Q. Was it to be administred at the same time as he and the Dutchess were a-bed together?

A. No.

Q. Was the Dutchess there?

A. He laid the Syringe to the Fire-side, till such time as the Dutchess rose.

Q. Apothecaries are exact in point of Time in making their Bills.

A. He says, I compos'd the Clyster my self, but he did not compose it at the Dutchess's House, but at Mr. Germaine's.

Q. Did you stay with Sir John Germaine till all was over?

A. No; as soon as he had given it him, he went home to Mr. Germaine's House.

Q. Whether he pretends to speak of any other Time he saw the Dutchess in Bed with him at her House in Duke-street, but when he carried him the Clyster?

A. Yes, my Lord, he says he has.

Q. Let him tell the Times and Circumstances.

A. He says, he can't very well remember the Times, but he had sometimes Business there, to bring and carry Letters.

Q. When was that Time of the Clyster?

A. It was about two Months before he left them.

Q. Was that the last time he saw them together?

A. That was the last Time.

Q. How long before that did he see 'em together?

A. Long before that Time, in the same House.

Q. He says, he has seen Sir John Germaine and the Dutchess in Bed together elsewhere. Did he never see them in Bed together at the Mill-bank?

A. He has seen them there two or three Times a-bed together.

Q. When did your Master order you to prepare a Clyster?

A. He had Order to come and wait for Mr. Germaine at the Dutchess's; and, that Mr. Germaine coming to the Dutchess's late, he ordered him to bring the Clyster next Morning.

Q. At what Time he came the next Morning?

A. He had Order to bring it at 9 a-Clock, and he brought it at the appointed Hour, and waited in the little Room where Susan was till he was call'd in.

Q. He says, he waited for Sir John Germaine, by his Orders, at the Dutchess's, till 'twas late; which of the Dutchess's Servants did he keep company with?

A. He says, he remembers very well it was Mr. Keemer.

Q. Whether that time that he saw Mr. Germaine and the Dutchess in Bed together at Mill-bank, if it was after the first time he was sent out of England, when the Bill was depending before the Lords?

A. 'Twas after.

Q. What Year did you see them a-bed together at Mill-bank?

A. 'Twas a day or two before Mrs. D'avenant died. A day or two before she died Mr. Germaine came to Mill-bank, and staid there about eight Days.

Nicola Hausfear.
Depositions

Depositions of William Bayly.

Die Sabbati 25 Februarii, 1699.

William Bayly ſworn.

Q. D'YE know Sir John Germaine and the Dutcheſs of Norfolk?

A. Yes.

Q. Was you Servant to Sir John Germaine?

A. Yes.

Q. In what Capacity?

A. Three Years I wore his Livery, and three Years I was his Steward.

Q. When did you firſt come to live with him?

A. Three Weeks before the King was crown'd.

Q. Was there any Converſation between Sir John Germaine and the Dutcheſs of Norfolk? D'ye know that they liv'd together, or kept Company one with another?

A. No; I never knew them live together, but ſeen them keep Company together, but never ſaw any Incivility between them.

Q. Where ſaw you them in Company together?

A. I ſaw them in Company in my Maſter's Houſe.

Q. How long ago?

A. About five Years ago.

Q. Where did your Maſter then live?

A. He liv'd then where he does now.

Q. Did the Dutcheſs of Norfolk ever lie there?

A. Never, to my Knowledge.

Q. What was the Time ſhe uſually came there?

A. Commonly in an Afternoon.

Q. How often have you ſeen her there?

A. Two or three times.

Q. At what Time did ſhe uſe to come? and, At what Time did ſhe uſe to go away?

A. She uſed to come there about Four or Five a-Clock in the Afternoon, and might ſtay there about two or three Hours.

Q. You are upon your Oath, and pray tell whether you ever ſaw them in Bed together?

A. By all that's good, I never ſaw them in Bed together.

Q. Did the Lady Dutcheſs uſe to come thither Mask'd or Unmask'd?

A. She uſ'd to come Mask'd, but put it off when ſhe came into the Houſe.

Q. Who uſed to come with her?

A. There uſed to come Mr. Keemer with her.

Q. What Company? Did no other uſe to come with her to Sir John Germaine's Houſe?

A. Yes, another Servant, Mr. Carter.

Q. Who was in the Room with them in Sir John Germaine's Houſe?

A. Mr. Keemer ſtay'd commonly with them all the Time they dined, and after Dinner; the other Servants and I were in the next Room to them, and commonly, when they had Occaſion, they would call Mr. Keemer.

Q. Was there no other Servant but Mr. Keemer that they uſed to call upon?

A. Yes; a Gentlewoman, Mrs. Suſan Barrington.

Q. Have you ſeen her lately?

A. No, not theſe fix Months.

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Q. D'ye know if your Maſter uſed to go to the Dutcheſs's Houſe?

A. Yes, I have heard ſo, but I can't ſay ſo poſitively.

Q. Did you ever go with them to the Dutcheſs's Houſe?

A. No; but I have gone with them as far as the Horſe-Ferry.

Q. When was the laſt Time you ſaw them together?

A. I can't tell; I have been out of my Maſter's Service theſe four Years.

Q. How long before you left your Maſter's Service, d'ye think it was that you ſaw them together?

A. I can't tell, but I think it might be about half a Year.

Q. He has gone with his Maſter as far as the Horſe-Ferry; pray then let him be aſk'd where he left his Maſter?

A. I left him at the Horſe-Ferry.

Q. What Orders did your Maſter give you when you left him?

A. He order'd me to go Home, and keep the Houſe.

Q. D'ye know whither your Maſter was gone then?

A. I may judge he went to the Dutcheſs, but I can't ſwear he went there.

Q. Did Sir John Germaine come home to Bed that Night?

A. Some Nights he came, and ſome he did not.

Q. Did you carry Cloaths to him at any Time?

A. I have carried Cloaths for him to Mr. Keemer, the Dutcheſs's Servant.

Q. Where did Keemer live when you carried Cloaths to him?

A. In a little Street going to the Bowling-Alley.

Q. Who did he live withal?

A. He told me he lived with the Dutcheſs, but he was a Houſe-keeper, and had a Houſe there.

Q. Did you always carry Cloaths to Mr. Keemer for your Maſter?

A. Sometimes I carried his Cloaths to Mr. Keemer, and ſometimes Mr. Keemer came to me for them.

Q. Did you apprehend that your Maſter was then at the Dutcheſs's, or at Mr. Keemer's?

A. I can't tell where he was: How can I tell? I answer as punctually as I can.

Q. When Keemer came to you for Cloaths, what Account did he give you where your Maſter was?

A. He gave no Account.

Q. Whether did you ever ſee the Dutcheſs and your Maſter together at any other Place but his own Houſe?

A. Never.

Q. When you carried the Cloaths to Keemer's, did your Maſter lie at Home that Night or not?

A. Sometimes he lay at Home, and ſometimes he did not: Many times my Maſter has been at the Dutcheſs of Mazarine's from Four a-Clock this Day till Twelve the next.

Q. Repeat it again, for that's material.

A. My Maſter has taken his Chair at his own Back-door at Four a-Clock on a Saturday, and not come Home till Sunday at Twelve a-Clock.

Q. Where has your Maſter been at that Time, when he ſtay'd out all Night?

A. At the Dutcheſs of Mazarine's; and when

he lost his Gold, he has sent to me for more Gold.

Q. Did he ever send to you for any Cloaths when he was there?

A. Never.

Q. D'ye know where he was when he sent to you for Cloaths?

A. No, indeed.

Q. D'ye know *Nicholas Hoffer*?

A. Yes, I know him very well; I saw him here just now.

Q. Did you know him when he waited on Sir *John Germaine*?

A. Yes, he succeeded me, and I succeeded him again.

Q. You was Footman when you went to Sir *John Germaine*: When was that? and, What Year did you leave off your Livery, and serve him as his Steward?

A. I can't tell.

Q. He succeeded *Hoffer*, and *Hoffer* succeeded him: Pray let it be ask'd him, at what Time he came into his Master's Service, when he succeeded *Hoffer*?

A. 'Twas about the same Time that the Trial was here before.

Q. How long was it e'er *Hoffer* return'd again to serve Sir *John Germaine*?

A. To the best of my Knowledge, it was three Years; for I receiv'd and paid Money for my Master, and *Hoffer* was away all that Time: *Hoffer* won't deny it, if he were call'd in.

Q. You say that you succeeded *Hoffer* at the Time when the Trial was here: How long before that Time did you return to your Master's Service?

A. About three Weeks before the King was Crown'd I came to my Master, and serv'd him three Years, and wore his Livery; and he was pleas'd, after Mr. *Hoffer* went away, to make me lay out his Money, to be Caterer for him, and to keep his Gold, and to the best of my Knowledge 'twas three Years before *Nicholas* succeeded me again.

Q. How long was it before he came back again to serve Sir *John Germaine*?

A. Before I saw him in my Master's House, and that he took my Place from me, 'twas three Years.

Q. Did you not see Mr. *Hoffer* in *England* before that Time that you went out of your Master's Service?

A. No; I beg your Lordship's Pardon, I will recollect my Memory for that; as I have a Soul to be sav'd, now 'tis come into my Mind, my Master sent for *Nicholas* into *Holland* about a Year before *Nicholas* did come over: My Master told me, before he came, that he would send for *Nicholas* again, and that I and *Nicholas* should have the Charge of his House. *Nicholas* came over, and we had the Play at our own House: *Nicholas* staid there some Time, but he did not like his Business, and so he went away again, because he could not have all the Money.

Q. About what Time did *Nicholas* come into *England*, after the Trial was before this House?

A. I can't resolve you.

Q. Had you no Certificate of Leave, or Discharge, when you left your Master's Service?

A. No; my Master was so kind, that he brought me immediately into the Excise, as soon as I was out of his Service.

William Bayly cross-examin'd, *Lune* 26 *Februarii*, 1699.

Q. When you carried the Cloaths to Sir *John Germaine's*, was it the Time when you wore his Livery?

A. I carried no Cloaths to him when I wore his Livery?

Q. Had you no Discourse with the Dutchess's Agents since *Saturday Night*?

A. No, I have not seen them, nor don't know them.

Q. He says, he saw the Dutchess of *Norfolk* at the Cockpit, at Sir *John Germaine's* House where he now dwells: Pray recollect you self, that you may be positive as to the Time.

A. I can't resolve you as to the Year, 'tis so long ago; I believe 'tis about five Years ago.

Q. Can you be positive that it is not more?

A. To the best of my Knowledge, 'twas about five Years.

Q. Can you be so far certain, that you can say 'twas not more?

A. I can't swear 'twas more, but I believe it may be five Years, more or less.

Q. You say you saw her two or three times there: Was it all in one Year, near the same Time or Month? Can you reduce it to any Certainty?

A. I believe it might be in Summer.

Q. All in one Summer?

A. Yes, I believe, all in one; to the best of my Knowledge there was never a Winter between the Time that I saw her first and last.

Q. Did you know the Dutchess of *Norfolk* before that Time that you saw her in your Master's House, and took her to be the Dutchess of *Norfolk*?

A. I did not know her before the Trial was here.

Q. Did you know her any Time after that Trial, before the Time you saw her in Sir *John Germaine's* House?

A. I was not sure that it was she, only as I had it from Mr. *Keemer*.

Q. Then you don't undertake of your own Knowledge to say that it was she?

A. I can't swear that 'twas she, but as Mr. *Keemer* told me; I don't know whether I should know her now or not, 'tis so long since I saw her; I believe it is five Years, if not more.

Q. Did you see her before or after you saw her at Sir *John Germaine's* House?

A. The first time they told me 'twas she, I met her in her Coach in the *Pallmall*, with two other Gentlemen with her, a little before the Trial was here: I followed the Coach, and the Dutchess went into some Lady's House in *Dover-street*, and they told me the Dutchess was the first Woman that went out; this is the first time that e'er I saw her, that I know of, 'till such time as *Keemer* told me 'twas she.

Q. Whether do you know *Nicholas*?

A. I know him very well.

Q. Can you tell how long it is since he came last into *England*?

A. No, he has been here two or three times in *England*, since I left my Master.

Q. How long before this Examination saw you him, or spoke with him?

A. I

A. I did not ſee him above theſe three Years.

Q. How long before you came hither as a Witneſs did you ſee him?

A. I have not ſeen him theſe three Years till I came hither to be a Witneſs, and did admire to ſee him here, that a Man that had got his Bread under his Maſter ſhould appear here againſt him, it is ſo ungrateful a thing.

Q. How came it you had ſo much Curioſity as to follow the Dutcheſs's Coach?

A. I had a Mind to ſatisfy my own Humour.

Q. D'ye know how *Nicholas* lived ſince he was out of his Maſter's Service?

A. No, I never ſaw him, nor had any Account of him at all, nor have ſeen him theſe three Years till now.

Q. Did you know when *Nicholas* and *Elleanor Vanefs* went out of *England*?

A. No, I never knew when they went, nor when they came.

Q. Don't you know what Buſineſs he went out of *England* about, the Time you took his Place?

A. I know not the Buſineſs he went out of *England* upon.

Q. Did he at any Time tell you he was to get away to hide himſelf from coming hither?

A. No, I heard not one Word from him at the Time of his parting.

Q. What reaſon had you to ſay upon the firſt Sight of *Hofier*, that he was ungrateful for coming hither?

A. I ſhould think my ſelf ungrateful to eat a Gentleman's Bread ſeven Years, and do him all the Spite and Malice I could.

Q. Repeat thoſe Words?

A. I ſhould think my ſelf very ungrateful to proſecute; if I ſhould do any Harm to a Maſter that I had ſerved ſo many Years, I ſhould think my ſelf very ungrateful, let him think of himſelf what he pleaſes.

Q. He added ſome other Words?

A. For any thing I know, it is Spite and Malice.

Q. Where did you live when you followed the Dutcheſs's Coach?

A. At Mr. *Germaine's*.

Q. This Man is a Witneſs, and ſo is *Hofier*; let him explain himſelf what he means, and where in there is any Difference between him and *Hofier*, for both are Witneſſes?

A. I ſay, I ſhould think my ſelf very ungrateful, if I would do any Harm to a Man whoſe Bread I did eat ſo long, and had got ſo much Money under him.

Q. What Harm does *Hofier* do, being a Witneſs againſt the Dutcheſs of *Norfolk*? what Harm is that to Sir *John Germaine*?

A. I don't know.

Q. D'ye reckon it ungrateful to ſpeak the Truth to the Prejudice of a Maſter?

A. No, I would not ſpeak an Untruth for all the Maſters in the World.

Q. Where is there any Fault more in *Hofier* than in you?

A. I know not.

Q. Whether did *Elleanor Vanefs* live with Sir *John Germaine* when you liv'd there?

A. I know not who ſhe is.

Q. This Woman that was here as a Witneſs?

A. Yes, ſhe liv'd there.

Q. What Time went ſhe away from Sir *John Germaine's* Service?

A. I know not, I cannot tell, indeed.

Sign'd,

WILLIAM BAYLY.

Die Martis, 5^o Martii, 1699.

Council and Witneſs being call'd in for the Dutcheſs of *Norfolk* (and the Duke's Council being preſent) the Examination of the Witneſſes, taken Yeſterday in Short-hand and tranſcribed, were read to them, and ſubſcribed, (*viz.*)

Die Lune 4^o Martii, 1699.

Thomas Hawkſworth ſworn, depoſed as followeth:

Queſt. DO you know *Elleanor Vanefs*? and did you live in the Dutcheſs of *Norfolk's* Family?

Anſw. I came to live with the Dutcheſs about *October*, 1691. and left her in *September*, about two Years within two Months: *Elleanor Vanefs* lived there when I lived there, and was Cook-maid.

Q. When did ſhe leave the Dutcheſs's Service?

A. About the beginning of *January*, or the latter end of *December*, 1691.

Q. On What Occaſion went ſhe away?

A. She was turned away, to the beſt of my Remembrance, for keeping Company with *Dutchmen*.

Q. Whether uſed ſhe any other Office but in the Kitchen? or had ſhe Acceſs to the Dutcheſs's Chamber?

A. Never; ſhe was not allowed to come any higher than the firſt Floor: She uſed to clean that Room next the Street, one Pair of Stairs next the Door, and the Back-Parlour even with that, but was not ſuffered to come into the Dutcheſs's Chamber.

Q. Who waited upon the Dutcheſs in her Chamber?

A. *Frances Knight*; ſhe was conſtantly in the Dutcheſs's Chamber, and uſed to warm her Bed.

Q. You ſay that *Vanefs* was allowed to come no higher than the firſt Floor; explain that.

A. The Kitchen is under-ground backward; that Room *Vanefs* cleaned waſ even with the Street, a Ground-Room; the Laundry-maid clean'd the next Pair of Stairs.

Q. What was the Laundry-maid's Name?

A. *Suſan*; ſhe's dead.

Q. Do you know how long?

A. No.

Q. Did you ever ſee *Vanefs* in the Dutcheſs's Chamber.

A. Never in my Life; I never heard ſhe was allowed to come there.

Q. How

Q. How long is it since you liv'd with the Dutcheſs?

A. About ſix or ſeven Years, or very near it.

Q. D'ye remember the Bill that was brought into Parliament againſt the Dutcheſs, while you lived there?

A. I came to the Dutcheſs the *October* before that Bill was brought in.

Q. Was *Vanefs* turned away before that?

A. She was gone a Month or thereabouts before that.

Q. D'ye remember the Month?

A. To the beſt of my Remembrance, 'twas about the latter End of *December*, or the beginning of *January*.

Q. Was there any Stir about the *Dutch* Foot-Soldiers haunting *Vanefs*?

A. I never ſaw any, but have heard the Servants ſay they did.

Q. Can you ſay what Time it was? Whether before or after the Bill?

A. Before I heard any thing of the Bill ſhe was gone.

Croſs-Examin'd.

Q. Were do you live now?

A. With Sir *Thomas Barnardifton*.

Q. What Station were you in, when you lived with the Dutcheſs?

A. A Footman.

Q. Do you know *Hofier* then?

A. No.

Q. Where did the Dutcheſs live, when you came firſt to her.

A. Upon the Row between the *Horſe-Ferry* and *Mill-Bank*.

Q. How long did you live there?

A. A Fortnight or thereabouts; not much more.

Q. Do you know where ſhe liv'd before?

A. No.

Q. Do you know Sir *John Germaine*? And, on the Oath you have taken, did he ever come to the Dutcheſs's Houſe while you liv'd with her?

A. I never ſaw him in the Houſe; I never ſaw any unhandſome Thing by the Dutcheſs all the Time I lived with her.

Q. Did you never ſee Sir *John Germaine* with her?

A. No, never, and I had the Privilege of the firſt Floor and the ſecond Floor, and help'd to rub the Rooms, and ſometimes I rubb'd the Lodging-Room.

Q. Had you the Privilege of going up Stairs in the Morning?

A. No, it was one *Peacock* that rubb'd the Room above Stairs.

Q. Did you know *Vanefs*? Was ſhe Servant to the Dutcheſs when you liv'd there?

A. Yes, ſhe was.

Q. Can you be poſitive as to the Time of her going away?

A. As near as I can tell, it was in the beginning of *January*, 1692. I came in the *October* before, and ſhe went away the *January* following.

Q. Were you by, when ſhe was diſcharg'd?

A. No.

Q. Who paid her her Wages?

A. I can't tell.

Q. Did you never ſee *Vanefs* in the Dutcheſs's Chamber?

A. Never.

Q. Did you attend at the Dutcheſs's Chamber in the Morning?

A. Not conſtantly; we took it by Turns.

Q. Did you never attend in her Chamber when ſhe was a-Bed?

A. No.

Q. Who was it of her Women that attended in her Chamber?

A. *Suſan* —, *Frances Knight*, and *Suſan Barrington*.

Q. When did you ſee *Suſan Barrington* laſt?

A. About five Years ago.

Q. Did ſhe conſtantly attend in the Dutcheſs's Chamber?

A. She and Mrs. *Knight* carry'd Coals conſtantly to warm the Bed?

Q. How old was you when you liv'd with the Dutcheſs?

A. About eighteen Years old.

Q. How old are you now?

A. I think about Seven and twenty.

Thomas Hawkſworth.

Die Luna, 4 Martii, 1699.

John *Peacock* ſworn, depoſeth as followeth:

Queſt. DID you live with the Dutcheſs of *Norfolk* in 1691?

A. 'Tis ſix Years ſince I left her Service, laſt *January*, or thereabouts; I liv'd two Years and a half with her, or thereabouts; I came in *Auguſt*, and ſtay'd till *January* two Years following, or thereabouts.

Q. Did you live with the Dutcheſs, when the firſt Trial, as they call it, came on in Parliament?

A. Yes, I liv'd with her before and after.

Q. Did you know *Vanefs*?

A. I knew one whoſe Name was called *Lena*.

Q. What was her Buſineſs?

A. Below Stairs in the Kitchen; I never ſaw her in any other Room, but the outer Room next to the Street, and I was there all the while ſhe was there, and after ſhe was gone.

Q. Did you ever ſee her in the Dutcheſs's Bed-Chamber?

A. No; the Work ſhe was employ'd about was dirty Work; I never ſaw her clean, but naſty, and could not eat the Victuals of her dreſſing.

Q. Was you there before *Vanefs*?

A. Yes, I was in the Houſe ſome time before her Grace came over, to help the Upholder, and to carry Looking-Glaſſes and Stands.

Q. When did ſhe come over?

A. She came to *Mill-Bank*, but I know not when ſhe came over: My Lady *Peterborow* order'd me to do what I did.

Q. Was you Servant there to the Dutcheſs before ſhe came over?

A. I never ſaw my Lady Dutcheſs before ſhe came there, except ſome Years before at *Drayton*, when he liv'd with her.

Q. Who hired you?

A. I

A. I came there by the Lady *Peterborough's* Order, and had my Viſtuals at my Lord *Peterborough's*.

Q. Who hired you?

A. I was not hired at all.

Q. How long did you live at *Mill-bank*?

A. I liv'd about two Years and a Quarter, or ſomewhat more.

Q. What was your proper Buſineſs, when you liv'd with the Dutcheſs?

A. When the Dutcheſs went abroad, I went with the Coach; and when ſhe ſupp'd or din'd at home, I laid the Cloth, Forks and Spoons.

Q. Did you ever wait above Stairs?

A. Yes, I have waited above Stairs.

Q. Who waited upon the Dutcheſs in her Chamber?

A. *Frances Knight*, one *Suſan*, and one *Suſannab*.

Q. Upon your Oath, did you ever ſee this Woman, *Helena*, go into the Dutcheſs's Bed-chamber?

A. I never once ſaw her there all the Time I ſtaid there; I rubb'd the Bed-chamber with a long Rubbing-bruſh; I never ſaw her there, nor above Stairs.

Q. Do you know at what Time it was ſhe came to live with my Lady Dutcheſs?

A. Yes; ſhe came while I was there.

Q. Did you live with the Dutcheſs before ſhe came to *Mill-bank*?

A. I liv'd at no other Place with the Dutcheſs, but at *Mill-bank*, and at *Drayton*.

Q. D'ye know how *Vanefs* left the Dutcheſs's Service; and why?

A. Yes, upon Complaints of Diſorders, and her ill dreſſing the Viſtuals.

Q. What Diſorders?

A. There were Men came to the Door to enquire for her, twice, or more.

Q. Did you ſee the Fellows?

A. Yes, I ſaw the Fellows, they came to the Door in the Duſk of the Evening, and I acquainted the Dutcheſs with it, and told her Grace, I did not think it ſafe for her Houſe, becauſe I had the Charge of Silver Spoons and Forks.

Q. What ſort of Men were they?

A. One of them appear'd to be a Foot-Soldier in a blue Coat.

Q. In what manner was ſhe put away, or left the Houſe?

A. Upon theſe Complaints, the Dutcheſs ſaid ſhe wou'd turn her away.

Q. Did you hear the Dutcheſs ſay ſo?

A. Yes.

Q. Was that before the Trial at the Lord's Houſe, or after?

A. To the beſt of my Remembrance, it was before the Trial, the latter End of *December*, or the Beginning of *January*, but I can't be poſitive; I think 'twas the latter End of *December*.

Q. Did ſhe go away before the Trial, or not?

A. I think, before the Trial, but I am not ſure: Yes, at the Time of the Trial, I remember another Cook.

Q. Are you ſure of that?

A. Yes, I am ſure of it; 'twas the Coachman's Wife, one *Goffing*.

Q. D'ye know *Hauſeur* or *Nicola*?

A. No.

Q. You lived at *Mill-bank* two Years; D'you know no ſuch Man?

A. I never heard his Name before; I had no Acquaintance with him, nor ever ſaw him about Houſe.

Croſs-Examined.

Q. Where do you live now?

A. Near *Huntingdon*; I board in a Houſe there.

Q. How long have you been out of Service?

A. Ever ſince I left my Lady Dutcheſs.

Q. How do you live then?

A. I board in a Houſe; I follow no Employment, but live on my own, except to teach Children, two, three or four, out of Charity.

Q. When came you to the Dutcheſs's Service firſt?

A. I ſerved her about ten or twelve Years ago, but I can't remember the preſiſe Time, 'tis ſo long ſince.

Q. How long did you live with her then?

A. I lived with her about half a Year at *Drayton* in *Northamptonſhire*; I went about *November*, and ſtaid to *Lady-Day* following.

Q. How long was it before you came to live with her the laſt Time?

A. I can't tell.

Q. You ſay you came to live with her about two Years and a Quarter; what Time was that?

A. I can't tell, but that may be eaſily found; I liv'd with her about ſix Years ago, or thereabouts.

Q. How long did you leave the Dutcheſs, after the Hearing came on in this Noble Houſe?

A. I don't know; it was about a Year and three Quarters, or two Years, I can't be poſitive.

Q. Was it after the Trial began?

A. Yes, I think the Trial began in *January*, and 'twas a Year after it began.

Q. Can't you be poſitive what Time you came to live with the Dutcheſs?

A. I came about *Auguſt* to *Mill-bank*, but the Dutcheſs was not come then, but the *October* following my Lady Dutcheſs came.

Q. Where did the Dutcheſs live then?

A. I don't know, I was at the Lady *Peterborough's*; I help'd her Servants to carry Things, and to get Things ready.

Q. Did you know where the Dutcheſs liv'd then?

A. No; ſome ſaid ſhe liv'd in *Flanders*, others in *Holland*, and ſome in *France*.

Q. Was you never at *Vaux-ball* while the Dutcheſs liv'd there?

A. I was never there while the Dutcheſs lived there, if ſhe did live there.

Q. Was you never there where ſhe did live?

A. When no body liv'd there, I have ſeen the Houſe where they ſaid ſhe did live.

Q. How long ago is that?

A. I know not how long ago, but 'twas in the Summer-time.

Q. How came you to take notice of that Houſe more than the reſt of the Houſes in *Vaux-ball*? Who was it told you the Dutcheſs lived there?

A. I think it was one that was ———

Q. You ſaid the Dutcheſs went ſometimes by Water; did you go along with her at that Time?

A. Yes, I did, with ſome other Company.

Q. Was

Q. Was you ever sent to the House, to fetch Goods from thence?

A. No.

Q. Who went with you, when you went with the Dutcheſs there?

A. One Mrs. *Beufflers*, and two or three other Ladies.

Q. D'ye know Sir *John Germaine*?

A. I never ſaw him, but in his Coach, as he was going along the Street; I never ſaw him in any Houſe, or any other Place, ſitting or going, but in his Coach.

Q. Was you never at his Houſe?

A. I never was at his Houſe, nor any Place where he lived.

Q. You ſay you were at the Dutcheſs's Chamber to rub the Room?

A. Yes, I was.

Q. Did you not ſee *Vanefs* there?

A. No.

Q. Can you take it upon your Oath that you never ſaw her there?

A. No, I never ſaw her there; but I ſaw *Susan Barrington* there.

Q. What Service did *Susan Barrington* do there?

A. She help'd to dreſs and undreſs her Grace, and to mend Linnen, as I think.

Q. When ſaw you her laſt?

A. 'Twas about the 9th, 10th, or 11th of *Auguſt* laſt, at the *George Inn* in *Huntingdon*.

Q. D'you know where ſhe lived then?

A. She was at *Huntingdon* then, and came with the Lady Dutcheſs to take a Stage-Coach for *London*; ſhe was at the *George Inn* in *Huntingdon*, I think, about *Auguſt* laſt.

Q. You ſay you liv'd at the Dutcheſs's Houſe at *Mill-bank*, before the Dutcheſs came thither: Did *Vanefs* come with her, or was ſhe hired after?

A. I think ſhe came with the Dutcheſs.

Q. D'ye know whence the Dutcheſs came, when ſhe came there?

A. As I have heard, ſhe came from *Fox-ball*: When my Lady Dutcheſs went thither by Water the Summer after, I was told, that my Lady liv'd at ſuch a Houſe in *Fox-ball*.

Q. Didn't you know that my Lady Dutcheſs liv'd at *Fox-ball*?

A. I never knew my Lady Dutcheſs till ſhe liv'd at *Mill-bank*.

Q. What Account had you at the Dutcheſs's Houſe where ſhe was then?

A. People ſaid ſhe was in *Flanders*.

Q. D'you know when *Vanefs* came to live with the Dutcheſs?

A. I believe ſhe came to live with the Dutcheſs at *Mill-bank*.

Q. D'ye know when ſhe was diſcharg'd out of her Service?

A. I think 'twas the latter End of *December*, or the Beginning of *January*; I think ſo, but I don't ſpeak poſitively.

Q. Was you by when her Wages were paid?

A. No.

Q. Have you ever ſeen her ſince?

A. No, I never ſaw her from that Hour to this.

Q. Where have you liv'd ſince you left the Lady Dutcheſs's Service, and how? Have you any Eſtate?

A. I have a ſmall Matter to live on; I live near *Huntingdon*, I was born near there; 'tis my native Place; I have liv'd there about four or five Years, or within ſeven Miles of that Place, or thereabouts.

Q. Did *Vanefs* dreſs the Dutcheſs's Dinner when ſhe lived there; for it ſeems ſhe was not good enough to ſerve you?

A. Yes, ſhe did dreſs the Dutcheſs's Dinner, but I did not care to eat Victuals of her Dreſſing.

Q. When did you firſt complain to the Dutcheſs, that Men follow'd *Vanefs*? or, that you apprehended Danger by her being there?

A. I can't tell.

Q. Was ſhe diſcharg'd immediately after that?

A. I think ſhe was diſcharg'd immediately after that.

Q. You ſay there were ſome other Ladies that went with the Dutcheſs to *Fox-ball*; can you name them?

A. Mrs. *Marſhal*, and ſome others; but I can't be poſitive.

Q. Did you know Mrs. *Briane*?

A. No, I never heard her Name before.

Q. Did the Dutcheſs eat always at *Peterborough-houſe*, or *Mill-bank-houſe*, as you call it?

A. Sometimes ſhe eat abroad, and ſometimes at home.

Q. Who dreſs'd her Victuals when ſhe eat at home?

A. *Lena*.

Q. What d'ye mean by *Mill-bank-houſe*?

A. *Peterborough-houſe*.

Q. Who did you hear ſay the Dutcheſs lived at that Houſe at *Fox-ball*?

A. The Dutcheſs was going by Water, and told the Ladies then, that That was the Houſe ſhe had liv'd at, at *Fox-ball*; and walking in the Garden of the ſaid Houſe, told 'em ſo.

JONAS PEACOCK.

Die Luna 4^o Martii, 1699.

Frances Knight ſworn, depoſeth as followeth:

Queſt. **H**OW long have you liv'd in the Dutcheſs of *Norfolk*'s Family?

Anſw. Twenty-ſeven Years, or upwards.

Q. With whom did you live all that Time?

A. With the Lady Dutcheſs's Father, the Lady *Peterborough*, and the Dutcheſs.

Q. Did you live with the Dutcheſs when ſhe liv'd at *Mill-bank*?

A. Yes, I liv'd with her at her firſt coming there.

Q. Have you been with her ever ſince?

A. Yes.

Q. Did you know *Vanefs* in the Dutcheſs's Family at *Mill-bank*, and what Employ had ſhe there?

A. Yes, I know her very well; ſhe was in the Kitchen.

Q. Did you uſe to be in the Dutcheſs's Bed-chamber, and about her Perſon?

A. Yes, I was the firſt in the Morning there, and the laſt at Night, conſtantly.

Q. Did you know *Elianoer Vanefs* there; and did ſhe uſe to come into the Dutcheſs's Chamber?

A. She

A. She never came there.

Q. Where uſed ſhe to employ her ſelf?

A. In the Kitchen.

Q. Was ſhe well enough in Cloaths, cleanly enough, and fit to come into the Dutcheſs's Chamber?

A. No, ſhe was not.

Q. What Time went ſhe away; and upon what Account?

A. My Lady put her away, becauſe Soldiers came and aſk'd for her, and ſent for her to Ale-houſes about Ten a-Clock at Night. I went up one Morning, and complain'd of her to my Lady Dutcheſs, and told her that Soldiers haunted her, aſk'd for her, and ſent for her to Ale-houſes at Ten a-Clock at Night: And my Lady Dutcheſs ſaid, ſhe would not keep a Servant that kept ill Hours.

Q. Was this before the Trial?

A. Yes, my Lady put her away, upon my ſpeaking this.

Q. Do you know why ſhe was put away?

A. Yes, for having Soldiers haunt her Company.

Q. Conſider well what you ſay?

A. Yes, my Lords; I ſpeak what my Conſcience tells me: Here I am before the Lords, I muſt ſpeak Truth.

Q. How far can you recollect your ſelf, if it was before the Trial, or not, that ſhe was put away?

A. It was before the Trial.

Q. How long?

A. I can't remember; I think it was about a Quarter of a Year, I can't tell exactly, but it was near upon.

Q. How near was you to the Dutcheſs? What was your Employment?

A. I help'd to get her to Bed, as her Chamber-maid.

Q. Did *Elianoſ Vanes* never undreſs her?

A. No, never in this World.

Q. Did you never know her come into the Dutcheſs's Chamber?

A. Never, never. Oh, ſie! never indeed.

Q. D'ye know *Nicholas Hauſeur*?

A. I don't know him: There were many aſk'd for Mr. *Keemer*, but I did not know them, for he has many Acquaintance.

Q. Did you know *Thomas Hawkſworth*, your Fellow-ſervant?

A. Yes, he came when my Lady came to *Mill-bank*; Mr. *Peacock* came before; they were both Servants together.

Frances Knight Croſs-Examined.

Q. You ſay you lived Twenty-seven Years and upwards with the Dutcheſs and her Mother; Do you live with the Dutcheſs ſtill?

A. Yes.

Q. How long is it ſince you liv'd with her Mother?

A. After the Dutcheſs was marry'd, I came to live with her and my Lord Duke.

Q. Have you been in her Service ſince?

A. Yes.

Q. After the Duke parted with my Lady Dutcheſs, where did ſhe go to live?

A. She liv'd at *Mill-bank*, and no where elſe that I know of.

Q. Came you to live with her ſoon after her

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Marriage? and have you lived with her ever ſince? and, did ſhe ever live at *Vaux-ball*?

A. I never lived with her at *Vaux-ball*.

Q. Then you have not lived with her ever ſince?

A. I have lived with her ever ſince; I have taken my Oath, and as near as I can tell you.

Q. Where did the Dutcheſs live before ſhe came to *Mill-bank*?

A. She liv'd at *Vaux-ball*?

Q. Did not you live with her there?

A. No, I broke my Leg, and was brought to her Mother's, and ſtaid there a Twelvemonth; Mr. *Peters* was my Surgeon, he can tell it: I came here to ſpeak the Truth.

Q. Don't be angry?

A. No.

Q. Did you continue with the Dutcheſs till you broke your Leg?

A. Yes; and when I broke my Leg, I went home to her Mother's.

Q. When left you the Dutcheſs after ſhe parted with my Lord Duke?

A. I left her at *Mill-bank*.

Q. Do you know the Queſtion that's aſk'd? When did you leave the Dutcheſs after ſhe parted with the Duke?

A. I know no ſuch Queſtion as you aſk. I ſpeak the Truth as well as I can.

Q. Where did my Lady Dutcheſs go, when you left her?

A. I went away lame, and cou'd do her no Service.

Q. Where did you come to my Lady Dutcheſs again, when you were well.

A. At *Mill-bank*.

Q. Was you ever with her at *Vaux-ball*?

A. I was not there, becauſe I was lame.

Q. Was you ever at *Vaux-ball*?

A. I told you I broke my Leg.

Q. Was you ever at *Vaux-ball*, or not?

A. I tell you I was lame.

Q. Was you ever at *Vaux-ball* at any Time?

A. I tell you I was lame; I give you Answer to your Queſtion. I tell theſe noble Lords, that every Word I ſpeak is Truth.

Q. But you are ſwore to ſpeak the Whole Truth.

A. I ſpeak the Truth. Why ſhould you do ſo?

Q. Was you ever with the Dutcheſs at *Vaux-ball*?

A. I was not able to be there with her.

Q. Was you there with her, or not?

A. I was not able to go thither.

Q. Was you never there?

A. I was not able to go thither.

Q. Was you never there, or not, with the Dutcheſs?

A. No, I never was at *Vaux-ball* in my Life, but at *Mill-bank* and *Whiteball* I have. *Memorandum* in this Interlineation was alter'd, upon reading over her Examination, *Yes; I have been there, but I did not ſtay there.*

Q. Was you ever there with the Dutcheſs, or not?

A. I was not there: I tell you I was not there, I was lame.

Q. Was you never there with the Dutcheſs at any Time?

L I

A. No,

A. No, I tell you, I was lame: I was never there with the Dutcheſs.

Q. Where was the Dutcheſs before ſhe came to *Mill-bank*?

A. That I can't tell.

Q. Where was ſhe when you broke your Leg?

A. I left her at *Mill-bank*, with her Mother.

Q. Where did you find her, when you came again?

A. I found her at her Mother's.

Q. Can't you tell where ſhe was in the mean Time?

A. No.

Q. Was you never told by any of the Family where ſhe was at that Time?

A. No.

Q. Did *Vanefs* come to the Dutcheſs when ſhe liv'd at *Mill-bank*?

A. Yes.

Q. How long did ſhe live with her after?

A. I can't tell; but a ſhort Time.

Q. Do you know *Suſanna Barrington*?

A. Yes.

Q. When did you ſee her laſt?

A. About three Weeks ago.

Q. Is ſhe not in the Dutcheſs's Service ſtill?

A. I'll tell you the Truth: She receiv'd a Letter from *Flanders*, acquainting her that her Mother was dead: She was very much afflicted with it: And when the Dutcheſs came in, I told her Grace that *Suſan* had receiv'd a Letter that her Mother was dead, and I did deſire my Lady to give her Leave to go to *Holland*; and ſhe's there.

Q. Did you ſee the Letter?

A. I ſaw it.

Q. Was it from her Mother, or from her Siſter?

A. Yes, 'twas from her Siſter, that her Mother was dead.

Q. Was *Suſanna Barrington* in the Dutcheſs's Service when this Bill was depending?

A. No.

Q. How long is it ſince you received that Letter?

A. 'Tis about three Weeks ago.

Q. How long is it ſince you went?

A. A Fortnight to Day.

Q. Did you ſee her any Time theſe three Weeks?

A. No, no.

Q. Did you not live with her in the Houſe, and did you not ſee her?

A. She has been gone about a Week.

Q. D'you know Mrs. *Judith*?

A. No.

Q. D'ye know Mrs. *Briane*?

A. I have heard her Name, but am not acquainted with her.

Q. Had you any Diſcourſe with *Vanefs*, when ſhe came to *Mill-bank* to live with the Dutcheſs?

A. No, I never lik'd her Diſcourſe.

Q. Did you ever hear the Dutcheſs ſay that ſhe liv'd at *Vaux-Hall*?

A. No.

Q. Do you know Sir *John Germaine*?

A. I know him by ſight.

Q. Did you never ſee him at the Dutcheſs's?

A. No.

Q. Did you ever ſee him at *Mill-bank*, or at her Houſe here?

A. No, my Lords, never.

Q. Did *Vanefs* come along with the Dutcheſs when ſhe came to *Mill-bank*, or, was ſhe hired after her Return?

A. She came after her Return to *Mill-bank*.

Q. What Time went ſhe away?

A. I can't tell the Day; that's a hard Queſtion. She went away, on my ſpeaking to the Dutcheſs, that ſhe was haunted with bad Company.

Q. Did not ſhe dreſs the Dinner, when the Dutcheſs dined at home?

A. Yes, but ſhe never dined at home but very ſeldom.

Q. Can't you tell when *Vanefs* went away?

A. No.

Q. Did you know *Nicolas Hoſier*?

A. No, I know no ſuch Man. There were many People came to Mr. *Keemer*, Lords Servants, and others, I don't know ſuch People.

Q. You have heard that the Dutcheſs liv'd at *Vaux-ball*.

A. Yes.

Q. At what Time did ſhe live there?

A. I can't tell you; I was ſick in Bed.

Q. You may recollect about what Time was it.

A. I was lame in *March*, this Month: I can't tell what Year.

Q. D'you know what Houſe ſhe liv'd in?

A. Yes; 'twas one Sir *Thomas Groſvener's*, at *Mill-bank*.

Q. I aſk you what Houſe ſhe liv'd at, at *Vaux-ball*?

A. I know not.

Q. How came you to know the Dutcheſs liv'd at *Vaux-ball*?

A. You aſk what I can't tell you.

Q. You daren't tell.

A. Yes, I'll tell the Truth, before all the Houſe of Lords.

Q. You ſaid ſhe liv'd at *Vaux-ball*?

A. No, I never ſaid it.

Q. Whence came the Dutcheſs, when ſhe came to *Mill-bank*?

A. She came from the Place ſhe did; I did not aſk her the Queſtion, I durſt not be ſo bold.

Q. Can't you tell when ſhe came to *Mill-bank* nor from what Place ſhe came?

A. I can't tell the Day when ſhe came. I don't aſk from what Place People come.

Q. When did you know Sir *John Germaine* firſt?

A. I ſaw him firſt with my Lord Duke there, at his Houſe in the Square.

Q. Did you never know him keep Company with the Dutcheſs?

A. No, but only with the Duke of *Norfolk* there; I ſpeak in the Preſence of God.

Sign'd,

FRANCES KNIGHT.

Die Lunæ 4^o Martii, 1699.

William White ſworn, depoſeth as followeth:

Queſt. DID you live with the Dutcheſs of *Norfolk* for ſome Years paſt?

Anſ. I liv'd with her ſince the firſt Week of the firſt Trial, about ſix, or ſeven, or eight Years ago.

Q. What

Q. What Care was there taken about the Dutcheſs's Door in the Park?

A. I generally went out the first in the Morning; the Door had two Bolts, a Croſs-Barr, and an Iron Chain; beſides, theſe I unbolted every Morning, and unbarr'd, when I went out early.

Q. Did you ever hear or underſtand that *Hofier* had a Key to that Door?

A. I never knew any thing of it, nor know not of what Uſe it could have been; for he could not come in till the Door was unbolted.

Q. Say poſitively, whether ever you have heard, that this Man had a Key to that Door?

A. I never heard of it.

Q. Did you never ſee him come in at that Door?

A. Yes.

Q. How? Upon what Occaſion?

A. I happen'd to be going out my ſelf, and to open the Door for him. His Buſineſs, I was told by my Lady Dutcheſs's Maid, was, That ſhe had lent Money to a Man in *Holland*, and ſhe wrote a Letter to be carry'd by this Man to her Siſter, to get this Money; and ſhe ſent another Letter by one *Bull*, to carry to *Holland*, to get the Money, as ſhe told me.

Q. Did you let him in?

A. I unbolted the Door, and let him in.

Q. Did you find that this Man uſed to come freely to the Houſe, at that Door, by any Key?

A. No, I never knew it.

Q. Who did he come to?

A. To *Suſan Barrington*.

Q. Did you ever ſee him above Stairs with her?

A. No; he might come in, and I not ſee it.

Q. Did the Dutcheſs or Servants ſay any thing that he had Leave to come in?

A. I never examin'd that, becauſe any body that had Buſineſs had Leave to come in, as Tradeſmen, and others.

Q. Did they tell you in the Houſe, that *Hofier* was at Liberty to come into the Houſe with a Key?

A. No, never.

Q. Had you ever any Diſcourſe with *Hofier*?

A. I was one Day coming from *Change*, and met Mr. *L'Eſtrange* and this *Hofier*. *L'Eſtrange* told me, that he was ill of the Gripes. I told him, that the beſt Thing for it was burnt Claret; and he, and I, and *Hofier* went to a Tavern in *Smithfield*: And while we were together, *Hofier* reflected upon his Maſter, ſaying, His Maſter had uſed him ill, and deſerv'd to be ill uſed. Mr. *L'Eſtrange* heard theſe and ſome more Words; Mr. *L'Eſtrange* told me, that he ſpoke to that purpoſe, He was reſolved to be reveng'd of his Maſter.

Q. What did he ſay of his Maſter?

A. He ſaid his Maſter had uſed him very ill; he had many threatning Words; he ſaid his Maſter was an ill Man, and deſerv'd to be ill uſed, and the Time would come when he ſhould repent it.

Q. When did he ſay theſe Words?

A. 'Twas about *Michaelmas* two Years ago, or a Year ago, I can't tell which.

Croſs-Examined.

Q. You ſay you liv'd with the Dutcheſs the firſt Week of the firſt Trial: Was *Vaneſs* there at that Time?

VOL V.

A. She was gone before I came.

Q. How long?

A. I can't tell; I never ſaw her there, to the beſt of my Remembrance, but have heard there was ſuch a one in the Family.

Q. Did you know *Hofier*?

A. I ſee him come in at the Back-door.

Q. Whoſe Servant was he then?

A. The firſt Time I did not know; but a little after, I was told he was Sir *John Germaine's*.

Q. What Occaſion had he to come to the Dutcheſs's Houſe?

A. I know not, but about the Buſineſs of the Letter.

Q. How often did you ſee him there?

A. Two or three Times, or more.

Q. With whom?

A. With *Suſan Barrington*.

Q. What was his Buſineſs with her?

A. About the Money, as ſhe told me. He went along with that Woman; ſhe ſent a Letter by him; and ſhe ſent Letters by ſome other *Dutchmen* into *Holland*, about the Money.

Q. Did he aſk for any other Servant?

A. Not that I know of.

Q. Did you ſee him above Stairs with her?

A. I never ſaw them in any Apartment but that Place below, where the Lumber is, near the Park-door.

Q. D'you know *Suſannah Barrington*?

A. I know her very well.

Q. D'you know where ſhe is now?

A. Her Mother died about the 10th of *January*, and then I ſaw her all in Tears; and ſhe went away after this Account of her Mother's Death.

Q. When did you ſee her laſt?

A. I have not ſeen her this Fortnight or Month, that I know of, that I could diſtinguiſh her from another Woman, except ſhe had a Mask on.

Q. How long before this Trial ſaw you her?

A. About a Fortnight: She gave me an Account that her Mother died the 10th of *January*, in *Holland*.

Q. When did ſhe go away?

A. I did not take notice of the Time ſhe went away.

Q. Did you know *Hofier* at any other Place but at the Lady Dutcheſs's?

A. Never, but as I have ſeen him in the Park, and with Mr. *L'Eſtrange*.

Q. Was you never with him at Sir *John Germaine's*.

A. Never.

Q. D'you know Sir *John Germaine*?

A. After I had lived with the Dutcheſs ſome Time, I was told by ſome in the Street, that that was his Coach, and his Livery, and that he was the Man that there was ſo much Noiſe about.

Q. Did you never ſee him in the Dutcheſs's Houſe?

A. I never ſaw him in no Part of my Lady Dutcheſs's Houſe, nor in no Apartment; and I am the only Man that goes up and down Stairs.

Q. Did you never ſee him in the Dutcheſs's Company at any other Place?

A. No.

Q. Did you conſtantly lie at the Dutcheſs's Houſe?

A. When the Dutcheſs was laſt at *Drayton*, I lay at *Richmond* two or three Nights.

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Q. Did

Q. Did you lie constantly there, when the Dutcheſs was there?

A. I was ſick near a Month, and all that Time I lay at my Wife's; but moſt commonly lay at the Dutcheſs's, ſince ſhe is come to *Duke-ſtreet* to live.

Q. You ſay, You uſed to open the Door in the Park firſt in a Morning; what Time did you uſe to open it at?

A. At Six, Seven, or Eight a-Clock in a Morning; there was no certain Hour, but I generally open'd that Door.

Q. Did you ever know *Hauſeur* come in at any other Door but that?

A. Yes; one wet Day he came in at the Street-door, before the Porter and all the Servants, and ask'd for the ſame Woman.

Q. Did he never ask for any other Body?

A. I never heard him ask for any but *Suſan Barrington*, for ſhe was his Country-woman.

Q. If *Nicholas* got in at the Park-door, could not he get up Stairs?

A. If he could get in at that Door he talks of, he could not get into the Dutcheſs's Apartment; for there was a Room betwixt that, where the Plate and Jewels lay, that no Key could open: That if he could get up two Pair of Stairs, he could not get in there.

Q. If he had a Key, and got in at any Door, cou'dn't *Suſan Barrington*, when he came in, without any difficulty, lead him round the Houſe?

A. I can't ſay but ſhe might, but I never ſaw him, but below Stairs with that Woman, and then he went away without going up Stairs.

Q. Did you never ſee him bring any Thing to the Houſe?

A. No.

Q. You nam'd one *L'Eſtrange*, that you ſaw with him at the Tavern, what is he?

A. He was my old Fellow-Servant at the late Duke of *Norfolk*'s.

Q. What Diſcourſe had you with him then?

A. He complain'd to me of his being ill, and I gave him the beſt of my Advice.

Q. What Time was it that *Nicholas* had thoſe threaten'g Words againſt his Maſter?

A. About Ten, Eleven, or Twelve a-Clock at Noon.

Q. How long ago is it?

A. I can't tell if it be a Year, or two Years; 'twas a little after *Michaelmas*, but whether it be one Year, or two Years, I can't tell.

Q. Cou'dn't Mr. *L'Eſtrange* tell?

A. I ask'd Mr. *L'Eſtrange*, and he cou'd not tell.

Q. Whoſe Servant was *Nicholas* then?

A. He was no body's Servant then: He rail'd againſt his Maſter at that Time for turning him away.

Q. Did you not know who was his Maſter a Year or two ago?

A. He told me, he was out of Place.

Q. Did you not know him to be Sir *John Germaine*'s Servant, when he came to the Dutcheſs's?

A. I did not know it when I firſt ſaw him and *Suſan* together; but ſome time before he went away, I heard he was his Servant.

Q. But you ſay, you did not know Sir *John Germaine* about two Years ago?

A. I did not know him ſo, as to ſpeak to him.

WILLIAM WHITE.

Die Luncæ 4^o Martii, 1699.

Matthew Mac-Donnell ſworn, depoſeth as followeth:

Queſt. HOW long have you liv'd with the Dutcheſs of *Norfolk*?

Anſw. Four Years at *Lady-day* next.

Q. In what manner was the Door going out to the Park kept? Had any body a Key to it that was not of the Family? Did it uſe to be left open?

A. 'Twas not to be left open; 'twas very unſafe to be left open; beſides, it was bolted and lock'd.

Q. Was there particular Care taken of that Door?

A. Yes; I my ſelf bolted it very often at Night.

Q. Did you often unbolt it in a Morning?

A. Yes.

Q. Whether or not, the Time that you lived there, did you know any body, that was not of the Family, come with a Key to open that Door?

A. Never.

Q. Did you know *Hauſeur*, or *Nicholas*? Had he a Key to that Door?

A. I never knew it.

Q. Did you ever ſee him come in at that Door?

A. I open'd that Door for him once or twice, when he rung.

Q. When was that?

A. In an Evening.

Q. What did he come about?

A. I do not know; but he ask'd for *Suſan*, my Lady Dutcheſs's Servant.

Q. Did you ever ſee him go up Stairs?

A. I never did hear he went up in my Life.

Q. When he ask'd for *Suſan*, did he go up then?

A. No; I call'd her to him, and I never ſaw him go up Stairs.

Q. Did you ſtay with him all the while *Suſan* was with him?

A. No, I had no Buſineſs; I went my way.

Q. Was *Nicholas*, when he rung, in the Park, or at the inner Door?

A. In the Park.

Croſs-Examined.

Q. Did you know whoſe Servant *Nicholas* was?

A. I did not know, nor I ask'd no Queſtions.

Q. How often have you ſeen him at the Dutcheſs's?

A. Three times.

Q. Did he always ask for *Suſannab Barrington*?

A. One time he ask'd for Mr. *Keemer*.

Q. Who was Mr. *Keemer*?

A. He was the Dutcheſs's Servant.

Q. Did you uſe to ſtay with him? or, did you leave him?

A. No, to tell you the plain Truth, I thought he came to court *Suſan*, and did not ſtay with him.

Q. Did you ever ſee him up Stairs in *Suſan*'s Room?

A. I never ſaw him there.

Q. What Employment have you under the Dutcheſs?

A. I am her Foot-man.

Q. When did you ſee *Suſan* laſt?

A. On

A. On *Tuesday* Seven-night in the Morning.
Q. Not ſince?
A. No.
Q. Where did you ſee her then?
A. At the Dutcheſs's Houſe.
Q. What became of her after that?
A. She ſaid, her Mother died lately in *Holland*, and ſhe was going there.
Q. When did you hear her ſay ſo?
A. I heard her ſay ſo ſeveral times before ſhe went away; a Month, or a Quarter of a Year, before ſhe talk'd of going to *Holland*.
Q. Upon your Oath, don't you know that ſhe is at the Dutcheſs's?
A. I know not of her being there.
Q. Can you take it upon your Oath when ſhe was firſt wanting?
A. I ſaw her on *Tuesday* Seven-night laſt, in the Morning.
Q. How came you to know ſhe was gone, if you don't know the Time when ſhe went?
A. I did not know ſhe was gone, till I went home from the Houſe here.
Q. Who told you ſhe was gone?
A. The Servants.
Q. She was there when you came hither?
A. On *Tuesday* Morning I did ſee her.
Q. Has the Dutcheſs another in her Station?
A. There is one Mrs. *Cambell*, that dreſſes my Lady Dutcheſs, but ſhe does not live there.
Q. Did ſhe uſe, in *Suſan*'s Time, to come and dreſs the Dutcheſs?
A. Yes, ſhe uſed to come ſometimes.
Q. Has the Dutcheſs taken any body to do *Suſan*'s Work?
A. I know not of any.

Sign'd,

MATTHEW + MAC-DONNEL.

Die Lunæ 4^o Martii, 1699.

Mr. Robert Welburne ſworn, depoſeth as followeth:

Queſt. WHAT Account can you give of Mr. *L'Eſtrange*'s having Notice to be a Witneſs?

Anſwer. I was told by the Dutcheſs, That *L'Eſtrange* had been with her, and gave her an Account of ſome Particulars between *White*, and him, and *Nicholas*; That, having the Griping in the Guts, they went into a Tavern together; That he heard *White* and *Nicholas* talk together very loud, but he told me he had the Gripes, and could not ſo well mind what he ſaid, but he heard him uſe hard Words againſt his Maſter, but he could not remember that he ſaid he would be reveng'd upon his Maſter; but he would recollect himſelf, and, if he could remember, he would ſay what he could: He told me, he had been bred in the *Norfolk* Family.

Q. Did you aſk Mr. *L'Eſtrange* about this Matter?

A. Yes: Mr. *L'Eſtrange* told me, He remember'd they were together, and heard *Nicholas* ſpeak very hard, ill Words againſt his Maſter, but he could not be poſitive what they were; but what he could remember he would ſpeak, if that

would do the Dutcheſs any Service. He deſir'd my Lady Dutcheſs would give him notice the Night before, and he would appear.

Q. When was this?

A. 'Twas *Tuesday* or *Wednesday*; I think 'twas *Wednesday*.

Croſs-Examined.

Q. Did the Lady Dutcheſs tell you what Mr. *L'Eſtrange* ſaid?

A. Yes; that gave me the Occaſion to ſpeak of it. He ſaid, he heard *Nicholas* ſay hard, ill Words againſt his Maſter, but not that he heard him ſay he would ſtudy to be reveng'd. Perhaps, ſays he, there might be ſome other Words. That he was in the Kitchen, and would endeavour to recollect who was there beſides; and if he had two or three Days Time, he would enquire.

Q. Did you let him know you was concern'd for the Dutcheſs?

A. Yes; and he told me he would tell me what he could ſay in this Matter; and he ſhould be ready to appear at any Time, if that would be for the Dutcheſs's Advantage.

Q. Did he tell you he was going abroad into *Holland*?

A. Not one Word.

Q. Did you intimate to him, when the Dutcheſs was to make her Defence?

A. I think I did, but I can't be poſitive; but he took no notice to me, that he would not be there.

Q. D'you know Mr. *La Fountaine*?

A. Yes, I know one *La Fountaine*.

Q. Is he in the Dutcheſs's Service?

A. I believe not.

Q. D'you know whether he is at *Drayton*?

A. I have ſeen him at *Drayton*.

Q. Did he live with Sir *John Germaine*, that you know of?

A. Never, that I know of.

Q. When ſaw you *Suſan Barrington*?

A. I can't be poſitive; but I think, not this Month or ſix Weeks.

Q. Ha'n't you ſeen her ſince this Bill was brought in?

A. Poſitively, I have not.

ROBERT WELBOURN.

Die Lunæ 4^o Martii, 1699.

Elleanor Monfort ſworn, depoſeth as followeth:

Queſt. TELL the Lords if you know *Nicholas Hoſier*, and on what Account you came to know him.

Anſw. This *Nicholas* lodg'd two or three times at my Houſe. My Huſband was a *Dutchman*, and he was a *Dutchman*; they were like Brothers, they lov'd one another.

Q. What know you of this Man, this *Nicholas*?

A. My Huſband told me, that this Man *Nicholas*, (I did not know no other Name he had;) my Huſband told me, that he had a Deſign to rob his Maſter, and that he knew where his Gold and his Jewels lay, and had made falſe Keys, and would watch his Opportunity, when his Maſter was at Play, or out of Town; and left the Keys at her Houſe.

A. Your

Q. Your Husband told you so?

A. Yes, my Husband bid me send for this Man. These were his last dying Words.

Q. Your Husband had a sad Misfortune. When was't your Husband told you so?

A. When he was in Prison.

Q. How long ago is that?

A. About eight or nine Years ago last *Christmas*. I would not have your Lordships think my Husband was so bad a Man; he was only Condemn'd and Executed for changing Ten Pounds of his own Money.

Q. What were your Husband's last dying Words?

A. He desired me to send for this Fellow, and deliver those Things he left at my House. I sent for him, he came, and had some Keys in a Drawer, that my Husband told me he had left there. He took two or three Keys, and put them in his Pocket, and look'd mightily out of Countenance.

Q. What did your Husband say to you?

A. He bid me give *Nicholas* the Keys, and bid him have a Care, and keep good Company.

Q. When was that?

A. A Week or a Fortnight before my Husband was executed.

A. Did you acquaint *Nicholas* with what your Husband said of him?

Q. No, an't please your Honours; I only told him, my Husband charg'd me to give him those Keys; but being in Trouble, and having a great many Enemies, I talk'd no further with him.

Q. What did *Nicholas* say to you?

A. He look'd out of Countenance, and told me he would come and see me another Time; but he never did; so that I did not see him again till I saw him in the *Meuse*, and then he told me that he would come to see me; but he never did, but always shunn'd me.

Q. How long have you known *Nicholas*?

A. These eight or nine Years. I knew him when he was Footman to Sir *John Germaine*, and I knew him when he was his Gentleman. I knew him when he went, and I knew him when he came: He is like a Sea-Rat, he comes and goes when he pleases. I hope in God Almighty it will be consider'd by this House, that such a Fellow's Witness should not be taken in such a great Concern.

Signum,

ELEANOR + MONFORT.

Then the Dutcheſs's Council pray'd that *Mac-Donnel* may be examin'd, as to the withdrawing Witnesses, and that it be taken in Writing: Which was agreed to, and he examin'd.

Then the Dutcheſs's Council proceeded to examine other Witnesses, and their Evidence taken in Short-hand.

Then Mrs. *Pitts* being call'd for, and not appearing, *William Godfrey* being sworn, said to this effect:

I Went to Serve Mrs. *Pitts* on Friday Morning: When I came to her House there was no body. A Woman with a Pitcher of Water went in: I ask'd her for Mrs. *Pitts*; she said, She was not at home. I shew'd her the Order, and left a Copy of it upon the Table. She was loth to

receive it; she said, the Lady would be within quickly. The Woman's Name was *Olivet*. The last Night I went again, and a Woman came out and said, Mrs. *Pitts* was not at home. Then she spake in *French* to me: I did not understand her. I left a Note for her to attend this Day.

Then the Dutcheſs's Council pray'd, That some Agreements between the Duke and Dutcheſs, in 1694, may be read out of the Deeds executed for that purpose: Which was agreed to, and read accordingly.

Die Martis 5^o Martii, 1699.

Francis Negus sworn, deposeth as followeth:

Quest. I Desire Mr. *Negus* may be ask'd, Whether the Dutcheſs of *Norfolk* did not send some Message by him? The Words I don't confine him to; but, Whether the Message sent by him to my Lord Duke was not to this purpose; That notwithstanding the Articles, she desir'd to know from his Grace in what Manner she should live; and, that she would be govern'd by his Directions?

Answer. I think 'twas much about the Time of the Transaction of these Articles the Dutcheſs sent to me. Mr. *Longueville* was Council for the Duke, and Sir *Thomas Powys*, for the Dutcheſs. Mr. *Longueville* took what Care he could; and when they came to talk of their living separately, I took it only to be an Apprehension and Fear that my Lord Duke would confine the Dutcheſs to some House. My Lady Dutcheſs sent for me; I waited on her, and she express'd her self very sensibly of the Misfortunes of the Duke and her self, that such Differences should have been between them; and she was desirous to let my Lord Duke know, and desir'd me that I would let my Lord Duke know it, that she would avoid all Company that should give him any Offence, and that she would not so much as pay a Visit, but where he liked. I acquainted my Lord Duke with something to this purpose; for she often said to me, more than once or twice, That if she happen'd to die before my Lord Duke, she would leave him her Estate; and I know I have said so to my Lord Duke.

Q. Whether, from that Time, do you know that the Duke sent any Message of Complaint to the Dutcheſs, to the Place where she liv'd, that he would have her live in any other Way?

A. I know nothing of that Matter.

Q. Do you know whether my Lord Duke ever desir'd her to come and live with him?

A. I never heard of any such Thing.

Q. Did he ever send to her, to avoid any Company?

A. I never heard of any such Thing.

Q. Whether had you any Directions to attend the Duke, That he would give Way in a Controversy between the Dutcheſs and a Noble Lord of this House, whether he would wave his Privilege?

A. I have great reason to desire Sir *Thomas*'s Favour in this Matter; I know not what he aims at. I was call'd to the Bar before, to speak the Truth as to the Matter of the Privilege; I know not what he means by it.

Q. I meant it only as an Instance of a Civil Message between the Duke and Dutcheſs, own-
ing

ing her as his Wife, and that this was a Meſſage that beſpoke a good Underſtanding between them?

A. Will you have me to give an Answer to Sir Thomas, my Lords? I confeſs, the Duke did ſend for me, and aſk'd how the Settlement and Agreement were betwixt the Duke and the Dutcheſs, becauſe of this Matter of the Privilege.

Q. I did not mean that; but only as a late Inſtance of the Duke's owning the Dutcheſs fo far?

A. When the Duke ſent for me, he would know, whether by the Agreement he was oblig'd to let her have the Privilege: I ſaid, I underſtood it ſo; and tho' he had no Mind to do it, but as he had waved his Privilege, in the Caſe of an Uncle, he would do it for her.

Q. What would have been the Conſequence, if the Duke had not waved his Privilege? Would not that have defended her from a Suit?

A. That you may make uſe of as you pleaſe.

Sir Thomas Powys. I would only make this Uſe of it, as an Inſtance of Kindneſs between the Duke and Dutcheſs.

FRANCIS NEGUS.

After the Examination of Francis Negus, he being before ſworn, the Dutcheſs's Council declar'd they had finiſhed their Evidence.

Whereupon the Duke's Council deſir'd to call a Witneſs or two, to ſupport Nicholas Hauſeur's Reputation. Then William Allen was ſworn and examined.

Die Martis 5^o Martii, 1699.

William Allen ſworn, depoſeth as followeth:

Queſt. D'You know Nicholas Hauſeur?

Anſw. Yes.

Q. How long have you known him?

A. Three Years.

Q. Did you not know him before that Time?

A. I knew him about three Years ago.

Q. Had you any Dealings before that Time?

A. I had Dealings with him when he liv'd with Mr. Germaine.

Q. What were his Dealings?

A. As honeſt and fair as any Man could deſire.

Q. What Office had he under Mr. Germaine?

A. He was Cook to Mr. Germaine, I ſuppoſe.

Q. What! was he, Cook to him?

A. He bought in the Goods, and he paid me honeſtly for what he bought.

Croſs Examined.

Q. What Trade are you?

A. A Butcher.

Q. Then he paid you his Maſter's Money for his Maſter's Goods?

A. Yes, he paid me very honeſtly.

Q. When ſaw you him laſt?

A. I ſaw him when I was ſummon'd here by the Order of this Houſe, but not before of late.

Sign'd,

WILLIAM M. ALLEN.

The Duke's Council mov'd for Copies of the Examinations and Journals; which was granted,

and then the Council withdrew. The following Orders were made:

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That Copies of the Examinations, ſign'd by the Witneſſes this Day, and Entry in the Journal, be deliver'd to either Side; and, That the Examinations taken this Day in Short-hand be tranſcrib'd, in order to be read to the Witneſſes To-morrow.

It is Order'd by the Lords Spiritual and Temporal in Parliament aſſembled, That To-morrow, at Twelve a-Clock, this Houſe will proceed to hear the Examinations taken this Day, read to the Witneſſes, relating to the Duke and Dutcheſs of Norfolk, and all Lords ſummon'd to attend.

Die Mercurii 6^o Martii, 1699.

After the Examination taken Yeſterday, relating to the Duke and Dutcheſs of Norfolk, were read to the Witneſſes, and they ſigning them, the Dutcheſs's Council mov'd to have Copies of the Depoſitions taken on either Side, and then withdrew.

Die Martis 5^o Martii, 1699.

Matthew Mac-Donnel ſworn, depoſeth as followeth:

A. I Was going to Mr. Strange's Houſe, and I ſaw my Lord Howard of Eſrick coming that Way, and he went to the Door and knock'd. I made up to the Door, and a Girl open'd the Door. My Lord aſk'd if Mr. Strange was within, and ſhe answer'd, Yes. Then I went to the Door, and aſk'd if Mr. Strange was at home; ſhe answer'd, No, he went away on Thursday. I aſk'd, By Packet-boat, or how? She ſaid, By Long-Sea. I thought ſhe told my Lord he was within, and ſo I came away.

Signum,

MATTHEW + MAC-DONNEL.

Die Martis 5^o Martii, 1699.

Richard May ſworn, depoſeth as followeth:

Queſt. D'You know Nicholas Hauſeur?

A. I never ſaw him till Sunday Fortnight laſt.

Q. Where ſaw you him then?

A. At my Lord Duke of Norfolk's. I had a Command from my Lord Duke to take him in there.

Q. Where?

A. To lodge him in my Lord Duke's Houſe: I am his Houſhold-Steward; he commanded me to provide for him in the Houſe.

Q. I don't deſire you ſhould do any Thing unbecoming to my Lord Duke; but you are upon your Oath, and you muſt tell the Truth?

A. I'll freely tell what I know.

Q. Can you give me any Account where he was before that Time?

A. I never ſaw nor heard of him till then.

Q. Hath he been there ever ſince?

A. Yes; I made Proviſion for him, by his Grace's Command.

Q. Do you know Vanefs? Where hath ſhe been?

A. On Sunday was Fortnight ſhe came thither likewise,

likewise, and I was order'd to take Care for her.

Q. Where was she lodg'd?

A. In my Lord Duke's House in *St. James's Square*.

Q. Has she been there a Fortnight?

A. Yes, a Fortnight last *Sunday*, and coming here to attend the Lords.

Q. Had she the Liberty of the House; or was she kept close?

A. They were kept only as they desir'd themselves; no body was deny'd Liberty to see them: They desir'd to be there, sooner than any Place.

Q. D'you know that those People have been sent for, and how long before they came?

A. I was never privy to any thing of that nature: I had no Knowledge of their Names, nor whence they came.

Q. Do you know of any Money issued out for their coming over?

A. Not one Penny.

Q. Do you know of any Reward they have had, or are to have?

A. I know not of any Reward they have had, or are to have.

RICHARD MAY.

Die Martis 5^o Martii, 1699.

Christopher Raine sworn, *deposeth as followeth*:

Quest. ARE you Servant to the Duke of Norfolk?

A. Yes.

Q. D'you know *Hauseur*?

A. I have seen him, but am not acquainted with him.

Q. How long is it since you saw him?

A. It is within this Fortnight.

Q. Did you not see him any time further off?

A. No, I am positive of it.

Q. Where did you see him first?

A. In *St. James's*.

Q. In what Place there?

A. At his Grace's House.

Q. Hath he been there ever since?

A. Yes.

Q. Was there a Woman call'd *Vaness* with him?

A. Yes.

Q. Did they come at the same Time?

A. Yes.

Q. How long ago?

A. A Fortnight; it may be, not so much.

Q. Had they the liberty of the House, to take notice where they were?

A. They had liberty to go where they pleased.

Q. Did they go abroad since they came there?

A. I can't tell; not to my Knowledge.

Q. D'you know whether they went out of the House upon any Occasion?

A. Not to my Knowledge.

Q. Who brought them there?

A. I don't know.

Q. D'you know whence they came?

A. No.

Q. Did you not understand where they lodg'd before?

A. No, I am a Stranger to them both; I never saw them before.

Q. Saw you them when they came first?

A. No, I was not at home.

CHRISTOPHER RAINE.

Die Martis 5^o Martii, 1699.

Edward Cotter sworn, *deposeth as followeth*:

Quest. ARE you Servant to the Duke of Norfolk?

Ans. Yes.

Q. D'you know *Nicholas Hauseur*?

A. I did not know him but since this Trial.

Q. How long ago is that?

A. About a Fortnight.

Q. Do you know where he had been before?

A. No; I knew nothing of him, where he was, nor what he was.

Q. Came *Helena* the Dutchwoman with him?

A. Yes, the Woman came with him since the Trial; I never saw them before.

Q. Did you never know them go out of Doors since they came, but to this House?

A. Never, no where else.

Q. Who brought them to the Duke's?

A. I know not.

Q. Whence came they, d'you know?

A. I can't tell.

Q. Did they never report in the House, whence they came?

A. No, I never heard where they lived, nor how they behaved themselves.

Q. Do you know whether ever any Reward was given them?

A. No.

Q. I desire he may be ask'd, whether he has not known before, for some Time past, within this Fortnight or three Weeks, more or less, Meetings in *Somerfet-house*, in order to this Trial?

A. The Thing is this; I was one Night at *Somerfet-house* with my Lord Duke, 'twixt Six and Seven a-Clock; but I can't tell how long it is, whether it be three Weeks or a Month; it is no more, that I know.

Q. What were you there about?

A. I went there with my Lord Duke.

Q. Upon your Oath, Was there any Thing then done there, relating to this Trial?

A. Upon my Oath, I did not know but 'twas concerning my Lord *Howard* of *Esrick*.

Q. Was he there with the Duke?

A. Yes.

Q. Did you know who they went to?

A. No.

Q. Upon your Oath, Don't you know whether they went to *Madam Pitts*, or no?

A. They went to some House, but I don't know her Name they went to.

Q. Was there any body else there, but my Lord Duke, and my Lord *Howard*?

A. God knows. My Lord Duke call'd me to the Door, and sent me on a Message; and I went, and came again.

Q. Who did you see there when you came again.

A. I saw none but my Lord Duke, and another that I did not know.

Q. Who did you see go in?

A. None but my Lord Duke, and my Lord *Howard*?

EDWARD COTTER.
Dis

Die Martiſ 4^o Martii, 1699.

Francis Huddleſtone ſworn, depoſeth as fol-
loweth.

Queſt. UPON your Oath, d'you know of any Meetings, relating to this Trial, that hath been within ſome Time paſt?

A. For Meetings, I know not any thing of them.

Q. Do you underſtand the Queſtion?

A. I know nothing of any Meetings.

Q. Have you not been at any Place where any thing has been done, relating to this Trial, againſt the Dutcheſs of Norfolk?

A. I don't underſtand any thing of the Trial. I know nothing of the Dutcheſs of Norfolk?

Q. Pray give a poſitive Answer; Have you not been preſent, or do you know of no Meeting, relating to the Proceedings againſt the Dutcheſs of Norfolk?

A. I never was at no Meeting.

Q. Who do you live with?

A. I live with my Lord Howard.

Q. Was you ever preſent at *Somerſet-Houſe*, where my Lord Howard and others met?

A. I have been at *Somerſet-Houſe*, but know nothing of any Concerns.

Q. D'you know *Vanefs*?

A. I know no ſuch Perſon.

Q. D'you know *Nicholas*?

A. I don't know him.

Q. Pray answer poſitively; Do you know one *Nicholas*, call'd *Hauſeur*?

A. I know ſeveral of that Name, but I know not who you mean.

Q. I mean one that lived with Sir *John Germaine*?

A. I know him not; I never had any Con-
verſation with any Body that liv'd with Sir *John Germaine*.

(*Nicholas call'd in.*)

Q. Did you ſee any ſuch Man as appears here, at *Somerſet-Houſe*?

A. I know no ſuch Man as is call'd *Nicholas Hauſeur*: I know ſeveral call'd *Nicholas*, but none of the *Hauſeurs*.

Q. Look upon this Man; Have you ſeen him before or not?

A. Yes; I have ſeen him twice or thrice; but I knew not who you meant before.

Q. How long is it ſince you ſaw him firſt?

A. About a Fortnight ago.

Q. Have you not ſeen him at *Somerſet-Houſe*?

A. Never.

Q. Where did you ſee him?

A. In *Gerrard-ſtreet*.

Q. Was that all the Places you ſaw him at?

A. I ſaw him no where elſe.

Q. Whoſe Houſe did you ſee him at?

A. At Captain *Soames's* Lodging.

Q. Did you not ſee a Dutchwoman there, one *Helen Vanefs*?

A. There was a Woman with him; I do not know her Name.

Q. Did you not ſee her at Captain *Soames's*?

A. She was with this Gentleman there.

Q. Did you ſee her at no other Time or Place?

A. No.

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Q. Who elſe was there then?

A. Captain *Soames*, my Lord *Howard*, and one or two more. I was but at the Door. I have ſeen this Man go in. I was but a Footman waiting at the Door. I knew not the others that were there.

Q. Did you know no more that were there?

A. My Lord *Howard* was in the Houſe, but I know not if he were with them.

Q. Did you ever ſee *Helen Vanefs* before, that Time?

A. I have ſeen the Woman ſince, but never ſaw her before.

Q. Did you never ſee her any where elſe?

A. Never any where elſe but at this Houſe, going and coming.

Sign'd,

FRANCIS H UDDLESTONE.

The Council being withdrawn, the following Orders were made.

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That Copies of the Examination, read to, and ſigned by the Witneſſes to Day, be deliver'd to either Side.

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That this Houſe will peremptorily proceed to hear the Duke of Norfolk's and Dutcheſs of Norfolk's Council, to ſumm up the Evidence on both Sides, on Friday next, at Twelve of the Clock, and all the Lords ſummoned to attend.

The Evidence having been ſumm'd up, the Lords, after a long Debate, and a Division of the Houſe, committed the Bill, by a Majority of Sixteen.

Whereupon the Dutcheſs immediately preferred the Petition recited in the Order 8^o Martii.

Die Veneris 8^o Martii, 1699.

UPON reading the Petition of *Mary*, Dutcheſs of Norfolk, ſhewing, that by the Bill now depending for diſſolving the Marriage between the Duke of Norfolk, and your Petitioner, her Jointure and Marriage-Agreements are to be ſet aſide, and other Things in the Petition mentioned, and praying to be heard by her Council, touching the ſeveral Claims and Intereſt, and ſeveral Clauſes in the Bill: It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Petitioner ſhall be heard by her Council to Morrow at Eleven of the Clock, at the Committee of the whole Houſe, to whom the ſaid Bill ſtands committed; at which Time ſhe is to produce her ſaid Marriage-Agreement and Writings, as in the Petition is ſet forth: At which Time the Duke's Council may be preſent, if he think fit.

Matth. Johnſton, Cler. Parl.

Upon which an Order was made for Council to prepare a Clauſe for the 10,000*l*.

The Dutcheſs's Council having reſuſed to join in drawing any Clauſe, tho' they adviſed a Petition about the Jointure and Marriage-Agreement, the Duke's prepared a Clauſe, to which the Lords added a few Words, and paſſ'd it as in the Bill. The Bill being ſent down to the Commons, the Dutcheſs preſented the following Petition.

M m

To

To the Honourable the Knights, Citizens,
and Burgeſſes, in Parliament aſſembled.

The Humble Petition of MARY, Dutcheſs of *Norfolk*.

SH EWETH,

THAT for putting an End to all Differences between the Duke of *Norfolk*, your Petitioner's Husband, and your Petitioner, ſeveral Articles of Agreement were entered into, and executed in *April*, 1694, by the ſaid Duke, your Petitioner, and your Petitioner's late Father, the Earl of *Peterborough*, whereby, and by Deeds executed purſuant thereunto, the Duke had his then deſired Advantage, and hath fully enjoyed the Benefit thereof: That your Petitioner, about the Time of perfecting the ſaid Deeds, ſignified to the ſaid Duke by Mr. *Negus*, that ſhe ſhould always readily comply with all ſuch Orders in her Way of Living and Converſation, as he ſhould think fit to appoint. Notwithſtanding which, and without ever ſignifying any Diſſatisfaction to or with your Petitioner, and without any manner of Notice, or previous Proceeding in the common and ordinary Courſe of Juſtice, and to take from your Petitioner that legal Trial in the Eccleſiaſtical Court, which by the Laws of this Realm (as ſhe is adviſed) ſhe is entituled unto, did on the 16th of *February* laſt, exhibit a Bill in the Houſe of Peers, entituled, *An Act to Diſſolve the Duke of Norfolk's Marriage with the Lady Mary Mordaunt, and to enable him to marry again*. Upon which the Pro-

ceedings were ſo very quick, two Witneſſes lately brought from beyond the Seas being forthwith examined againſt your Petitioner, and your Petitioner charged with Facts ſuppoſed to be committed many Years ſince, and long before the Date of the ſaid Articles, could not be prepared to make her Defence as ſhe would have done, if the Proceeding had been againſt her according to the known Laws of the Land. The Places of Abode of the Witneſſes produced againſt her being yet not known or diſcovered to your Petitioner: And your Petitioner having Notice, that the ſaid Bill is paſſed the Houſe of Lords, and ſent down for the Concurrence of this Honourable Houſe,

Your Petitioner prays ſhe may be heard by her Council at Law and one Civilian againſt the ſaid Bill, before any Proceedings be had thereon by this Honourable Houſe,

And your Petitioner ſhall pray, &c.

MARY NORFOLK.

A Day being appointed by the Houſe of Commons for the Committee to proceed, the Duke cauſed the Papers following to be publiſhed.

T H E
Duke of *NORFOLK*'s C A S E;
W I T H
R E A S O N S for paſſing his B I L L.

IF Want either of Precedent for a Parliamentary Divorce, before going through the tedious and ineffectual Methods of *Doctors-Commons*, or of Demonſtration of Fact, have hitherto deprived the Duke of *Norfolk* of that Relief againſt his Wife's Adultery, which the Divine Law allows; the late Statute made in the like Caſe, and the coming in of two, who, while the Duke's former Bill was depending, had been ſent away, to prevent that Diſcovery which they now make; cannot but be thought to remove all Objections againſt an Act of Parliament, not only for the Benefit of the Duke, but of the Publick, as a Means to preſerve the Inheritance of ſo great an Office and Honours to Perſons of the true Religion.

And ſince Biſhop *Cozens*'s Argument, in the Lord *Roffe*'s Caſe has made it evident, that thoſe Canons which govern the Spiritual Court in this Matter, are but the Remains of Popery; nothing can be now requiſite to ſatisfy the moſt

ſcrupulous of the Reformed Religion, but to ſet the Duke's Proofs of his Lady's Adultery in a true Light.

The Reputation which the Dutcheſs had maintained, of Wit and Diſcretion, made it difficult for many to believe, that ſhe could be ſurprized in the very Act of Adultery, as had been formerly proved. And tho' it then appeared, that one *Henry Keemer* lived with the Dutcheſs while ſhe went by a feigned Name, at a Houſe hired for her at *Vaux-hall* by Sir *John Germaine*'s Brother; and that *Nicola*, who then lived with Sir *John*, uſed to receive Wood ſent from the Dutcheſs to Sir *John*'s Houſe by the Cock-pit; the withdrawing of *Nicola*, and carrying with him the Dutch Maid, equally entruſted with the Secret on Sir *John*'s Side; left no Evidence of their conſtant Converſation, but *Keemer* ſince dead, and *Sufannab Barrington*, who had the like Truſt from the Dutcheſs.

Keemer,

Keemer, though very unwillingly, ſome Years ſince confeſſed his living with the Dutcheſs at *Vaux-hall*, where he pretended ſhe was obliged to conceal herſelf for Debt; and what Share *Suſannab* had in the Secret was unknown, till *Nicola* appeared: *Nicola* coming into *England* ſome time ſince, in Expectation of a Service, expreſs'd his Readineſs to diſcover what he knew, and to endeavour to bring with him the *Dutch Maid*.

^a She proves, that for two Months the firſt Summer after the King came for *England*, Sir *John Germaine* and the Dutcheſs lived together as Man and Wife, and were ſeen in Bed together by her, Mr. *Briane*, and his Wife, Sir *John's* Siſter; and that *Nicholas Hauſeur*, Sir *John's* Valet de Chambre, uſed to be aſſiſting to him; as the Dutcheſs's Woman, *Suſannab Barrington*, was to her, at going to Bed, and riſing.

She proves the like Converſation at *Vaux-hall*, and the Dutcheſs's Houſe at the *Mill-bank*, till the Duke's firſt Bill for a Divorce was depending; within which time, *Nicholas Hauſeur*, by Sir *John's* Order, carried away her and *Suſannab Barrington*, with Intention of going for *Holland*, to prevent their being examined to what they knew; but the Wind proving contrary, they could not go till the Bill was rejected; and then Sir *John* fetch'd back *Suſannab*, who was moſt uſeful to the Dutcheſs; but *Hauſeur* went for *Holland* with *Ellen*.

^b He confirms *Ellen's* Evidence in every Particular; and beſides the Perſons mentioned by *Ellen*, as privy to Sir *John's* lying with the Dutcheſs, names Sir *John's* Brother, *Daniel*. *Nicholas* having been found very truſty, his Maſter ſent for him to return to his Service; and gave him the Opportunity of proving the Continuance of the ſame adulterous Converſation, at ſeveral Times and Places, from the Summer, 1692, to the 26th of *April*, 1696. He ſwears he had after his Return to Sir *John's* Service, ſeen them in Bed together at Sir *John's* Houſe at the *Cock-pit*, and at the Dutcheſs's Houſe, at *Mill bank*, and where ſhe now lives; and uſed to be let into the Dutcheſs's Apartment by *Suſannab Barrington*, or *Keemer*. Nor can any Man who ſhall read the Teſtimonials given Mr. *Hauſeur* by Sir *John*; by the laſt of which it appears, that he ſerved him faithfully as his Steward, reaſonably queſtion *Hauſeur's* Credit.

^c Another, who had been advanced by Sir *John* from his Footman to Mr. *Hauſeur's* Place, and from thence to a good Office in the Excize, very unwillingly confirmed the Teſtimony of *Hauſeur* and the *Dutch Maid*, not only as to the Time of their going from the Service of Sir *John* and the Dutcheſs; but though being no Foreigner, he could not ſo eaſily be ſent away to prevent Diſcovery, and therefore was not let ſo far into the Secret as *Hauſeur* and the *Dutch Maid*; yet he ſwears, the Dutcheſs uſed to come maſk'd to his Maſter's Houſe; that he has gone with him as far as the *Horſe-Ferry*, towards her Houſe at the *Mill-Bank*; that then his Maſter ſometimes lay out all Night, and the next Morning he has carried Linnen and Cloaths for his Maſter to *Keemer's* Houſe, or *Keemer* has fetch'd them from him: And this he proves to have been ſince the rejecting the former Bill, and

about five Years ſince, when he was ſucceeded by *Hauſeur*, as before he had ſucceeded *Hauſeur*.

Two other Foreigners, *La Fountain*, who lived with Sir *John*, and was ſerved with Summons at the Dutcheſs's Houſe at *Drayton*, and *Hugonee*, who ran away from the Lord *Haverſham's* ſince Summons was taken out againſt him, ſeem to have had the ſame Truſt that *Hauſeur* had; for both declared, *That nothing ſhould oblige them to betray their Maſter's Secrets*: One ſaid, *No Court could diſpence with an Oath of Secrecy*; and both declared, *They would immediately go beyond Sea*. Summons have been taken out for Mr. *Briane* and his Wife, and Sir *John Germaine's* Brother (who are, or lately were, in Town) to confeſs or deny what *Nicola* and *Ellen* appeal to them for; and it cannot be imagined, that Sir *John* ſhould chuſe the Honour of being thought to have to do with a Dutcheſs, before the clearing her and himſelf from the Imputation, by bringing his Relations to diſprove the Charge, if what is ſworn to be within their Knowledge is falſe.

And if Sir *John's* Vanity ſhould prevail with him, at leaſt it is to be preſumed that his Relations would be more juſt to him and the Lady, than to ſuffer any Thing to paſs againſt them, which they could with Truth and Juſtice prevent.

But ſince none of them appear, the World will believe their abſenting more than a thouſand Witneſſes, in Confirmation of what Mr. *Hauſeur*, *Ellen* and *Bayly* have ſworn: Whoſe Evidence not only ſtands untouch'd by any Thing offered by the Dutcheſs's Witneſſes, but is plainly confirm'd by them in the principal Parts.

This being the Nature of the Proofs, 'tis obſervable,

1. That there never yet was any Caſe of this kind, where the Evidence was not liable to greater Objections than can be made to this.

Though in the lateſt Caſe of this kind, there was full Conviction of the Lady's having Children, while ſhe lived ſeparate from her Huſband, and the Preſumption was very violent whoſe the Children were; yet this was but Preſumption, and that was weakned by the Preſumption in Law that they were the Huſband's; eſpecially, ſince there was no direct Proof of the Lover's ever lying with her.

2. Tho' in that Caſe, by reaſon of the Interval of Parliament, and Fear of the Deaths of Witneſſes, a Suit was begun in *Doctors-Commons*, 'twas taken from thence while the Suit was depending; therefore that was rather an Objection againſt proceeding in Parliament, than an Argument for it.

3. In that Caſe, ſeveral Witneſſes were examined at the Bars of both Houſes, who had not been examined at *Doctors-Commons*, nor any Notice given of their Names before their Examination.

4. It appears by that Caſe, and the preſent, that the Examinations in Parliament are more ſolemn and certain than thoſe of the Spiritual Court; which depend too much upon the Honesty of the Register, or his Deputy.

5. Before that Caſe, Parliaments have either broken through the Rules which bind the

^a *Eleanor Vanefs Exam.* 22 Feb. 1699.

^b *Nicholas Hauſeur.*

^c *William Bayly.*

Spiritual Court, as in the Case of the Duke of Norfolk, ^a *Eliz.* where the Parliament ratified the Marriage, ^b *as lawful according to God's Law; tho' protracted and letted, by Reason of certain Decrees and Canons of the Pope's Law; or else have dissolved* a Marriage where there had been no Application to *Doctors-Commons*, as in the Case of Mrs. *Whar-ton*, who had been married to Mr. *Campbell*; and yet there had been no Examination of Witnesses, but what had been before the two Houses.

^c So long before, in the Case of Sir *Ralph Sadler*, upon Proof before the two Houses, that the Lady *Sadler's* former Husband had deserted her, and disappeared for four Years before she married Sir *Ralph*, the Parliament legitimated her Children by Sir *Ralph*.

Whereas some object against the passing the Bill, as if it would countenance a Jurisdiction in the House of Lords to examine to such Matters, in the first Instance or Originally; the Objection would be the same if it had begun, as it might, in the House of Commons; but in truth would be of equal Force against most private, and several

publick Acts, occasioned by the Examination of Witnesses of Notoriety of Fact.

Since therefore the Duke has so long, and so often in vain endeavoured to be freed from a Lady, publicly famed and proved to have lived with Sir *John Germaine*, as his Wife; the Duke's former Disappointment cannot but be powerful Arguments for his speedy obtaining that Justice which the Spiritual-Court cannot give him, their Power reaching no further than to that Liberty of living as she list, some Years since settled by Articles: But as none of less Art and Oratory than her Council, could have turned this into a Licence to commit Adultery, if she list, or a Pardon afterwards; had there not been Evidence of her acting according to such Construction, the Duke would have hoped she had repented of the former Injuries he had received from her; but now hopes, she shall no longer continue to bear the Name of his Wife, and put him in Danger of being succeeded by Sir *John Germaine's* Issue, or deprive him of the Expectation of leaving his Honours, Offices and Estate, to a Protestant Heir.

^a *Eliz. x. 31.* ^b 2 *Ed. 3 W. M.* ^c 37 *H. 8.*

Bishop COZEN'S Argument, Proving, *That Adultery works a Dissolution of the Marriage.*

Being the Substance of several of Bishop *Cozen's* Speeches in the House of Lords, upon the Debate of the Lord *Ross's* Case.

Taken from Original Papers, writ in the Bishop's own Hand.

THE Question is indefinitely to be spoken of, Whether a Man being divorced from his Wife, who hath committed Adultery, and is convicted of it, may marry himself to another Wife or no, during the Life of her which divorced?

The Place in St. *Matthew* the 5th, repeated again St. *Matthew* the 19th, has great Perspicuity: If it be not lawful for a Man to put away his Wife, and marry again, except it be in the Case of Fornication (for the displacing the Words, by putting the Exception before the Marriage, cannot alter the Sense) then *à contrario*, it must of necessity follow, that if the Wife be put away for Fornication, the Husband, by the Tenour of Christ's Words, is left free to marry again; which Freedom is not allowed to the Adulterers herself, nor any Man else that shall marry her.

St. *Mark* and St. *Luke* have been opposed to St. *Matthew*; and it has been said, that Christ's Words in St. *Matthew* did not properly belong to *Christ's Disciples*, or the *Christian Church*, as the Words in St. *Mark* and St. *Luke*, which are absolute, do; which is a Saying that neither I, nor, I think, no body else ever heard of before: For *Christ's* Sermon in the Mount was spoken to his *Disciples*, and especially belonged to *Christians*.

'Tis clear they are spoken to his *Disciples*; for he says to them, that they are the *Salt of the*

Earth, and the Light of the World; and that they are blessed, *when they suffer Persecution for his Name's Sake*; which no Man will say or apply to the *Jews*.

'Tis true, that in the 19th Chapter of St. *Matthew*, *Christ* answers the *Scribes and Pharisees*, who came to tempt him with their Question, *Whether it was lawful for a Man to put away his Wife for any Cause*, as they said, *Moses had permitted 'em to do*. But the Answer that *Christ* gave them, *That it was not lawful, but only in the Case of Adultery, for Men to put away their Wives, and marry another*; was a Rule which concerned all *Christians* to observe for ever after; and for that Reason was recorded by St. *Matthew*.

The Words in St. *Mark* and St. *Luke* are not to be taken absolutely, but to be supplied and understood by his Words in St. *Matthew*, as in many other Cases is clear; viz. the Thief upon the Cross, Baptism in the Name of the *Father, Son, and Holy Ghost*, &c. whereof many Instances may be brought, as the Destruction of *Nineveh*, &c.

But for *Christ's* Words, the Exception confirms the Rule, and infers a Concession, that in the Case of Fornication, the putting away one Wife, and marrying another is allowed. It is alike with divers other his Exceptions, which are found in Scripture: For brevity, I will instance in this one (viz.) *Except ye repent, ye shall all like-*
wife

wife periſh. Upon which Text, if I or any Biſhop elſe were to preach, I believe we ſhould not diſcharge our Duty, unleſs we ſhould tell the People, That if by the Grace of God they did repent, they ſhould not periſh.

The Exception here, *ei non niſi*, unleſs, is parallel with the 1 Kings iii. 18. *None were in the Houſe except wee twain*; they two therefore were, others were not.

Such Exceptions proceeding from natural Equity, are tacitly implied in Laws, tho' pronounced in general Terms.

But as to the Exception here, the Words are not capable of any other Senſe than as I have obſerved; for except that Reſtraint be referred to marrying again, the Senſe would run thus, *Whoſoever puts away his Wife commits Adultery*; which ſtands not with Truth or Reason; ſince it is not the Diſmiſſion that is adulterous, but the Marriage of another. It is therefore the plain Drift of our Saviour to teach the *Phariſees* that the Marriage of a ſecond Wife, after a Diſmiſſion of a former, *Upon any other Cauſe, except for Fornication*, is no leſs than Adultery; thereby inferring, That upon a juſt Diſmiſſion for Fornication, a ſecond Marriage cannot be branded with Adultery.

Befides, the *Phariſee's* Queſtion [*Is it lawful for a Man to put away his Wife for every Cauſe?*] was not without a plain Implication of Liberty to marry another, which our Saviour well knowing, gives a full Answer, as well to what he meant, as what he ſaid; which had not been perfectly ſatisfactory, if he had only determined that one Part concerning Diſmiſſion, and not the other concerning Marriage; which Clause if two *Evangelists* expreſs not, yet it muſt be fetch'd neceſſarily from the third; ſince it is a ſure and irrefragable Rule, That all Four *Evangelists* make up one perfect *Gospel*.

The *Rhemists* and College of *Doway*, urge for the *Papiſt* Doctrine, *Rom. vii. 2. The Woman which hath an Huſband, is bound by the Law to her Huſband as long as he liveth*; but,

1. This Place is to be expounded by *Chriſt's* Words.

2. *St. Paul* hath no Occaſion here to ſpeak of Divorce, but of *Marriage whole and ſound*, as it ſtands by *God's* Ordinance.

3. He ſpeaks of a Woman who is under a Huſband; ſo is not ſhe that is divorced from him.

4. *St. Paul* uſeth this to his Purpoſe of the Law being dead, to which we are not bound.

Nor is their Doctrine more favoured by 1 *Cor. vii. 10. Let not the Woman depart*; as being in her Choice whether ſhe would depart or not; but in the Caſe of *Fornication* ſhe was to depart, or rather be put away, whether ſhe would or not.

The Bond of Marriage is to be enquired into, what it properly is. Being a Conjugal Promise ſolemnly made between a Man and his Wife, That each of them will live together according to *God's* Holy Ordinance, notwithstanding Poverty or Infirmary, or ſuch other Things as may happen during their Lives. Separation from Bed and Board, which is Part of their Promise ſo to live together, doth plainly break that Part of the Bond whereby they are tied to live together both as to Bed and Board. The Diſtinction betwixt Bed and Board and the Bond, is new, never mentioned in the Scripture, and unknown to the ancient Church; deviſed on-

ly by the Canonists and Schoolmen in the *Latin* Church (for the *Greek* Church knows it not) to ſerve the Pope's Turn the better, till he got it eſtabliſhed in the Council of *Trent*, at which Time, and never before, he laid his Anathema upon all them that were of another Mind; forbidding all Men to marry, and not to make any Uſe of *Chriſt's* Conceſſion.

Bed and Board, or Cohabitation, belong to the Eſſence and Subſtance of Matrimony; which made *Erasmus* and *Bishop Hall* ſay, *That the Diſtinction of thoſe two from the Bond, is meerly Chimerical and Fancy*.

The Promise of Conſtancy and mutual Forbearance, if it hinders Divorce as to the Bond, hinders it alſo as to Bed and Board; and becauſe the ſame Bed and the ſame Table were promiſed in the Marriage Contract; but the Promise does not extend even to tolerating Adultery, or malicious Deſertion; which, according to *God's* Ordinance, diſſolves the Marriage.

Our Saviour ſpeaks of Divorces inſtituted by the *Mosaical* Law; but they were no other than Divorces from the Bond.

The Form of the Bill of Divorce among the *Jews* was this, *Be expelled from me, and free for any Body elſe*. To give the Bill of Divorce, is from the *Hebrew* Root *נז*, which is to break, or cut off the Marriage. With this agree the ancient Canons, Councils, and Fathers of the Church.

Concil. Neocaſar. & Elib. forbid the retaining an adulterous Wife. *Concil. Eliber. Aurelian. & Arelatenſ.* give Liberty in ſuch Caſe to marry again. *Clemens's* Conſtitution, *Tertullian*, *St. Baſil* in his Canons, approved by a General Council, are for marrying again. *Concil. Venet.* If they marry in any other Caſe than Fornication, they are to be excommunicated, and not otherwiſe. *Concil. Wormat.* gives Liberty to the innocent Party to marry after Divorce. *Concil. Lateran.* gives leave for the innocent Party after a Year to marry again.

Concil. Lateran. If any one take another Wife while a Suit is depending, and afterwards there be a Divorce between him and the firſt, he may remain with the ſecond.

Lactantius, *St. Hierom* and *Epiphanius*, are for Allowance of Marriage after Divorce. *Chryſoſtom*, *Hom. 19. 1 Cor. 7.* ſays, *That the Marriage is diſſolved by Adultery; and that the Huſband, after he hath put her away, is no longer her Huſband*.

Theophylaſt on the 16th of *St. Luke*, ſays, that *St. Luke* muſt be interpreted by *St. Matthew*. *St. Hilary* is for marrying again, as *Dr. Fulk* ſaith upon *St. Matthew* the 7th. The *Eastern* Biſhops, in the Council of *Florence*, are for marrying again: *Juſtin Martyr* ſpeaks of a Woman giving a Bill of Divorce to a diſſolute Huſband, without finding any Fault with it.

St. Ambroſe ſays, a Man may marry again, if he puts away an adulterous Wife; *Theodoreſt* ſaid of a Wife who violated the Laws of Marriage; *Therefore our Lord requires the Bond or Tie of Marriage to be diſſolved*.

All the *Greek* Church to this Day allow it. *Erasmus Cajetan*, and other *Papiſts*: The Civil Law, and the Laws of the Emperor are clear for it: And the Conſtitutions of our own Church of *England*, in the Time of *H. 8. Ed. 6.* and *Queen Eliz.*

The

The Practice of the *English Church*, in the Stat. 1 Jac. c. 11. against second Marriages, Divorces are excepted; and in Canon 107. 'tis provided, they shall not marry again; but it is not said such Marriages are void, only the Caution is forfeited: *Neither doth the Canon speak of such Separations, wherein the Bond is broken, as 'tis by Fornication.*

Even the *Canon-Law* allows marrying again, in case a Woman seeks her Husband's Life, and in case of a Bond-Woman. *Gratian* says, in the Case of Adultery, lawful Marriages ought not to be deny'd. In the Case of an incurable Leprosy, it was the Advice of *St. Gregory* to *Austin* the Monk, That he that could not contain, should rather marry. *Bellarmino* owns, That the Bond of the Marriage of Infidels is dissolvable; but the Marriage of the Faithful, and of Infidels, is of the same nature: And *Justinian*, a Jesuit, confesses, That it is simply lawful for the innocent Party to marry again. And the *Roman Doctors* allow a Dissolution of the Bond of Marriage, if the Parties should, after Consummation, transfer themselves into a Friary or Nunnery.

The *Canons* which, in the Case of Adultery, prohibit marrying in the Life-time of the guilty Person, are contrary to two Acts of Parliament made 25 Hen. 8. and 3 & 4 Edw. 6. wherein no *Canons* are allow'd that be any way repugnant to the *Laws of God*, or the *Scripture*, the *King's Prerogative Royal*, and the *Statutes of this Land*: Thirty-two Persons were to review the *Canon-Law*, in which Review, drawn up by *Archbishop Cranmer*, the innocent Person is permitted to marry again, according to *Christ's Law* and *Concession*.

We have Examples of such Marriages in H. 4. of *France*, and H. 8. of *England*, *Lord Mountjoy*, *Lord Rich*, *Bishop Thornborough*, and divers others. And 'tis observable, That in the Case of the *Marquis of Northampton*, 5 Edw. 6. who had been divorced for his Lady's Adultery, and married another before any Act of Parliament made concerning it, an Act which passed afterwards (only two Spiritual and two Temporal Lords dissenting) declares, he had been at liberty by the *Laws of God* to marry, and did lawfully marry another: Where the Act manifestly supposes, that whatever had obtain'd for Law till that Time, was void, as being contrary to *God's Law*.

The most considerable Men of the Reformed Churches, both at Home and Abroad, are of this Opinion: *Grotius* quotes *Tertullian*, in whose Time it was lawful for the innocent Party to marry.

Lancelot. Instit. Jur. Can. acknowledges, that Divorce is a Dissolution of the Marriage.

Selden, who is not likely to contradict the Laws of this Kingdom, maintaineth, That Marriage after Divorce is to be allow'd; and, in that Particular *Dr. Hammond* doth not contradict him, but is clearly for it.

The Opinion of *Amesius* deserves to be set down at large: "Marriage, says he, cannot be dissolv'd by Men at their Pleasure; and for that reason, as 'tis consider'd simply and absolutely, 'tis rightly said to be indissoluble, because Marriage is not only a Civil, but a Divine Conjunction; and is also of that nature, that it cannot be dissolv'd without Detriment

of either Party: Yet it is not so dissolvable, but it may be dissolv'd for a Cause which God approves as just; for the Indissolubility was not instituted for a Punishment, but for the Comfort of innocent Persons; and it admits an Exception, wherein God ceases to conjoin. By Adultery two are made not to remain one Flesh: Hence it is that a contagious Disease is not a Cause of dissolving Marriage. By Adultery the very Essence of the Contract is directly violated; but the Contract ceasing, the Bond depending on the Contract necessarily ceases. It is against all Reason, that all Matrimonial Duties should be for ever taken away, yet the Bond or Obligation to those Duties should continue. The Words of our Lord, Mat. v. 32. and xix. 9. have no Distinction or Limitation of the Putting away, but simply and absolutely approve of Putting away; therefore they approve of Putting away, not Partial, or to a particular Purpose, from Bed and Board, but Total.

None are against the Reform'd Divines, but *Dr. Howson*, *Mr. Bunney*, and *Dr. Prideaux*.

Dr. Howson was a profess'd Adversary to *Dr. Reynolds*, who was a great Maintainer of the Church of *England* against all the Points of Popery, and particularly in this.

Dr. Taylor, *Bishop Hall*, *Dr. Fulk* are for Second Marriages; no Authors against them but the Council of *Trent*, and those of the Church of *Rome*; whose Credit is only sav'd by those of our Church who agree with them.

Upon the Difference of Explication between *St. Ambrose*, *Origen*, and *St. Austin*, a new kind of Divorce has been thought of, from Bed and Board; but this Divorce, or Name of a Divorce, was unknown to the *Jews* and *Ancient Christians*.

I said so much before, at the first and second reading of this Bill, that I was in good Hopes to have had no further Occasion given me of answering any Objections against it now; but seeing divers new Arguments have been studied and framed against it since that Time, I shall now endeavour to satisfy and clear them all.

1. The first Argument against it is, That the Separation from Bed and Board doth not dissolve the Bond of Marriage. To which I must reply, as I did before, That this is a Distinction without a Difference, newly invented by the *Canonists* and *School-men*, and never heard of either in the *Old* or *New Testament*, nor in the Times of the ancient Fathers, who accounted the Separation from Bed and Board to be the Dissolution of the Bond itself.

2. That first Institution of Marriage, that they may be one Flesh, is by Adultery dissolv'd, when the Adulteress makes herself one Flesh with another Man, and thereby dissolves the first Bond of her Marriage.

3. The Objection, That if the Bond be dissolv'd, and afterwards, if the Man or Woman be reconcil'd, they must be married over again, is no necessary Consequence, no more than 'tis in a Person baptiz'd, who may break his Covenant, and renounce his Baptism, and yet upon true Repentance be receiv'd into God's Favour by virtue

of the firſt Covenant, without any new Baptiſm. Suppose a Witch, who, they ſay, makes a Compact with the Devil to renounce her Baptiſm, ſhould afterwards, by the Grace of GOD, ſeriouſly and truly repent herſelf of the Wickedneſs; I do not believe that any body would take upon him to baptize her again: And if a Prieſt ſhould renounce his Orders, and turn Turk, and yet afterwards repent him, and return into the Church, he need not be re-ordain'd a ſecond time. The Caſe will be the ſame in Marriage.

4. I ſaid heretofore, That the *Roman* Doctors allow'd this Diſſolution of the Bond when the Man and Wife, even after the Conſummation of Marriage, would transfer themſelves into a Friary or a Nunnery; but becauſe it hath been ſince doubted, that no Authority can be ſhewed for this Particular, I ſhall here ſhew it out of the old Conſtitutions of the Church of *England*.

“ And, ^a in the Caſe of Religion, that is the true Underſtanding, That, to wit, either of them betaking themſelves to Religion before Carnal Knowledge, the Bond of Marriage be diſſolv'd: But if both enter into Religion, and make ſolemn Profeſſion, then ſuch Marriage is diſſolv'd, even as to the Bond.

5. It hath alſo been ſaid, That if the Bill paſs, it will paſs againſt the *Church of England*; which I confeſs, I do not underſtand; for the *Church of England* is within the Kingdom of *England*; and if the Laws of this Kingdom be for the Bill, and have declar'd it by the Aſſent of the King, Lords

and Commons, as in the Caſe of the Marquis of *Northampton* was heretofore declar'd, in the Time of King *Edward the Sixth*, That by the Laws of GOD the innocent Party was at liberty to marry again; certainly the *Spiritual Lords*, as well as the *Temporal* and *Commons*, are bound to admit it: And I know not why they ſhould be call'd the *Church of England*, that join with the Council of *Trent*, and plead ſo much to uphold it, rather than others that join with all the Reformed Churches, and plead againſt the Canon of the *Church of Rome*, which hath laid an Anathema upon us, if we do not agree with them.

As to the ſuppos'd Inconveniencies that will follow upon marrying again.

1. More Inconveniencies will follow if they be forbidden to marry again.

2. The Father would be in an Uncertainty of the Children, if they ſhould retain the Adulterers.

3. There would be danger of poiſoning or killing one another, if no ſecond Marriage were allow'd.

4. Where the Parties ſhould conſent to new Marriages for their own Luſts, the Magiſtrates have Power to over-rule ſuch Practices.

5. If they be kept altogether by Divorce from Marrying, it would occaſion the innocent Party to ſin.

A little before the main Queſtion about paſſing the Duke's Bill, the Dutcheſs's Agents handed about this Paper, among ſuch as they thought to be her Friends.

^a Prov. Will. Lyndewode, five Conſt. Ang. fol. 94. Ver. nullatenus ſeparantur.

THE

CASE of MARY, Dutcheſs of *Norfolk*.

UPON the Marriage of the Dutcheſs with the now Duke of *Norfolk*, in the Year 1677, her Father, the late Earl of *Peterborough*, paid as Part of her Portion 10000 *l.* and ſettled on that Marriage Lands of near 1000 *l.* per Annum, the Remainder of which, on Failure of Iſſue, was limited to the now Duke and his Heirs for ever; and the Earl after his and his Lady's Death, ſecured to the Duke the Forfeiture of *Drayton*, worth 10000 *l.* more; and the Duke receiv'd alſo, by Agreement, 1000 *l.* per Annum for Twenty Years out of the Earl's Eſtate, beſides very rich Jewels, Plate, and other Things of great Value, which the Dutcheſs brought with her into the Duke's Family: And great Debts having been contracted for the Support of the Duke's Honour and his Service, while he cohabited with the Dutcheſs, ſhe hath, ſince his Separation from her, paid them out of her own Eſtate.

That by the evil and malicious Inſinuations of the Dutcheſs's Enemies, the Duke was prevail'd on to carry her, then a Proteſtant, into *France*,

and to put her into a Monastery (where ſhe could not be admitted without changing her Religion) and left her there, on great Aſſurances of ſending for her home in a ſhort time, and ſo parted with great Expreſſions of Kindneſs.

That a conſiderable Time after, by the Duke's Conſent, ſhe return'd into *England*, and lived retiredly at *Drayton* in *Northamptonſhire*; and at the Time of the Revolution ſhe again retired to *France*, where ſhe continued till ſhe heard of her Father's Imprifonment in the *Tower*, and then came back to *England*, and lived privately, till her Father obtain'd his Liberty, when ſhe came home to him.

That the 8th of *January*, 1691, the Duke was prevail'd on, by the Inſtigations of her Enemies, to exhibit a Bill in the Houſe of Peers, to the ſame Effect with the Bill now depending, and divers Witneſſes were examin'd on both Sides; after which, and a long ſolemn Debate and due Conſideration had by their Lordſhips of the Witneſſes, and what was ſworn by them, the 17th of *February*,

bruary, they were pleased to reject the Bill without a second Reading.

Notwithstanding which, the Duke was again prevail'd on, the 22d of December, 1692, to exhibit a Second Bill in the House of Peers, to the same Effect with his First; which, after several Debates, was the 2d of January following again rejected.

Some time after this, and for accomodating all Differences between them, Proposals were made to the Dutchess, which, after long Agitation, on the 28th of April, 1694, were reduced into Writing, and executed by the Duke and Dutchess; the Preamble of which Articles is in the Words following: *Whereas diverse Controversies, Debates, Demands, and Suits of several natures have for some Time since been agitated, and continued, between the said Duke and the said Dutchess his Wife, &c. unto all which it is at last held fitting (it being conducive to their respective Quiets and Ease) to have an End put, and the like for the future prevented. It is therefore hereby, and by the Parties to these Presents, declar'd and agreed in manner following; Whereby the Dutchess convey'd to the Duke's Use the Manour of Castle-Rising, &c. And also the said Dutchess and her Trustees assign'd their Interest in a considerable Part of the Manour of Sheffield in Yorkshire to the Use of the said Duke; so that by these Articles, and that Deed executed thereupon, the Duke had his then desired Advantages.*

That after the Execution of these Articles, the Dutchess sent for one Mr. Negus, the Duke's principal Gentleman, and express'd her self very sensible of the Misfortune of the Duke and her self, and desir'd Mr. Negus to tell the Duke, that she would avoid all Company that should give him any Offence; and, that she would not so much as pay a Visit, but where he liked: Which Mr. Negus lately testified before the Lords, and that he acquainted the Duke with it; as also, that she had several times told him, If she died first, she would leave the Duke her Estate.

That notwithstanding the said Agreement, whereby the Duke and Dutchess agreed to live separately, yet without his signifying any Dissatisfaction to or with the Dutchess, and without any manner of Notice, or previous Proceeding in the common and ordinary Course of Justice, but by taking from her that Legal Trial in the Ecclesiastical Court, which by the Laws of this Realm she is entitled unto, he did, on the 16th Day of February last, exhibit in the House of Peers the Bill now depending, for dissolving the Duke's Marriage with the Dutchess, and for enabling him to marry again: Upon which the Proceedings were so very quick, two Foreigners (a French Footman, and a Dutch Cookmaid) lately brought from beyond Sea, being forthwith examin'd against her, charging her with Facts suppos'd to be committed many Years since, and long before the Date of the said Agreement, and on which the two former Bills were founded, that it was impossible for her to make her Defence, as she might have done if the Proceedings had been against her according to the known Laws of this Land.

The Dutchess thought her self under a Necessity of complying with all the Orders of the House of Peers; and accordingly, as well as she could, made her Defence, tho' less than a Week's Time was allow'd her for doing it; and upon examining the Evidence of the Duke's Witnesses,

many Contradictions appear'd, some whereof follow, as doth appear by the Depositions taken in Writing, and now remaining in the House of Peers.

For *Hauseur* the Footman swears, the Dutchess was at the *Cock-pit*, when, and before he came to live with Sir *John Germaine*; and, that he continued there Fifteen Days after; and, that after the Dutchess left the *Cock-pit* she went to *Vaux-ball*.

Vaness the Cook-maid swears, *Hauseur* came to Sir *John* when the Dutchess was at *Vaux-ball*.

Hauseur swears, that the 8th of Febr. 92, he left Sir *John's* Service, when the Trial was between the Duke and Dutchess in Parliament, and after lived privately six or eight Weeks, till he and *Vaness* could get for *Holland*, and arrived there in the Easter following.

And yet in another Place he swore, he desir'd Leave to go; and afterwards, That he also went for *Holland* as soon as the Wind was fair.

But note, all the Evidence was closed and order'd to be summ'd up the Ninth of February; so that he needed not afterwards to have gone. And whereas he insinuates, That he and *Vaness* were secreted, and kept from being Witnesses:

Note, It doth no where appear, that either he or *Vaness* were ever thought on for Witnesses.

Hauseur swears, He return'd again to Sir *John* in Summer 92, being often sent to by Sir *John*.

Whereas *Bayly*, another of the Duke's Witnesses, swears, he did not return again to Sir *John* in two Years after he went away, *Bayly* the Witness being all that Time, and three Years before, a Servant in the House.

Note also, That this very Summer 92, to wit, in Easter-Term, the Duke brought his Action against Sir *John*, which was tried Michaelmas-Term 92; at which Time it had been more likely, if Sir *John* had believ'd he could have done him any Harm, he should have kept him *Holland*, rather than have sent for him over, especially considering that this Fellow afterwards swears Sir *John* swore in a Rage this Fellow would betray him.

Hauseur being ask'd, Who sent for *Vaness* over?

He answer'd, That after he had promis'd the Duke and Lord *Howard* to speak the Truth of what he knew, they desir'd him, if he met *Vaness*, to desire her to come over, and speak the Truth of what he knew.

And being ask'd, How long after he met *Vaness*? answer'd, About Twelve Months since.

And being ask'd, When was the first Time he spoke to her about coming over to speak the Truth? answer'd, 'Tis about a Year since.

And being ask'd, How long it was since they resolv'd to come over? answer'd, Twelve Months.

Vaness being ask'd, Whether she was not sent for from *Holland* to be a Witness? answer'd, She knew nothing of it till eight or nine Weeks ago.

Vaness swears, She was sent away on Account of the Trial.

Whereas *Peacock*, *Hawksworth* and *Knight*, three Servants of the Dutchess's, swore the Dutchess turn'd her away before the Trial, for keeping Company with Dutch Soldiers; and they do swear a new Cook-maid before the Trial.

Hauseur swears, He had a Key of the Door going into the *Park*, and could come in when he would.

And

And yet owns he knew but two of the Servants, one whereof is long ſince dead.

And alſo the Dutcheſs's Servants ſwear, they never heard any body had a Key; and, that if any Key had been, they muſt have known of it. They alſo prove the ſhutting up, bolting, and chaining the Door every Night, and opening it every Morning; and but one of the Servants remembers ever to have ſeen him at the Door, and then he rung the Bell, but came only to ſee a Country-woman of his, and to carry Letters to *Holland*, and brought Answer back to her, but was not admitted beyond the Paſſage.

Hauſeur and *Vanefs* ſwear, they ſaw the Dutcheſs and Sir *John* in Bed together at *Mill-bank*.

The Dutcheſs's Woman ſwore, ſhe has put the Dutcheſs to Bed, and taken her up every Night and Morning ſeveral Years, and never ſaw him in the Houſe. And two others ſwear, they were conſtantly in waiting Night and Morning, and poſitively deny any Knowledge of any ſuch Thing, and ſay, they never ſaw *Hauſeur* there; and that *Vanefs* was never admitted up Stairs, ſhe was ſo dirty a Creature, much leſs to drefs or undrefs the Dutcheſs, as ſhe pretended often to have done.

Vanefs ſwears, She could not tell the Places ſhe has been at theſe Six Weeks laſt paſt. Whereas

Mr. *May*, and two other of the Duke's Servants, ſwear, ſhe has been fourteen Days in the Duke's own Houſe, with the full Liberty of the Houſe.

Vanefs being aſk'd, Whether ſhe ever told any body of the Occaſion of her going away? ſhe ſwore, Yes, ſhe told it to a great many in *Holland*, and not here.

Yet being afterwards aſk'd, Whether ſhe ever diſcovered that ſhe was ſent out of the Way? ſhe ſwore directly, No.

Theſe are ſome of the many plain Contradictions and Diſproofs of theſe Evidences, beſides the great Improbability in their own Nature, in ſeveral Things ſworn.

But it is alſo to be noted, that *Hauſeur* left Sir *John*'s Service in a Diſguſt; and ſo 'tis prov'd by *Bayly*, another of the Duke's Witneſſes, and that what *Hauſeur* ſwore could be nothing but Spight and Malice: Yea, 'tis prov'd on the Dutcheſs's Part, that he ſwore he would find a Way to be reveng'd of him, and that perhaps it might not be long fiſt: And Mr. *Strange*, Mrs. *Pitts*, and her two Maids, who could have depoſed very materially for the Dutcheſs, refus'd to appear, tho' often ſummon'd, being Perſons not in the Dutcheſs's Intereſt or Power.

This *Hauſeur* has been out of Place ever ſince he left Sir *John*'s Service, April 96, and is ſo ſtill, as he ſwears, and ſo in conſequence likely to be neceſſitous.

Note alſo, that *Hauſeur* ſwears, Sir *John* gave him ſeven Guineas to pay the Charges of himſelf, *Vanefs*, and another, which were order'd to be kept private till they could be ſhipp'd off, and alſo for their Paſſage into *Holland*, which was in Time from the 8th of February 92, till *Eaſter*.

Which does not look like a Bribe for a Secret of this Nature, being hardly ſufficient to maintain three People, and pay their Lodgings, for two Months.

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Hauſeur would be thought a mighty Conſident, ſo as to have a Key to the Dutcheſs's Houſe, to come in and go out when he pleas'd; and yet, as well acquainted as he pretended to be with the Houſe, and the Dutcheſs's Bed-chamber, he could not tell on what Floor it was, nor what Furniture it had, nor whether wainſcoted or hang'd: And when he was aſk'd which way the Windows of the Bed-chamber look'd? he trifled in that Queſtion, and concluded, he could ſee the Water, but was afraid to go near the Window, for fear of being diſcover'd; and yet had no Scruple of coming into the Houſe with his Key, at any time.

Theſe Things being obſerv'd, it muſt be conſider'd, that the Facts now in effect charged againſt the Dutcheſs are ſuggeſted to be done many Years ſince, and were debated and conſider'd before the Peers, before the Rejection of the two fiſt Bills, and long before the Agreement for putting an End to all Controverſies and Debates. Now 'tis very hard to put the Dutcheſs to account again for thoſe very Facts, conſidering that after eight or nine Years, many People are dead, others diſpers'd, and not in a little Time to be found out, and Circumſtances of Times and Places (which in the Nature of all theſe Cafes is almoſt all that is left to diſcover a Falſity) forgot.

The Dutcheſs is alſo under the unavoidable Neceſſity of proving a Negative againſt downright Swearing, and that without any Matter introductory; and alſo by two mean Servants, the one turn'd out of her Place for keeping company with Foot-Soldiers, and the other leaving his Place in diſguſt, becauſe he could not have the Play-Money.

Maſters are already too much in the Power of their Servants, and if they charge their Maſters with Adultery, Felony, and even Treason, it is not eaſily in the Power of the Maſter to defend himſelf againſt downright Swearing; Servants having thoſe Opportunities of the Knowledge of Times, and Places, and Company, which cannot be denied or avoided, and which others have not; whereupon they may frame and build falſe Evidence, and many times are of ill Principles and deſperate Fortunes, and of Tempers very revengeful; ſo that whoever turns away a Servant, he is in his Power for his Eſtate, Honour, and even Life itſelf; and therefore, for the Safety and Freedom of Families, in other Countries, they are not permitted to be Evidence againſt their Maſters, in any Matter criminal whatſoever.

Note alſo, that the Dutcheſs thinks ſhe, as an *Engliſh* Subject has, by *Magna Charta* the ſame Right to a Trial in the legal and ordinary Way of Juſtice, as the reſt of the King's Subjects, eſpecially conſidering that there never yet was in *England* one Preſident of a Bill exhibited in *Parliament* to diſſolve a Marriage at the fiſt Inſtance, without any previous Proceedings in the Eccleſiaſtical Courts, (which in theſe Cafes is the Law of the Land) and not above Five or Six Bills, in above 600 Years ever paſſ'd to diſſolve Marriages, or make Second Marriages good, even after there had been a Divorce in the Spiritual Courts, and thoſe Bills too in Cafes generally where the Huſbands were without any Recrimination.

No Impediment appears why the Duke ſhould not have endeavour'd a Divorce at Law before he had attempted a Bill to diſſolve the Marriage;

N n

for

for any Application to the *Legislature* for Trial of Matters of private Right is improper, because there are proper Judicatures that give that Remedy the Law allows.

To ask any thing of the *Legislature*, in private Causes between Party and Party, beyond what the known Laws in force give, seems to be improper ; because,

1. It is to make a Law in one Person's Case, which is not the Law in another's.

2. It is to retrospect Actions, and after the Fact, to augment or alter the Penalty. Our Laws are certain and known, that Persons may conform their Actions to them.

3. The Courts and Forms of Law are equally the Subjects Right with the Law, and the Application to the *Legislature* takes away all that Right of Form and Charging ; whereas a Certainty in Time to answer, and Exceptions to Witnesses, and other legal Defences of the Fact cannot be denied the meanest Subject.

The Consequence that short and summary Ways of Proceedings may have on the Settlements of Estates and Families, may be very dangerous ; and tho' the Duke of *Norfolk's* Bill passed the House of Peers, yet a great Number of the Peers, both Spiritual and Temporal, enter'd their Protest against its passing, and their Reasons for it.

It ought to be no Prejudice to the Dutcheſs, that the next Heir presumptive to the Duke doth not yet appear to be a Protestant, because when a Bill, which hath lately passed both Houses, is become a Law, it is not likely that noble Family will be without a Protestant at the Head of it.

If any of the Witnesses formerly examined on the Bill in 1699, be now again produced, it is humbly apprehended, that as the Validity of their Testimony they then gave, was totally overthrown by a greater Number of Witnesses, so it will be again, tho' under the Disadvantage of the great Distance of Time.

Martis 19 die Martii, 1699.

The Reading the Bill, for dissolving the Marriage of the Duke of *Norfolk*, the second Time, and hearing Council as well on the behalf of the Dutcheſs against the Bill, as on behalf of the Duke for the Bill, being the Order of the Day, before the Council was called in, to prevent the Inconvenience of People crouding into the House, the House made an Order,

That none but the Council, Solicitors, and Parties should be called in, and that the Witnesses should have Notice to attend without, ready to be called in, if the House should think fit.

It was also intimated, That if the Duke and Dutcheſs did think fit to come into the House, they should be accommodated with Chairs, that being a Respect shewed to the Nobility when they come into the House.

And then the Council, and Solicitors, and Parties of both Sides were called in : And first the Bill was read to them.

And then the Lady Dutcheſs's Petition was read.

The Council that appeared were,

Sir *Thomas Powys*,
Mr. *Dod*,
Dr. *Pinfold*, } for the Dutcheſs.

Mr. Serj. *Wright*,
Mr. *Northey*,
Mr. *Atwood*,
Dr. *Oldish*, } for the Duke.

And Mr. *Speaker* then spake to this Effect :

Mr. *Speaker*. You are here, I see, Council on both Sides. The House have ordered, That my Lady Dutcheſs should be heard according to the Prayer of her Petition ; and my Lord Duke had likewise an Order to be heard to make good his Bill. I think the Petitioner is to be heard first, to make good the Allegations of her Petition ; and when the House have heard you both, as to that, they will consider whether they will proceed to hear the Allegations of the Bill made out.

Sir *Thomas Powys*. Mr. *Speaker*, with your Favour, Sir, I am of Council with the Petitioner, the Dutcheſs of *Norfolk*, against this Bill that is now before you ; and I believe I may say with some Assurance, that this Bill, in the Manner it is now brought before you, is the first that ever was attempted in this Honourable House. It's, Sir, true, that several Years ago this Bill, or another of the same Nature, was attempted twice in the other House, and as often rejected ; but 'tis as true, at last it does come from thence hither, but not without a Protestation there ; and I humbly hope that you will take notice, that this is a Bill of Divorce in Parliament, in the first Instance, without a previous Prosecution to examine the Fact in any of the ordinary Courts that have Authority in these Matters.

It is a Bill not only to Divorce the Dutcheſs upon a very short Warning, who hath been a Wife twenty-three Years, but to render her Infamous to all Posterity by Act of Parliament, which I account to be the greatest Misfortune possible to befall any Person ; and at the same time it takes from her the legal Trial of the Fact whereof she is accused, and which she hath a Right to by the Laws of the Land, sure as much as the meanest Subject ; and which we don't apprehend she has in any wise forfeited ; nor is there any Reason assigned, why his Grace has not been pleased to proceed in the ordinary Course. I hope, Sir, you will take Notice also, that this is, in truth, nothing but a Suit between Party and Party. 'Tis merely a Cause Matrimonial between Husband and Wife, began originally in the House of Peers ; and as hitherto the Beginning of Causes between Party and Party, in that House, hath been strongly opposed, so I hope it will be thought reasonable to do so always, because it deprives the Subject of that legal Defence due to him by the Law of the Land. If this was always complained of, when the Proceedings were in a Judicial Way, surely 'tis a great deal worse to begin there a private Cause between Party and Party in the Legislative Way. I can see no manner of Difference, with respect to the

the Loſs of thoſe great Advantages the Party is intitled to, only this ſeems rather to be the moſt againſt Reaſon.

Sir, this is a ſummary Proceeding with a witneſs. It began but the 16th of February, and but a Week's Time given to the Party accuſed of ſo high a Crime, and of ſo great Conſequence to the Party accuſed, to be heard to it; and tho' perhaps we may with Reaſon enough find Fault with the tedious Proceedings in ſome Courts, where Appeals and Writs of Error are juſtly due, as where Property is well fixed, it muſt needs be reaſonable: I ſay, from various Cauſes, though Suits in the Ordinary Courts are very tedious; yet I am ſure a ſummary Way of Proceeding without due Warning, or any certain Way of making Defence by any known Rules, and without Oath, as here without Appeal, without any Poſſibility of retrieving the Matter again, with great Submiſſion; and if this muſt be for all that one has in the World, ſuch a ſummary Way is a very terrible Thing.

I would be glad any one would make it his own Caſe, and think with themſelves how they ſhould like it, if their Life, Eſtate, and all they had, were put upon ſuch a ſummary Way of Proceeding. 'Tis true, in ſome Kingdoms, where the Government is arbitrary, the Proceedings are ſummarily, and moſt commonly they go together; and if we were in a Place where the Judges were infallible, and there were no falſe Witneſſes, and Truth could be diſcovered at an inſtant, a ſummary Way would be beſt; but ſince Men are fallible, ſince there is Paſſion and Partiality in the World, ſince oftentimes there is notorious Detecions of Perjury, and ſeveral Things are difficult to be diſcovered, and require a reaſonable Time for examining into Facts; from thence it is that there are ſettled Courſes for determining all Queſtions in England between Party and Party; and there are known Rules and good Methods for the Relieving againſt any ill Judgment that is given.

Whatever you may think of this particular Caſe of the Dutcheſs of Norfolk; the Example is of mighty Conſequence to all Parents, that perhaps make hard ſhift to give their Daughters conſiderable Portions, and may think they have married them well, and made Proviſion for them and their Children: I ſay it will be hard, if their Daughters ſhould be ſent home to them upon a Fortnight's Warning, and that Witneſſes ſhould be examined againſt them without their having Notice ſo much as of the Places of their Abode; and a Thing ſhould be determined before the Witneſſes can be well known: And it muſt be agreed to be of great Conſequence to all collateral Heirs, if Marriages are ſo eaſily and ſuddenly ſet aſide for want of Iſſue; which I find to be one of the Cauſes aſſigned for this Bill, and that it might be in a ſummary Way, perhaps, before they can well hear of it. I am ſure, this is a Matter of too great Temptation to be put upon Men that may grow weary of their Wives, and deſire a better Fortune, or deſire Change, or may be moved by a thouſand Reaſons we can't think of, to revive old Quarrels, and think of Things long ſince paſſed, if you will ſee ſuch a Precedent of Divorcing in ſuch a ſummary Way.

This is ſure of infinite Concern to us in higher Matters. A Bill of Divorce of a Woman in Parliament, without a legal Trial, is juſt the ſame Thing as a Bill of Attainder againſt a Man for Treason; the one forfeits the Eſtate, corrupts the Blood, and takes away his Life, and the other does very little leſs: For I find, according to the Bill, 'tis to forfeit her Joynture, to defame her Perſon, corrupt her Reputation; and tho' it leave her Life, it is left with Infamy, which is worſe than Death; and in a Caſe of this high Moment, ſure you will be careful how you alter the Courſe of Trials. I beſeech you, Sir, will not the Reaſon be the ſame, that a Bill of Attainder may be brought againſt a Man, and that Witneſſes againſt him may be fetch'd from beyond Sea, which he had formerly diſcharged from, his Service, and put the other Side to prove what is always very difficult, the Negative, to make his Defence, which muſt needs require a reaſonable Time for the making out of Circumſtances, and laying Evidence together? Where will be the Difference between proceeding againſt a Man for his Life without a Trial, and proceeding againſt a Woman for her Joynture, where her Name, Family, and Reputation is concerned, and perhaps her Children, the Legitimacy of whom muſt come in queſtion; and in a Caſe, where the Perſon by no Behaviour of hers hath forfeited ſuch a Trial, nor the Perſon that proſecutes this Bill, can't ſhew, that he hath been obſtructed in his proceeding in the ordinary Way? I need not take notice of what every body knows, that we have a happy Conſtitution, if we can keep it; every Man can call his Wife his own, and his Eſtate his own, becauſe it can't be taken away, but by legal Trial; but if you will go into theſe extraordinary Reforts, when the Courts and the Law is open, without any previous Preparations for that Matter, by having a fair Examination, that the Party can't ſay there is a Surprize, I know not where it will end; and though in one Caſe it may be deſirable, that there ſhould be an extraordinary Relief: But will this go no further? Can any body ſay that?

That which we find in *Magna Charta* is not to be forgot, where there is ſo much Care in the ſeveral Inſtances of it for the preſerving of Property, and the Right of Trials, *Quod nullus deſtruatur, nec ſuper eum ibimus, nec ſuper eum mittimus, niſi per legale judicium parium ſuorum vel per legem terræ.*

Why, in this Caſe the Eccleſiaſtical Law is *Lex Terræ*. And if that be to be taken away without any Reaſon, why may not the Law in any other Caſe?

We have, perhaps, in Time of great Emergency and publick Difficulties, had ſome extraordinary Laws grounded on extraordinary Reaſons; but now we are in a Time of ſettled Peace, when there may be a juſt Determination according to the Law of the Land, I can't ſee any Reaſon for this Proceeding, no not in this particular Caſe.

I would, Sir, with your Favour, take Notice of thoſe few Inſtances of this kind, that have been in England by Act of Parliament, and in what manner they have proceeded.

There have not passed hardly six in six hundred Years; I think I may challenge them on the other Side to shew so great a Number, but those I have I shall quote: But they proceeded in another manner than this has done.

'Tis true, where Persons have had a fair Trial in a proper Court, and Witnesses have been examined, and Sentence final been pronounced, and where the Party as to the Fact hath been concluded according to the Law of the Land; when all this hath passed, some Instances there have been, that afterwards an Act of Parliament has passed to strengthen the Sentence, and to carry it farther than the Ecclesiastical Court will allow, even to the dissolving the Marriage, and enabling the innocent Person to marry again; but you will find all those Acts are founded and built upon the Sentence of those Courts, and recite those Sentences as a great Inducement to the passing of those Acts; and I crave Leave just to take Notice of those. The first we find, is that made in the Case of the Marquess of *Northampton*, which was in 5 E. 6. He was married to a Daughter of the Earl of *Essex*, and she eloped from him, and was prosecuted in the Ecclesiastical Courts, and there was Sentence against her of Divorce. The Marquess, from hence, took upon him to marry a Daughter of the Lord *Cobham*; and after four Years Marriage of her, he obtained an Act of Parliament to ratify the second Marriage; which Act recites a Settlement of Divorce in the Ecclesiastical Court.

This took its rise from Examination according to Law; and that Act of Parliament is grounded upon it, and recites it as a previous Matter necessary to induce that Act.

The next that follows was the famous Case of the Lord *Ross*, afterwards Earl of *Rutland*, tho' there perhaps was as great a Notoriety of Fact as can be pretended in this Case, and he did not stand impeached of any immodest Behaviour, but even in that Case the Divorce by the Act, followed a Divorce in the Ecclesiastical Court, and that passed with such Difficulty, that it was four Years in hand; it began in Sixty-six, and was not passed till Seventy: I have a Copy of it, and it says, that forasmuch as *Manners*, commonly call'd *L. Ross*.

And it proceeds thereupon to enable him to marry again; but this, Sir, could not be but by two Acts of Parliament, besides the Sentence in the Ecclesiastical Court; for he first got that Court to declare the Children illegitimate, and then in the Year (70) the Parliament passed this Act.

I know of no other, till we come to a Case that happened within our Memory; 'tis the Case of a Person of great Worth, and I hope it will give no Offence when I cite the Precedent.

It was the Case of Mr. *Lukenor*, who had been grossly abused by his Wife, by Elopement and open Adultery; but the Act he obtained went no farther than to disable the Children born while she lived in open Adultery; and that Act recites a Sentence of Divorce: I have a Copy of it, and I crave leave I may read a few Lines of it; it recites that Mr. *Lukenor's* Wife had eloped from her Husband.

There was indeed a famous Case not long ago, of a Lady that was taken away by Force, and pretended to be married, and an Act of Parlia-

ment came afterwards to declare that Marriage null and void; but even there was a Proceeding at Law with a witness. The Person that had been concerned, was actually indicted and executed; it was not there to make a Divorce, and so it had been a vain Thing to have gone into the Spiritual Court, where there was no Marriage, for it was only a Law after the Fact declaratory by way of Caution, to give the more Satisfaction that That Marriage was null and void.

Sir, the last I know of (and it may be proper for you to observe how quick these People come after it) was that of a noble Earl, that did obtain last Parliament, an Act for divorcing him and his Lady: It is the Case of the Earl of *Maclesfield*; but in that Case it will be proper to take Notice to you, that there were previous Proceedings in the Ecclesiastical Court; there was a Libel exhibited against her, a Charge upon her, and Witnesses examined, and she had a fair Opportunity of making her Defence; there was a regular and a long Proceeding against her, and a Prosecution of her, in order to a Sentence of Excommunication; and then there came the Earl's Petition into the House of Peers, setting forth, that there had been such a Proceeding as this, and that she stood in Contempt, having been prosecuted as far as that Court could go: After an Examination of Witnesses, in all the Cases I have heard of a Divorce by Act of Parliament, there have been Proceedings in the Ecclesiastical Court; this was the Way of former Time, but now we are beginning where the Matter ought to end.

And now the first Application is to that Place, wherein all these Instances (as I think it ought to be) was the last Resort. 'Tis true, this Method may not please the Duke, for we know his Grace is in haste for cutting the Knot asunder at once, by the Legislative Power; but I hope, upon these Precedents, you will think it more reasonable it should be at first untied, or at least loosened by a judicial Proceeding. If you will, I do not see how in Justice the Parliament can deny the like Remedy the next Sessions to any other that may be in the like Case; it may be in worse, for here is no Pretence of any spurious Issue. Can the Parliament of *England*, whence we take our Measures of Justice, deny the like Remedy in Justice to any others that are in the like Case? What is it that guards you from an infinite Application of this Nature, but requiring Persons to take the ordinary Course first, and to come round about to the Parliament, as the last Remedy, to carry the Sentence perhaps farther than the Ecclesiastical Court can do: But if Persons can come up directly hither, I am apt to think your *Lobby* will be crowded with Petitioners of this Nature the next Sessions, though the Sessions now are long and frequent, this single Business may be so great as to obstruct all other Business; I am sure a Committee for Adultery would have a full Employment.

Let it be consider'd how strange it would be, if some poor Man upon this Precedent, shall come and make Application, and tell you he stands in Need of such a Bill from the Condition of his Family; that his Wife plunders his House, sells his Goods, and lives in Adultery, and prays this Matter may be examined in a summary

ſummary Way, becauſe he is not able to go through the coſtly Courſe of Eccleſiaſtical Courts, and be favoured with a Divorce; would not this poor Man's Caſe ſeem to have the like Juſtice, or poſſibly more; and yet if ſuch a mean Man ſhould come with ſuch a Petition, perhaps it would look ſtrange; but yet in Juſtice there is no Reſpect of Perſons; the Law in England is, *unum pondus & una menſura*; and if this ſhould be done in the Caſe of a great and rich Man, and not for a poor Man, they may ſay what has been ſaid by ſome, *That our Laws are like the Spider's Web, which only hold the leſſer Inſects.*

Shall thoſe that expect the beſt Fortunes and greateſt Advantage by Marriage, not undergo the bad Fortune of Marriage too? I am ſure if this be ſo, it's a Privilege of *Peerage*, never thought on before.

You may ſee, Sir, by this Bill, how Precedents grow upon you; at firſt in the Caſe of the Marqueſs of *Northampton*, it was hard to get an Act after a Divorce: So it was in the Caſe of my Lord *Rofs*; the laſt Sefſions in the Caſe of the Earl of *Maccleſfield*; it went farther there, becauſe there had been a previous Proceeding in the Eccleſiaſtical Court, and his Lady had obſtructed that Sentence, that Act paſſed before Sentence; but now we are come to have it done without ſo much as a Trial to get a Divorce in the Eccleſiaſtical Courts; to have all paſſed at once in a ſummary Way, it will be but to petition the *Parliament*, and all ſhall be determined without a Poſſibility of being re-heard.

I know nothing can be ſaid on the other Side with good Reaſon (unleſs that which I heard in another Place) why they ſhould not go to the Eccleſiaſtical Court, which is that thoſe Courts cannot divorce a *Vinculo* Matrimony; therefore it would have been a vain Thing: This may be a good Reaſon for them to come to you afterwards, but 'tis no Reaſon for them to come here at firſt, unleſs they would ſay at the ſame time, that every Thing ought to be begun in *Parliament*, becauſe 'tis poſſible every Thing may be brought to the Houſe of *Peers* at laſt: Will they ſay that all Ejections ought to be begun originally in the Houſe of *Peers*, becauſe after the Parties have been at great Charge and Trouble in the Courts below, they may be brought thither by Writ of Error at the laſt. This would have been a good Expedient, in a Cauſe lately where a Deed was tried over and over, if the Perſons concerned in ſo many Verdicts, had once thought of having begun in *Parliament* to have had it ſettled, whether it was a juſt Deed or no; if this be the Rule, it would be well it were known, and made to be the Law of the Kingdom; for that Law will be always reckoned hard which is made in one Caſe, if it may not be had in another; the Law of England does go throughout, and if it be Law for one, 'tis for another. I have but one Thing more to lay before you, and that ſeems worthy of your Conſideration, beſides all that I have ſaid.

You obſerve the Bill is general without Reſtraint, of Time and Place, or Deſcription, or Circumſtances relating to the Fact: Now, Sir, I muſt take leave to acquaint you, that ſo long ago as April 1694, his Grace the Duke, who complains of this Matter, as if ſome Miſfortune

had befallen him, having made former Complaints and Attempts for obtaining what he now deſires, did at laſt in April 1694, not ſuddenly, but by Advice of Council, with his Friends about him, after a long Time of Agitation, come to Articles with his Wife the Dutcheſs; of which I crave leave only to read the *Preamble*.

The Articles are between his Grace the Duke of *Norfolk* and the Earl of *Peterborough*, and recites—

* It is therefore determin'd by the Parties, and agreed as followeth; and thereupon the Articles proceed to ſettle every Thing between the Duke and Dutcheſs to his own Satisfaction, and according to his own Deſire: His Grace hath reaped the Benefit of thoſe Articles, by having received a great Sum of Money; and the Dutcheſs parted with her Intereſt in that Great and Noble Manour of *Sheffield*; his Grace hath had all that he on his Part was to have, and hath executed abundance of Deeds, purſuant to his Agreement. Now if, after all this, there be a Proſpect of farther Advantage by another Marriage, that will not move you to give him a Liberty for a Departure from ſo ſolemn an Agreement, in what a Condition are People that have purchaſ'd their Peace as the Dutcheſs has, if they may have Liberty to go back beyond this, for the Bill has no ſtint; ſurely all Reconciliation between Men and their Wives, and all Acts towards them, and all Acts of Kindneſs, are to be favour'd; and Matters of a Divorce are of an odious Nature, and not to be encourag'd after ſuch Compoſure of Differences, and Reconciliation. We have Inſtances of ſome that have taken their Wives again, and lived comfortably afterwards; ſurely it ſhall not be in their Power to go back and ſay, *Pray let us be divorced*; 'tis contrary to the Uſe of all Acts of Pardon. What is the End of all Acts of *Parliament* of General Pardon, and all Statutes of Limitation, but to eaſe People in ſuch a Caſe? For 'tis impoſſible that any Perſon can be able to defend their Actions nine or ten Years ago; they can't keep their Witneſſes alive, and therefore the Law hath often limited a Time, beyond which Perſons ſhall not go back: And this, we think, the Duke hath done by Articles, and ſurely they are concluſive both before God and Man.

I ſhall ſay no more, but that I don't apprehend the Nation will be in any great Danger, if the Duke do, betwixt this and the next Sefſion, proceed in the ordinary Courſe, and prepare Matters againſt another Sefſion; I am ſure 'tis of great Conſequence: No Man can deny but we have a good Conſtitution; but if it is in the Caſe of a particular Perſon to be broken, ſuch a Breach in this Conſtitution may not be very eaſily recover'd.

I hope this Cauſe, that is precipitated here out of Time, and before thoſe Preparations were made that have been in all other Caſes, ſhall be remitted to its proper Place, where her Grace will give the Duke a meeting, if they be not before that Time reconcil'd.

Mr. *Dodd*. Mr. Speaker, I deſire the Favour of a Word of the ſame Side. Theſe Bills are not common; I think there are not above three Inſtances to be found in the Records of this Kingdom.

* Vide her printed Caſe *ut infra*.

This Bill is to dissolve a Marriage after Twenty-three Years Continuance, and that not upon so many Days Notice as there have been Years of the Marriage, for to serve the particular Purposes of one Person: 'Tis a Law after the supposed Fact committed; the Law should go first, and the Fact follow; it is not a General Law for all the People of *England*; as such, it would have another Consideration: There is no Occasion for a particular Law, 'tis a Bill from the Lords, and in a little time, for what I know, the Lords will prescribe to it. There is not one of these Bills for a Commoner, unless in my Lord *Rofs's* Case, who was of a Noble Family.

'Tis not pretended by this Bill, that the Dutchess hath had any spurious Issue, though that was the Circumstances of one of the Bills that did pass, and that was a material Circumstance in the Case; and that is not alledged here. These Bills are not to be made use of, but upon extraordinary Occasion, and the utmost Extremity, and till then I hope such Bills shall not be made use of, and we think the Proceeding upon this Bill, in this Case, will appear much harder; for 'tis the first Instance of this Nature, when there has been no Proceeding in any Court whatsoever, to convict the Dutchess of this Offence, no Citation all this while in the Ecclesiastical Courts, where the Dutchess might have an Opportunity to make her Defence.

If those Courts have Jurisdiction in any one Thing, 'tis in Case of Matrimony: If this was brought into those Courts, the Dutchess would be allowed to make her Defence, not only by way of Recrimination, but Examination of Witnesses; a Commission might be had to examine Witnesses beyond Sea, if she had any Witnesses there, or in the Country; she might appeal to a Superior Court, and thence to the Delegates: These are all proper Defences that the Law allows, that there may be no Surprise upon the Party; and if injured, he may be righted in another Place: These Proceedings, we think are necessary to go before a Bill of this Nature, for then the Fact would be plain; and if the Dutchess had been convicted in this manner, as to the Fact, we must not have opened our Mouths against it.

By the same Reason that a Bill is brought to dissolve this Marriage, in a little time you may have a Bill to marry People: Be it enacted for such and such Reasons, such Persons shall be married. This would be a much readier Way in Case of Contracts, than any Proceedings in the Ecclesiastical Courts. And though they may say the Law of *England* takes notice of Contracts of Matrimony, as well as any other Acts, that is no Answer; for the Fact is, whether there is any Contract of Matrimony, or no; and so 'tis here, whether my Lady is guilty of the Crimes charged here in the Bill; and for this she ought to have a proper Trial, and ought to be called to an Account in the ordinary Methods of the Law; and then it might be proper to carry the Sentence farther than those Courts can. I hope you will be very tender of making a new Precedent; and I do not know of any Bill before this, to convict a Woman of a supposed Crime; then this is the first Bill of this Nature, and you will consider, whether you will make a Precedent of it or no. Though this be-

fore you is the Case of a great and honourable Person, yet your Justice will be the same, if it should happen that any other Man in the Kingdom should be in the same Circumstances, and willing to slip over all Trials, whereby the Person accused might have an Opportunity of making her just Defence, as is the Case of this noble Lady, who is hurried on after twenty-three Years Marriage to a Determination in as many Days in this extraordinary manner.

I hope therefore you will not proceed in a Bill of this extraordinary Nature, of which there is not one Instance to be given, where you have begun to examine a supposed Crime, but you have always left it to the Determination of the Law in the ordinary Course; and we think it ought rather to be so in this Case, because 'tis not pretended by the Bill, that there is any Stop put to their Proceedings there; there is no Absence of Witnesses, no Incapacity, but his Grace may proceed there to convict this Lady of the Crime he supposes her guilty of, and she will then have her just Defence; and till then there is no Crime for you to judge upon, and I hope you will think fit to reject this Bill.

Dr. *Pinfold*. Mr. Speaker, I desire to speak a few Words as to the Ecclesiastical Law, which is a Part of the Law of *England* as much as any other, for our Law does not receive *Majus & Minus*; and the Ecclesiastical Courts have been settled for several Ages, and are governed by such Rules which every Subject has a Right to. Sir, this Bill is to dissolve the Bond of Marriage, and to give Leave to marry again; and I crave Leave to shew the House what our Ecclesiastical Constitutions are in that Case, and how tender they have been in that Point, and how those Constitutions are grounded upon the Canons and Decrees of Councils.

The Cases where the Bond of Marriage is to be dissolv'd are but few, and they arise before Marriage; 'tis in the Case of the Precontract, or Nonage, or Consanguinity, and there the Bond is broken by the Sentence of the Judge, and the Person hath liberty to marry again; but for what comes afterwards, whether it be the Case of Adultery, or any thing else, the Law Ecclesiastical, which, as I said before, is part of the Law of *England*, hath been very careful not to dissolve the Marriage.

The 48th Canon says, If any Layman shall put away his Wife, and marry another, he shall be excommunicated: That was the Sense of those early Days; and sure, they did not think it an indifferent Matter, because they punished it with so heavy a Punishment. So 'twas in the Council of *Arles*, 314, and there it was decreed, That if a Man took his Wife in Adultery, he should be forbidden to marry. There what was to be done? Counsel should be given him not to marry while she lived, tho' she was an Adulteress.

And in the Council 402, the *Neapolitan* Evangelical, Apostolical Council, it was decreed, That if a Man was divorced from his Wife, or a Wife from her Husband, there they were not to marry, but should remain unmarried, or be reconciled.

And in the *African* Council, Canon 102, there it was provided, That they who were divorced, whether

whether 'twas a Husband from his Wife, or a Wife from her Husband, they ſhould remain unmarried. This was the Senſe of the ancient Canons and Councils, and this is received into our Eccleſiaſtical Conſtitution. In the 15th Year of the Reign of Queen *Elizabeth*, in the Chapter of *Divorces*, 'tis ſaid, That upon a Sentence of Divorce there muſt be an Admonition, and a Prohibition, that the Party ſhall not marry again.

And in the Year 1602, in the Beginning of King *James's* Reign, there was a farther Proviſion made to keep them from being married again; and that was this, That they ſhould give Bond and Security that they ſhould not marry again; this is certainly our Eccleſiaſtical Conſtitution, and grounded on the Senſe of the ancient Canons.

Now it remains to ſhew ſome Advantage this would have had: If ſhe had had the Trial, which of common Right is due to the meaneſt Subject, ſhe would have had the Advantage of Challenges, which ſhe can't have here; for here the Evidence muſt drop from the Witneſſes Mouths, who are Foreigners, and have been long abſent; there they muſt give an Account of themſelves, which here hath not been done by any body. The Lady might have given her Exceptions to thoſe Witneſſes, and had a Commiſſion into *Holland*, to have examined how theſe Witneſſes behaved themſelves, and whether theſe Perſons were to be believed and credited: Here ſhe would likewiſe have Liberty to give an Account how this Deſign began. I do now ſpeak with reſpect to the Duke, but I do ſay it does ſeem to have begun a Year and a half ago. She would likewiſe have had the Advantage of a thorough Reconciliation: And here are ſome Deeds in (94) between the Duke and the Dutcheſs, which I hope, if the Houſe will take an Account of, will have its due Effect; ſhe would likewiſe have had the Advantage of an Appeal, the common Right of the Subject, and grounded upon good Reaſon; and in caſe there had been a Neglect in the firſt Inſtances, the Party may be righted in another Place.

By this Bill ſhe is debarr'd of the Advantage of Recrimination, to which ſhe hath a Right, for the Text Law is—

And the Text Law, *De Divortii*, were the Charge moſt true, which we do not admit; yet if ſhe can prove the ſame Thing againſt her Husband, the Fault of one muſt be ſet againſt the Fault of another, and he can't have the Advantage of his Prayer.

I ſhall repeat only one Thing more, and that is the Caſe quoted already of the Earl of *Maccleſfield*, but in that Caſe the Lady withdrew herſelf five or ſix Days before Sentence; yet there the Lord *Maccleſfield* had all her Defences, and even her Recrimination, and had a Time to prove it; there was Publication, and a Day ſet down for Sentence; but ſhe ſpun out the Time till the Parliament was ready to riſe, and then my Lord's Friends adviſed him to begin in Parliament; and when the Lords were acquainted of any Lady *Maccleſfield's* ſtanding in Contempt of the Court, and ſhe was proſecuted ſo far, that ſhe was almoſt ready to go to Priſon for her Contempt, then the Houſe of Lords did think fit to receive my Lord *Maccleſfield's* Bill, and not

before; but before my Lord *Maccleſfield* brought his Bill in Parliament, there was nothing remained to be done in the Eccleſiaſtical Courts but Sentence: And I hope for all theſe Reaſons, you will not proceed upon this Bill.

Mr. Serj. *Wright*. Mr. *Speaker*, I am of Council for the Duke of *Norfolk*, who is your Suppliant for this Bill, for Redreſs againſt the higheſt Injury that can be offered; the Rights of his Marriage-Bed have been invaded, and he comes for that Relief here, which no other Court can afford him; for the learned Doctor on the other Side, tells you plainly, from the Canon Law, that there can be no Divorce a *Vinculo Matrimonii* in their Courts: Now to ſend us to a Court for Relief, that they tell us before-hand can give us none, is in Effect to tell us we ſhall have none at all.

The Bill is founded upon the Suggestions contained in the firſt three or four Lines of the Bill, that the Dutcheſs of *Norfolk* hath, for divers Years lived in Separation from the Duke her Husband, and hath had unlawful Familiarity, and adulterous Converſation with Sir *John Germaine*, and is guilty of Adultery on her Part, and hath broken the Bond of Matrimony: Theſe are the Reaſons for which the Duke deſires this Bill may paſs; 'tis for the adulterous Converſation of the Dutcheſs, not for one ſingle Act, but a continual Series of the like Acts for many Years; for we ſhall not give only one ſingle Act or Inſtance in Evidence, but prove this Converſation for ſeveral Years, beginning in Eighty-seven, and carried on to the latter End of Ninety-five.

It hath been objected, that this is the firſt Inſtance of a Divorce, the firſt Bill of this Kind, where there has been no Proceedings in the Spiritual Court: That 'tis the firſt Bill of this Kind we deny; but that there have been no Proceedings in the Spiritual Court, we own; for the Earl of *Maccleſfield's* was the ſame, to all Intents and Purpoſes, as this is; for though 'tis true, they had been in the Spiritual Court, yet 'tis as true, they came here into Parliament before any Sentence in the Spiritual Court: Now to what Purpoſe is it to go into the Spiritual Court, and not to ſtay for the Determination of that Court, if the Judgment of that Court is to have any Weight in the Caſe of the Earl of *Maccleſfield*? 'Tis true, they had been there and examined Witneſſes on one Side, with all Precipitation, yet would they not ſtay for a Sentence there, but quitted their own Proceedings, and came to the Parliament. Now I do take it, that they had better never been there, than to have come away before Sentence; for when they were in the Spiritual Court, and were proceeding there, to leave that Court, ſhewed rather a Miſtruſt of their own Caſe. But it was no Objection in that Caſe, that it was taking it away from the Jurisdiction of the Spiritual Court. We don't come to you for any Thing the Spiritual Court can grant us; for that Court goes no farther, if the Fact be proved, than to make a Separation *à menſâ & thoro*, but the Bonds of Marriage is to be continued ſtill: Now with Submission, this is to puniſh the Innocent inſtead of the Guilty: What would the Dutcheſs deſire more, than to be ſeparated from the Bed and Board of her Husband, and be left free to accompany

company Sir *John Germaine*; but we go further, for we come to the Parliament to dissolve this Marriage for that, which is allowed by several learned Writers to be a justifiable Reason for so doing, for Adultery committed by the Wife; 'tis expressly, that a Man shall not put away his Wife, except in case of Fornication; this Text plainly allows, that in case of Fornication, a Man might put away his Wife; but the Popish Canons the Doctor has named, have put a Construction upon it: Say they, You shall put her away; but how? She shall be removed from your Bed and Table, but you shall not marry another. Then they say, there is no Precedent of a Bill of this kind, but there hath been a previous Prosecution in the Spiritual Courts. I agree the Marquis of *Northampton's* Case, that That Act does recite the Proceedings in the Spiritual Court: But that Case is stronger than this, for there the Marquis of *Northampton* had married even in the Teeth of their Canon Law, and comes afterwards an Act of Parliament to make this Marriage good, and there the Divorce was no Ingredient upon the passing of the Bill: But the Parliament enacted the Marriage to be lawful. In my Lord *Rofs's* Case, there is no mention of any Divorce.

I appeal to the Journals of your own Houses for that; but notwithstanding the Divorce, the whole Matter was examined over again, Witnesses were examined both in the House of Lords, and here upon the first Bill which was brought, which was to illegitimate and bastardize the Children; and the Witnesses proved, that my Lord *Rofs* and his Lady had not lain together for a long time, and that she had kept Company with others; so that the Parliament did not found the Bill upon what had been done upon the Divorce.

I appeal to your own Memory, that in the Earl of *Macclesfield's* Case, there was no Use at all on that Side; the Bill was brought, that there had been Proceedings in the Spiritual Court, nor is there any such Thing recited in the Bill, but only an express downright Charge of Adultery; nor was it proper for them to have mentioned any Proceedings in the Spiritual Court, since they waved that Prosecution; but we on the other side insisted on it, as a Reason why the Parliament should not proceed in it, it being to take upon them an original Jurisdiction; but we were then answered by a learned Gentleman against this Bill, that it was in vain to go there, for they could not give the Remedy that might reasonably be expected. I beg the Favour to mention a Case or two, where Divorces have been in Parliament, and there have been no Proceedings in the Spiritual Court; one of them was the Case of Mrs. *Knight*, who was married *infra annos Nubiles* to Mr. *Goodwin*. Every one knows, that a Marriage *infra annos Nubiles*, is a good Marriage; and if the Woman be above nine Years old, she shall be endowed; and yet notwithstanding, for some irregular Proceedings without going into the Spiritual Court, they came into Parliament; a Bill was passed, by which this Marriage was dissolv'd, and I think 'tis expressly enacted,

That she shall not marry till such an Age. This goes farther; for here I am sure the Doctor would have explained; and told you, if there had

been Reason to dissolve the Marriage, they could have done as great a Feat in the Spiritual Court; that they could have examined Witnesses upon Oath, and could have told you whether there was proper Evidence; yet the Parliament, without any regard to what they could do, would assert their own Jurisdiction.

The Case of Mr. *Wharton* was mentioned on the other Side; and therefore I need not say any thing to it: There was nothing of Divorce, nor needed any.

They say this Bill begins where it is proper for Matters of this Nature to end; and that after we have taken a Turn into the Spiritual Court, and travelled three or four Years there, then it will be fit for the Judgment of Parliament. I would know if they had been seven Years in that Court (and perhaps if they come there, we shall not get out sooner;) to what Use the Examination of that Court would be. This House, I presume, would not let those Depositions be read here, especially if the Witnesses to their Facts were living.

They say this is a very summary Way of proceeding; it may be too quick for the Dutcheffs; but you may be pleased to consider, that there was a Bill brought into the other House some Years ago and rejected; upon what Terms, that will rest upon us to shew you by and by.

But the Matter was, the Witnesses that proved the Fact, was sent out of the Way by the Dutcheffs and Sir *John Germaine*, when Things were under an Examination; and we hope a Matter of this Nature, never shall be baffled by keeping the Evidence out of the Way.

We told them long ago, who the Witnesses were; they were the Dutcheffs's Servants, such as they thought fit to entrust.

They say this Bill deprives the Dutcheffs of her Trial; I hope no body thinks the Parliament will pass a Bill, without due Examination of Witnesses, and legal Proof of the Fact; if so, what matter is it, whether the Proof be made before the Parliament, or some inferior Court; if the Dutcheffs be guilty of this Crime, we come here for a Relief, which the Spiritual Court, the Doctors tell you, can't give us; since the Dutcheffs hath broke the Bond of Matrimony, we come to you to Dissolve that Marriage, and I hope we shall have it.

The Doctor hath insisted on one Thing, that I think is very extraordinary: He tells you, by the Rules of their Law, if the Woman can re-criminate, and prove her Husband guilty, in such a Case, they must set the Fault of one against the Fault of the other.

I wish the Doctor could have told you the Offence had been equal, that the Injury to Families had been equal; a Man by his Folly of this kind brings no spurious Issue to inherit the Lands of his Wife, but a Woman deprives her Husband of any legitimate Issue; for when she converses in this Manner with another Man, the Issue may be equally look'd upon to be that Man's,

Man's, if not more, and his Lady hath kept this Conversation ever ſince the Year Sixteen Hundred Eighty-Seven, and left the Duke.

One Thing is farther objected, and they inſiſt upon certain Articles of Agreement in Ninety-Four, and they read to you the Preamble of them: Why, Sir, the Articles, if they come to be read through, I am ſure it won't amount to what they pretend; it does not amount to this, that the Dutcheſs might uſe her Body as ſhe pleaſed; there is no Agreement, that ſhe ſhould live after her own Pleaſure. Indeed, ſhe was to have the uſe of her Houſhold Goods, and Servants, and live where ſhe pleaſed, but that will not juſtify her in her Way of Living.

Then to tell you, theſe are Matters of long ſtanding; they are ſo, and of a long continuance; for, if my Inſtructions prove true, we ſhall prove this Scene of Adultery for matter of eight Years ſucceſſively, and that by Servants that were privy to the Intrigues, who were ſent away to *Holland*; but no ſooner was the Bill baffled, but the Man was ſent for again, and the ſame Conversation continued that was between the Dutcheſs and Sir *John Germaine* before he left *England*.

The ſame was continued after he came back to his Service in (1691); only they were ſomething more cautious, and People were not admitted ſo familiarly to ſee them in Bed together in (1692); and ſo it continued till 1695.

They mentioned the Statute of Limitations, which was to put an End to frivolous and vexatious Actions: How they can apply it to this Caſe, I can't ſee; becauſe a Man ſhall not bring frivolous and vexatious Actions after a long diſtance of Time, therefore a Man ſhall not complain when he hath received the greateſt Injury that can be done to Mankind.

Sir, They are kind to us again, in recommending it to the Duke to go into the Spiritual Court till the next Sefſions: But we think we are in proper Method here, for that Relief which the Spiritual Court cannot grant; and ſince we have ſo good Reaſon to come here, if we prove the Fact, I hope this high Court will not ſend away a Complaint of this Nature, without ſuch Relief as ſuitable.

Mr. *Northey*. Sir, I am of the ſame Side: I would beg leave to ſay this: As to what the Council have ſaid in relation to the Evidence, that there were three Witneſſes examined upon Oath, in the Houſe of Peers, before the Bill did paſs there; and I believe they are aware of that, and that when you hear our Witneſſes, there will be no Answer to be given on their Side; and indeed the Witneſſes they brought, were ſo far from contradicting our Witneſſes, that they did really confirm them. But that is not the Caſe now, what our Evidence is, or whether it be fit for you to believe them, that will be when you have heard them; and for the Matter of the Time, that you can't take notice of neither, till you hear our Evidence. But this I may ſay, we ſhall

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bring a Man that will ſpeak to within four or five Years.

But the Matter they apply themſelves to, which is material, is, Whether it is proper for you to proceed on this Bill, that is, to give ſuch a Relief as we deſire, by diſſolving this Marriage? And in the next Place, Whether this be a proper Time to aſk this Favour?

For the firſt, the learned Doctor tells you 'tis not proper at any time to do it, for he would have the Canon Law govern here, as it does in their Courts. But the Council on the other Side have cited you ſeveral Precedents where it hath been done. In the Caſe of the Marquis of *Northampton*, the ſecond Marriage was contrary to the Canon Law, and yet that Marriage was confirmed according to God's Law. And this Bill is to relieve againſt the Canon Law.

Now, whether we are here in a proper Time; Sir *Thomas Powys* has ſaid a great many Things, which may be proper to many other Purpoſes. One Argument was, becauſe the Witneſſes can't be upon Oath; but that we know will not prevail in this Place. In the next Place they except, becauſe this Proceeding is in a ſummary Way. I would know of them, whether there is not the ſame Objection to all Proceedings before a Jury, that they have no Notice what Witneſſes will be produced?

Then in the next Place they bring a great Argument for the Recital of ſome of theſe Bills, That there have been a Sentence in the Eccleſiaſtical Courts. Now, 'tis true, they have been ſo in ſome of thoſe Caſes: But I beg leave to obſerve, That in the Caſe of the Marquis of *Northampton*, the Bill was not to confirm the Sentence, or to enable them to marry, but to deliver them out of the Hands of the Eccleſiaſtical Courts, who ſaid it was not lawful in that Caſe to marry, for they were married before.

I beg leave to ſay, That in the Caſe of my Lord *Maccleſfield*, there was no Notice in the Bill that came down to you of any Proceedings in the Eccleſiaſtical Courts: And I take this to be the Reaſon, becauſe there was no Sentence, though where there was a Sentence, they had good Reaſon to take notice of it. And I think there is as much Certainty, and as good Ground to proceed on this Bill, as in the other Caſe, for the Witneſſes have been already examined in the Houſe of Lords. In the Caſe of my Lord *Rofs*, there was no Regard to the Determination of the Eccleſiaſtical Courts, as a Guide to the Parliament; and it was looked upon as of no Conſequence, for the Witneſſes were examined again.

'Tis true, when we came before you without ſuch a Proceeding, we came under this Diſadvantage, you will be ſure to expect a plainer and fuller Proof; but for that we will undertake to make the Fact ſo plain, that they can't give the leaſt Pretence to answer to it.

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We

We are here asking that we can't have any where else: Their great Design is Delay, and that we have learnt from the Civilian, who tells you, their Methods are very grave and deliberate, and, that they may have a Commission to examine Witnesses beyond Sea; and that is to enquire how their own Servants have liv'd beyond Sea.

As to what Sir *Thomas Powys* would have, that is, that we should go into the Spiritual Court, and apply our selves here again next Sessions, I do not think the Legislature will send us back to ask that in the Spiritual Court which both have submitted to: For after the Duke had miscarried in the Relief he fought by another Bill, by the Dutcheß's sending the Witnesses out of the way; why truly, after that, to prevent any Prosecution in the Spiritual Court, the Dutcheß submitted to a Separation by Articles, and that was all the Duke could have pretended to by the Ecclesiastical Law: We follow her upon that, and come to enforce that Separation. And, to make it effectual, and for that which we humbly hope will be thought but Justice to the Duke, that is, to be deliver'd from this Wife, and to have Liberty to marry again; we think there is no Occasion for Delay, and that no body can be hurt by a Precedent that carries Relief in this nature, and deliver us from a Law, which in the Days of Popery was put upon us. Upon the whole Matter, I hope you will think that we are here very properly for Relief, and that we shall have the Favour to call our Witnesses.

Dr. *Oldisb.* Sir, the great Objection against the passing of this Bill was, because Witnesses had not been examin'd in the proper Court. 'Tis very true, generally speaking, in Cases it ought to be so; but here is a very great Exception to that Rule, and which, I think, can't admit of an Answer, and that is, the Notoriety of the Fact; and in that Case they begin with Execution. And if that be so, I think there never was a clearer Demonstration in the World; for when formerly the Dutcheß came to give in her Answer in the House of Lords, to the Charge against her, she did declare, That in the Year 83, or thereabouts, she went out of *England*, and tarried Three Years, and return'd about the Time of the Revolution. And it does plainly appear there, beyond all question, that she was at *Lambeth*, and went under the Name of the Lady *Beckman*, and was attended by one *Keemer*, who went then by the Name of *Goodman*. Besides this, there are Witnesses that speak to particular Facts. Now, I say, here is that which amounts to Demonstration; and where there is a Notoriety of Fact, that is an Exception out of the General Rule, and 'tis proper to begin with Execution.

There is an Exception to the General Councils and Canons that have been mention'd, That there shall not be a Divorce *à Vinculo*. Sir, I say, it was an Ecclesiastical Constitution, which was against the Law of God; and 'tis demonstrably so; for where our Saviour says, That a Man shall not put away his Wife, except in case of Fornication; it is plain, that in case of Fornication he may.

There is another Thing insisted on, and that is, That there was a Reconciliation between the Duke and his Dutcheß. 'Tis true, a Reconciliation should drown all Things before that Time;

but when the Law takes notice in case of a Relapse, that does *recrudesce*, it rubs upon the old Sore, and then that which was before laid asleep is brought again upon the Stage, and will return with greater Vengeance. And we have plain Proof of her living in the same manner since, as before.

But they would insinuate to you, That in case there was a Trial in the Ecclesiastical Court, there might be a Recrimination; but there must be a Compensation, which can't be thought in this Case; for, I think, in this Case, under Favour, there is no Comparison. I don't think they are *Paria*, for 'tis impossible for the Husband to do that Injury as the Wife may; for she may bring a Bastard into the Family, and then the Estate does not go according to the Law of God and Nature, for every body desires his own Blood should succeed him.

Sir *Tho. Powys*. Sir, I shall say but very little. But Three or Four Things have been mention'd on the other Side, which they offer as if they conceiv'd them to have great Weight, and yet they seem to me as very capable of being answer'd; and I crave your Favour to do it.

They have gone much upon the Proofs that they are ready to make, and, I think, not very properly, because we speak against their Proceeding upon this Bill; but I am sure it turns upon them: For, according to their own shewing, they are very well prepar'd to proceed in a regular Course, for they have their Witnesses ready, and nothing does obstruct them.

Mr. Serj. *Wright* mention'd a Thing which, I must confess, I was surpriz'd in; for when I told him, he could not find any Precedent of such a Bill as this, without a previous Proceeding in the Spiritual Court; Mr. Serj. *Wright* said, It was quite otherwise; and, to shew you it was so, he cited two Cases where there was no Marriage. Now I always understood, a Divorce must be in any Case where there was a Marriage, for the Case of Mr. *Knigh's*, that was very lately: That was the Case of an Infant, who they pretended to have married *infra annos nobiles*; and therefore, says he, the declaring of that Marriage to be null and void by Act of Parliament, was a Divorce. The other was the Case of Mrs. *Wharton*, which was no Marriage neither, for Marriage must be by Consent, and that was a Force: And that he fancies to be a Case, where there was a Divorce too, without proceeding in the Spiritual Court; and yet, of his own shewing, it was no Marriage.

Another Thing I am much more surpriz'd at, we insisted, that they would not shew an Act for making a Divorce without giving the Party an Opportunity to make a Defence; and the Doctor says, in Common Cases it ought to be so: And they cited the Earl of *Macclesfield* we first mention'd, and the Doctor told you the Progress it had, and that there was a full and regular Proceeding, of great length of Time; and, that my Lady *Macclesfield* had all her Witnesses examin'd, and my Lord prosecuted her to an Excommunication, which is in effect a Sentence, for it is in our Law as in Cases of Outlawry. This he calls a Precedent wherein they proceeded to get an Act of Parliament, without a previous Proceeding in the Spiritual Court.

He

He tells you in the next place, That notwithstanding the Divorce in the Caſe of my Lord *Rofs*, the Parliament did examine Witneſſes; 'tis true, they did, for I don't think they will ſo entirely pin their Faith upon thoſe Proceedings, as to have no other Satisfaction. But will he therefore ſay they took no Notice of it, when 'tis the Foundation and Ground of the Bill?

He tells you in the next place, That the Crime does not ſeem equal between the one and the other; and ſo, in ſome fort, they ridicule the Doctor's Notion of Recrimination. But I apprehend the Doctor is right in it; for it would be hard if a Man ſhould marry a young Woman, and give her an ill Example in his own Family, (I do not ſay 'tis this Caſe) and bring her acquainted with looſe and ill Company, and by his Example or Provocation lead her into the ſame Offence; would that Man deſerve to be rewarded with a new Wife, and another Portion, becauſe his firſt Wife had only followed his Example?

They ſay, the Offence is not equal, becauſe the Man brings no Children into the Family.

I doubt it happens oftentimes to them that go abroad, that they bring home that to their Wives which ſticks longer by them than their Children.

Then to come and ſay, The Articles can't be of any Uſe to us at all; and to imagine that we uſe the Articles ſo, that the Dutcheſs might be at perfect liberty to live in Adultery; I wonder how that Conceit hath followed him hither, when we told him we had not ſuch a Thought as to live in Adultery, but they do direct her to live ſeparate; and ſo we uſed them, as an Answer to that Part. We uſed them likewiſe as an Act of total Oblivion and Remiſſion of any Thing beyond that Time; and, I hope, to ſuch Purpoſes they ſhall be thought ſacred.

Now I beſeech you, Sir, on the whole Matter, have they on the other Side ſaid one Thing but what does totally tend to bring all Caſes of Adultery immediately before you? Have they diſtinguiſh'd this Caſe from the Caſe of any other Perſon? And then, if they have not, I do not ſee from henceforward, that any but Fools will go to the Eccleſiaſtical Courts for Relief: For, ſays the Serjeant, they cannot give them a final Relief, and enable any Perſon to marry again, and therefore let no body think to go there again; but here is a Relief to be had worth a Man's having. But, I hope, we ſhall have the Benefit of the Law, as it is, till you think fit to alter it, and then you will erect ſome Judicature, where People may have their Trial. Now therefore the Argument goes too far, or it argues nothing at all, becauſe, if there be any thing in it, it goes to take away the Proceedings of thoſe Courts totally.

But tho' thoſe Courts cannot do all that theſe Gentlemen deſire, they can do what is very proper to be done; they can examine Witneſſes, and pronounce Sentence, and give the Party a full Opportunity of knowing the Accuſation and Accuſers; and then the Caſes we have mentioned have had the Aid of an Act of Parliament.

Sir, we have ſpent a great deal of your Time already; I hope, ſince you ſee what Uſe they make of the laſt Precedent of my Lord *Maccleſ-*

field, where he did proceed to an Excommunication. Now from thence they argue, that you ſhould proceed Originally in this Caſe. When is the Time to make a Stand, but in the firſt Caſe? And then no Man can complain of any Injury. If you grant this to my Lord, I think in Juſtice you cannot deny it to any other that ſtands in need of it. I believe there never was the like before, and therefore, I hope, you will put a Stop to it here.

Mr. *Dodd*. The Gentlemen on the other Side have told you, that our Saviour hath ſaid, *That no Man ſhould put away his Wife, except for Fornication*. 'Tis true, the Text is ſo, but he cannot ſhew you any Text wherein our Saviour ſays, That the Man may marry again, tho' he might put his Wife away. Another Thing was ſaid, as to the Proceeding in the Eccleſiaſtical Courts: Dr. *Oldiſh* ſays, There is to be nothing but Execution where there is a Notoriety of Fact; and here the Fact is notorious, and therefore you may come up to order Execution; but that is a ſtrange Doctrine to our *Engliſh* Conſtitution. Would they hang one firſt, and try him afterwards? That would make Work. Let the Fact be never ſo notorious, yet 'tis the Right of all the People of *England* to have a legal Trial; and, I hope, you will not interpoſe till there hath been a regular Trial in another Place.

Then Sir *Thomas Powys* offer'd to produce the Articles, but they were not admitted.

Lunæ 25 Die Martii, 1700.

The Houſe reſolv'd themſelves into a Committee of the whole Houſe, to conſider of the Duke of Norfolk's Bill.

Sir Rowland Gwynne took the Chair of the Committee of the whole Houſe.

And the Council and Sollicitors were call'd in, and the Bill read to them; and then Mr. Northey, of Council with the Duke, open'd the Evidence thus:

Mr. *Northey*. I Am of Council for the Duke of *Norfolk*. I ſhall not trouble you now (becauſe I think it not fit) to ſay any thing for the Bill, for that you have approved of by Commitment of the Bill, and declar'd it to be a reaſonable and juſt Relief againſt the Dutcheſs, for the Adultery charg'd in the Bill. I ſhall not ſpend any of your Time in aggravating the Crime of Adultery.

But that which is incumbent on his Grace's Council now, is to lay before you the Proofs of the Fact ſuggeſted in the Bill; and the Facts to be prov'd are the Introduction of the Bill, That the Dutcheſs has liv'd, for divers Years, in Separation from the Duke, and had unlawful Familiarity and adulterous Converſation with Sir *John Germaine*; and for that Fact we will call our Witneſſes.

And our Evidence will make this out to you, as plain as 'tis poſſible to expect a Matter of this Nature to be prov'd.

However, I think they have manag'd Things in that manner, as we ſhall be able to give as plain a Proof of theſe Facts as might be expected of thoſe Acts which are in their own Nature moſt publick. However, in the Nature of the Thing, there were but a few Perſons to be entrufteſt with it, and thoſe were generally Servants, who

had Attendance on the Dutchess's Person. We shall produce you Servants both of the Dutchess and Sir *John Germaine*; and, I hope, it cannot be an Objection, that they are Servants; for to object to them for that Reason, is to say, You shall prove the Fact, but you shall have no Witnesses; for these are Facts that cannot be prov'd but by such as were concerned with the Dutchess.

For our Evidence, it will fall out to be this: The Duke and Dutchess were married in the Year 1677, and they liv'd together till about the Year 1685: And then the Duke having some Account of her Conversation of this Nature, they did part, and afterwards she came to live openly with Sir *John Germaine*; for, in May, 1689, the Witnesses will give you an Account, that for two Months together she lodg'd with Sir *John Germaine* at the *Cock-pit*; and they liv'd there as Man and Wife, as the Witnesses phrase it. During the Time they liv'd there, there was a near Relation of Sir *John Germaine's*, Mr. *Daniel Germaine* his Brother, and Mrs. *Briane* his Sister, did frequently come to the House; and two of the Witnesses were frequently in the Room while they were a-bed together.

After two Months time, the Dutchess thought fit to be a little more private, and it was given out she was gone to *France*, but in truth she remov'd to *Vaux-hall*, to a House that was taken by Sir *John Germaine's* Brother, and went by the Name of my Lady *Beckman*; and she liv'd there two Years successively; and Sir *John Germaine* came there frequently, once or twice in a Week, and lay there a-Nights during that Time. We have two Witnesses that did attend the Dutchess, as well as at the *Cock-pit*; one of them is *Ellena Vanesse*, who was hired by Sir *John Germaine's* Sister, and liv'd with the Dutchess at the *Cock-pit* two Months. We have a second Witness, one *Hosier*, who was with Sir *John Germaine* at the *Cock-pit* fifteen Days before the Dutchess went to *Vaux-hall*; and afterwards he went to *Vaux-hall* when she removed there, and staid with her all the two Years.

These are both Foreigners, and Dutch People, and it was reasonable enough to expect foreign Witnesses, when an *English* Dutchess had a foreign Gallant: They are such as he thought fit to entrust about her.

After she had liv'd two Years at *Vaux-hall* (this brings her to the Year 1691) she removed home again to her House at *Mill-Bank*, and there Sir *John* and she were frequently together, and have been seen a-bed together.

This brings us to the Time when the Duke, having an Account that she had this Conversation with Sir *John Germaine*, brought a Bill into the House of Peers for a Divorce; but it happen'd that the Dutchess and Sir *John Germaine*, to avoid the Condemnation, kept the Witnesses out of the Way, and afterwards caused them to be sent into *Holland*.

The Woman staid abroad till about three Months ago, but the Man return'd before into Sir *John Germaine's* Service; and he will give you an Account of what Observations he made there, for the Familiarity continued between them then. He was admitted into the Room where they us'd to be, and he will give you an Account how he hath seen them frequently together; and he brings it down to within the Year 1695.

We have another Witness, one *William Bayly*, who likewise was a Servant to Sir *John Germaine*, and came into his Place when *Hosier* went beyond Sea. He is an unwilling Witness, because he hath been preferred by Sir *John Germaine*; but when he was upon his Oath in the other House, he did give an Account, That while he continued in Sir *John Germaine's* Service, notwithstanding this publick Reproach in 1695 and 1696, she frequently came to Sir *John Germaine's* House, with one *Keemer*, whom she had great Confidence in, and one *Susannah Barrington*, I think, yet in the Dutchess's Service. And this Mr. *Bayly* will give you an Account, that his Master was often from home; and when he was so, he us'd to carry his Linnen to this *Keemer*, who was the Dutchess's Servant, or this *Keemer* would come to him for it: And this will bring it down to 1696. There are several Witnesses to confirm this; but we think, with Submission, after the Dutchess had been so accused in the House of Lords of such a Familiarity, any Evidence of a Conversation between them afterwards, is as much as a Thousand Witnesses; for no Woman that valued her Reputation, having been accus'd as she was, would have had any Conversation with Sir *John Germaine* afterwards. But we don't want Circumstances to support the Evidence of Fact; we have as plain Evidence in this Case, as can be expected in a Case of this Nature. We will spend no more of your Time, but beg Leave to call our Witnesses.

Mr. *Atwood*. Sir *Rowland Gwynne*, please to favour me with a few Words on the same Side; I shall not mis-spence the Time of the Committee in repeating any thing said by Mr. *Narthey*; I shall only observe, that the Witnesses, *Hosier* and *Vaness*, say, That *Susannah Barrington* was privy to this adulterous Conversation: And this *Susannah Barrington* has withdrawn her self since the Bill was depending in the House of Lords.

'Tis further prov'd, That Mr. *Daniel Germaine* and Mr. *Briane's* Wife were in *England* lately, and that these were privy to the same Conversation.

Then the Witnesses were call'd in one by one, and Interpreters allow'd.

The Witnesses that were examined before the Committee of the Commons were *Ellena Vanesse*, *Nicholas Hosier*, *William Bayly*, and *Ann Read*.

But all, except *Ann Read*, were examined in the House of Lords, and their Evidence there being at large set forth, the Reader is referred to the same. The Evidence of *Ann Read* is as follows:

Ann Read being ask'd, Whether she had ever seen the Dutchess go to Sir *John Germaine's* House, and when? says, That about April 1692, (which was soon after the Duke's Bill had been rejected in the House of Lords) she saw the Dutchess of *Norfolk* go in a Chair to Sir *John's* House; that the Door was immediately opened upon her Chair's being set down, and she went into the House with her Mask off.

She being ask'd, Whether she had seen Sir *John* come to the Dutchess's House, and when? says, She, within a Twelve-month last past, or thereabouts, followed him to the Dutchess's House, about Three of the Clock in the Afternoon, and, that she did not see him come out.

After

After the Witneſſes were examined on the Part of the Duke of *Norfolk* for the Bill, Sir *Thomas Powys* of Council with the Dutcheſs of *Norfolk*, being call'd upon to make Defence, ſpoke to this Effect :

Sir *Thomas Powys*. I am at a Loſs, Sir, and under ſome kind of a Surprize, becauſe, as far as I apprehend, you call upon us to make our Defence. I hope, in a Caſe of ſuch Moment as this is (and it may be there cannot be greater) and ſince you are pleas'd to take this Caſe out of the uſual Way of Trials, and to try it in the firſt Inſtance, you will be pleas'd, that we ſhould be fairly and regularly heard. And ſince it was not allow'd us, upon our being heard againſt the Bill, that we ſhould have a Time to make our Defence; now we have heard what the Witneſſes ſwear, we ſhall deſire but a ſhort Time, no more than what is abſolutely neceſſary, to make our Defence. This hath ſpent us ſix Hours already; and I am ſure the Witneſſes that have been examin'd have given ſuch Variety of Answers, that it doth afford a great deal to be ſaid to it. We have likewiſe a good many Witneſſes to be examin'd, but I am far from propoſing any thing to delay it. We had a Week's Time allow'd us in the Houſe of Lords, but that is no Rule for you, and we don't expect it here: But, even while we are at this Bar, a Perſon from a very worthy Member gives us Intelligence, upon ſight of this Cook-maid, of a Matter that will defame her; and he will be ready to make it out, that ſhe was turn'd away for being a common Thief in *Holland*; and therefore, Sir, you ſee how Time is neceſſary in point of Accidents that do happen; and I cannot make our Defence now.

Thereupon the Council withdrew; and the Committee having conſider'd of the Deſire of the Council for the Dutcheſs to have Time allow'd them to make their Defence, were of Opinion, That the Council ſhould proceed then to make their Defence; and Candles were ordered to be brought in.

And the Council being call'd in again, Sir *Rowland Gwynne* being in the Chair of the Committee, acquainted them with the Determination of the Committee.

Then Sir *Thomas Powys* obſerv'd upon the Evidence that had been given, and inſiſted, that the Evidence given before the Committee of Commons did differ from the Evidence given by them upon Oath in the Houſe of Lords; and offered to produce the Examination of the ſaid Witneſſes upon Oath in the Houſe of Lords. And an Objection being made, That ſuch Examination ought not to be read in that Caſe, as Evidence before this Committee; the Council withdrew, and the Committee conſider'd of the ſaid Objection, and were of Opinion, that the ſaid Depoſitions ſhould not be read.

And the Council being call'd in again, were acquainted with it, and that if they had any Witneſſes, *viva voce*, to encounter their Evidence, they might produce them.

Sir *Thomas Powys*. Sir, by this Reſolution my Client is deprived of that Defence I thought I could have made for her; but I ſubmit to the Pleaſure of the Committee.

Mr. *Atwood*. The Examinations in the Houſe of Lords were ſo lately, that 'tis an eaſy thing for the Sollicitors, who were by, to give an Account of a Contrariety in the Evidence, if there were any.

A Member. Whether you have any other Evidence to offer, but as to this Point?

Sir *Tho. Powys*. All our Evidence would tend to contradict theſe Witneſſes; and if the reading of thoſe Depoſitions won't be allow'd, we muſt abide your Pleaſure, and ſubmit it to you.

Mr. *Dodd*. We muſt ſubmit it to you; our Witneſſes were in Concurrence with that ſort of Evidence.

Sir *Rowland Gwynne*. There are ſeveral Perſons named, who are Perſons of Credit, and good Reputation, Mr. *Briane* and his Lady, Mr. *Daniel Germaine* and his Siſter; theſe would be Witneſſes of Credit, againſt thoſe that are, you ſay, not of Credit.

Council. We have ſummon'd them, and Mrs. *Pitts*, and done all that we could on our Side to get them here; and I hope you won't prejudge our Caſe, to ſay they are in our Intereſt; that is to determine the Queſtion. We have likewiſe ſummon'd Mrs. *Pitts* and her two Maids; and whether they will appear, or not, that we cannot tell; but this we are ready to make out to you.

Mr. *Atwood*. *Sufannah Barrington*, the Dutcheſs's Woman, privy to the whole Converſation, is prov'd to have been with her ſince the Bill was brought into the Houſe of Lords.

A Member. Whether he has one living Witneſs to produce, that he can make good his Defence by?

Sir *Tho. Powys*. Sir, if you expect an Answer by me, I am aſſur'd that we have Witneſſes; but if I cannot bring thoſe People againſt themſelves, if I cannot bring *Nichola* againſt *Nichola*, I deſpair of doing any good, if I bring a thouſand other Witneſſes againſt him: And therefore I pray this Favour of you, That ſince 'tis your Pleaſure that this Evidence be not allow'd, you will not make a bad Conſtruction of it, that I do not proceed to make a Defence to this Bill; for I cannot truly do it, unleſs I had ſome other Inſtructions from my Client, but ſhall defeat her Expectation to proceed upon the other Part of the Caſe, ſince what we built upon with good Authority, as we thought, is not thought fit to be admitted.

Sir *Rowland Gwynne*. Sir, you are at liberty to go on, if you have any thing more to ſay, than that you cannot proceed without further Directions from your Client.

A Member. Whether they have any thing to offer in the Defence of the Dutcheſs, upon the Crime ſhe is charg'd with; for, I believe, 'tis a new Thing for the Council, when their Client is charg'd with a Crime, to ſay, They cannot defend her unleſs they go and aſk, whether they ſhall defend her, or no? If they have any thing to ſay in her Defence, we ſhall be ready to hear it.

Sir *Rowland Gwynne*. Sir *Thomas Powys*, have you any thing more to ſay?

Sir *Tho. Powys*. I cannot but repeat what I have already ſaid, That I would be glad to make the beſt Defence this Caſe may bear; and I may ſay, I have defended it twice with very good Succels,

Success, and this is a third Time; and I would make the best Defence this Case would bear now. And I must own to you, that the Course of our Evidence, we did propose to our selves, is so far broke, by the first Determination you were pleased to make, that I cannot venture upon the rest of the Defence, if so be your Pleasure be not to admit of this Matter.

Sir Rowland Gwynne. You may, by any Solicitors or Agents, that were present when these Witnesses were examin'd in the House of Lords, prove what they swore there.

Mr. Dodd. We apprehend you have already determin'd the Matter, and we cannot now meddle with it; but if I apprehend it aright from the Chair, 'tis your Opinion, that we may produce the Solicitors and Agents, to give an Ac-

count of what was sworn in the House of Lords. Now we are under this Disability by your Determination, That we, relying upon what you have determined against us, are not prepar'd with our Solicitors, or others, to give Evidence of that Matter, but, in a little Time, they will be able to give you an Account of what was then sworn.

Mr. Atwood. It seems they want to be taught their Lesson.

And then the Council withdrew, and the Committee proceeded upon the Bill, Clause by Clause, and went thro' it, and order'd the same to be reported; which was done accordingly; upon which the Bill pass'd.



CLXIX. *The Trial of Captain WILLIAM KIDD, at the Old-Baily, for Murder and Piracy upon the High-Seas ; and of Nicholas Churchill, James Howe, Robert Lamley, William Jenkins, Gabriel Loff, Hugh Parrot, Richard Barlicorn, Abel Owens, and Darby Mullins, for Piracy, May 8th and 9th, 1701, 13 Will III.*

THE King's Commission for holding the Court being first read, they proceeded to call the Gentlemen summoned upon the Grand-Jury, and the Persons sworn were the Seventeen following, viz.

William Broughton,	{	Stephen Thompson,
Thomas Hanwell,		Thomas Cooper,
Daniel Borwell,		Robert Gorwer,
Humphry Bellamy,		Robert Clement,
Nath. Rolston, Sen.		Thomas Sesson,
Joshua Bolton,		William Goodwin,
Benjamin Pike,		Robert Callow,
Joseph Marlow,		Thomas Harvis.
Benjamin Travis,		

Cl. of Arr. Gentlemen of the Grand-Jury, stand together, and hear the Charge.

The King's Majesty commands all Justices of the High Court of Admiralty, that have any Authority to take any Inquisitions, Recognizances, Examinations, or Informations of Offences committed within the Jurisdiction of the Admiralty of England, to deliver the Records of the same into this Court, &c. And all others are commanded to keep Silence, upon Pain of Imprisonment.

Then Dr. Oxenden gave the Charge to the Grand-Jury, explaining the Nature of the Commission, and the Crimes enquirable by Vertue of it by the Grand-Jury.

Then the Grand-Jury withdrew, and after some Time returned into Court, and found the Bill of Indictment against Captain Kidd for Murder, and another against him and Nicholas Churchill, James Howe, Robert Lamley, William Jenkins, Gabriel Loff, Hugh Parrot, Richard Barlicorn, Abel Owens, and Darby Mullins, for Piracy. Then Proclamation (as usual) being made, the aforesaid Prisoners were brought to the Bar, and Arraigned.

Cl. of Arr. William Kidd, hold up thy Hand,

Kidd. May it please your Lordships, I desire you to permit me to have Council.

Mr. * Recorder. What would you have Council for ?

Kidd. My Lord, I have some Matter of Law relating to the Indictment, and I desire I may have Council to speak to it.

Dr. Oxenden. What Matter of Law can you have ?

Cl. of Arr. How does he know what it is he is charged with ? I have not told him.

Mr. Recorder. You must let the Court know what those Matters of Law are, before you can have Council assigned you.

Kidd. They be Matters of Law, my Lord.

Mr. Recorder. Mr. Kidd, do you know what you mean by Matters of Law ?

Kidd. I know what I mean ; I desire to put off my Trial as long as I can, till I can get my Evidence ready.

Mr. Recorder. Mr. Kidd, you had best mention the Matter of Law you would insist on.

Dr. Oxenden. It cannot be Matter of Law, to put off your Trial, but Matter of Fact.

Kidd. I desire your Lordship's Favour ; I desire Dr. Oldisb and Mr. Lemmon may be heard as to my Case.

Cl. of Arr. What can he have Council for, before he has pleaded ?

Mr. Recorder. Mr. Kidd, the Court tells you, you shall be heard what you have to say when you have pleaded to your Indictment. If you plead to it, if you will, you may assign Matter of Law, if you have any ; but then you must let the Court know what you would insist on.

Kidd. I beg your Lordship's Patience till I can procure my Papers. I had a Couple of French Passes, which I must make use of in order to my Justification.

Mr. Recorder. That is not Matter of Law. You have had long Notice of your Trial, and might have prepared for it. How long have you had Notice of your Trial ?

Kidd. A matter of a Fortnight.

Dr. Oxenden. Can you tell the Names of any Persons that you would make use of in your Defence ?

Kidd. I sent for them, but I could not have them.

Dr. Oxenden. Where were they then ?

Kidd. I brought them to my Lord Bellamont in New-England.

Mr. Recorder. What were their Names? You cannot tell without Book. Mr. Kidd, the Court see no Reason to put off your Trial, therefore you must plead.

Cl. of Arr. W. Kidd, hold up thy Hand.

Kidd. I beg your Lordships I may have Council admitted, and that my Trial may be put off; I am not really prepared for it.

Mr. Recorder. Nor never will, if you could help it.

Dr. Oxenden. Mr. Kidd, you have had reasonable Notice, and you knew you must be tried, and therefore you cannot plead you are not ready.

Kidd. If your Lordships permit those Papers to be read, they will justify me. I desire my Council may be heard.

Mr. Coniers. We admit of no Council for him.

Mr. Recorder. There is no Issue joined; and therefore there can be no Council assigned. Mr. Kidd, you must plead.

Kidd. I cannot plead till I have those Papers that I insisted upon.

Mr. Lemmon. He ought to have his Papers delivered to him, because they are very material for his Defence. He has endeavoured to have them, but could not get them.

Mr. Coniers. You are not to appear for any one till he pleads, and that the Court assigns you for his Council.

Mr. Recorder. They would only put off the Trial.

Mr. Coniers. He must plead to the Indictment.

Cl. of Arr. Make Silence.

Kidd. My Papers were all seized, and I cannot make my Defence without them. I desire my Trial may be put off till I can have them.

Mr. Recorder. The Court is of Opinion, they ought not to stay for all your Evidence; it may be they will never come. You must plead, and then if you can satisfy the Court, that there is a Reason to put off your Trial, you may.

Kidd. My Lord, I have Business in Law, and I desire Council.

Mr. Recorder. Mr. Kidd, the Course of Courts is, when you have pleaded, the Matter of Trial is next: If you can then shew there is Cause to put off the Trial, you may; but now the Matter is to plead.

Kidd. It is a hard Case when all these Things shall be kept from me, and I be forced to plead.

Mr. Recorder. If he will not plead, there must be Judgment.

Kidd. My Lord, would you have me plead, and not have my Vindication by me?

Cl. of Arr. Will you plead to the Indictment?

Kidd. I would beg that I may have my Papers for my Vindication.

Cl. of Arr. Nicholas Churchill, hold up thy Hand.

Churchill. My Lord, I desire I may have the Benefit of the Proclamation; I came in upon the King's Proclamation.

Mr. Recorder. If you do not plead, the Court must pass Judgment upon you. You can have no Benefit in what you say, till you have pleaded. If you were indicted for Felony, and you will not plead, the Law takes it in Nature of a Confession, and Judgment must pass, as if you were proved guilty.

Cl. of Arr. Nicholas Churchill, hold up thy Hand.

James Howe, hold up thy Hand. Robert Lamley, hold up thy Hand. (*Which they did.*)

Mr. Recorder. W. Kidd has not held up his Hand.

Cl. of Arr. He does hold up his Hand. William Jenkins, hold up thy Hand. Gabriel Loff, hold up thy Hand. Hugh Parrot, hold up thy Hand. Richard Barlicorn, hold up thy Hand. Abel Owens, hold up thy Hand.

Owens. I came in upon the King's Proclamation, and entered my self into the King's Service.

Mr. Recorder. You must plead first, and then, if there be Occasion, you will have the Benefit of it. (*Then he held up his Hand.*)

Cl. of Arr. Darby Mullins, hold up thy Hand. Mullins. May it please your Lordships, I came in voluntarily on the King's Proclamation.

Mr. Recorder. This is the same Case with Owens, you must speak to that afterwards.

Cl. of Arr. W. Kidd, you stand indicted by the Name of William Kidd, &c Art thou guilty or not guilty?

Kidd. I cannot plead to this Indictment, till my French Passes are deliver'd to me.

Cl. of Arr. Are you guilty or not guilty?

Kidd. My Lord, I insist upon my French Papers; pray let me have them.

Mr. Recorder. That must not be now, till you have put your self upon your Trial.

Kidd. That must justify me.

Mr. Recorder. You may plead it then, if the Court see Cause.

Kidd. My Justification depends on them.

Mr. Recorder. Mr. Kidd, I must tell you, if you will not plead, you must have Judgment against you, as standing mute.

Kidd. I cannot plead till I have these Papers; and I have not my Witnesses here.

Mr. Recorder. You do not know your own Interest; if you will not plead, you must have Judgment against you.

Kidd. If I plead, I shall be accessory to my own Death, till I have Persons to plead for me.

Mr. Recorder. You are accessory to your own Death, if you do not plead. We cannot enter into the Evidence, unless you plead.

Cl. of Arr. Are you guilty or not guilty?

Mr. Recorder. He does not understand the Law; you must read the Statute to him.

Cl. of Arr. Mr. Kidd, are you guilty of this Piracy, or not guilty?

Kidd. If you will give me a little Time to find my Papers, I will plead.

Cl. of Arr. There is no Reason to give you Time; will you plead or not?

Mr. Coniers. Be pleased to acquaint him with the Danger he stands in by not pleading. What ever he says, nothing can avail him till he pleads.

Mr. Recorder. He has been told so, but does not believe us.

Mr. Coniers. If there be any Reason to put off his Trial, it must be made appear after Issue is joined.

Mr. Recorder. If you say guilty, there is an end of it; but if you say not guilty, the Court can examine into the Fact.

Officer. He says he will plead.

Cl. of Arr. W. Kidd, art thou guilty or not guilty?

Kidd. Not guilty.

Cl. of

Cl. of Arr. How wilt thou be tried?

Kidd. By God and my Country.

Cl. of Arr. God fend thee a good Deliverance.
(*And so of all the rest.*)

Kidd. My Lord, I beg I may have my Trial put off for three or four Days, till I have got my Papers.

Mr. Recorder. The Judges will be here by and by, and you may move the Court then; we are only to prepare for your Trial: We do not deny your Motion; but when the Court is full, they will consider of the Reasons you have to offer.

Then William Kidd was tried upon the Indictment for Murder.

Cl. of Arr. W. Kidd, Hold up thy Hand: Thou standest indicted by the Name of *William Kidd*, late of London, Mariner, &c.

The first Indictment for MURDER.

THE Jurors for our Sovereign Lord the King, do, upon their Oath, present, That William Kidd, late of London, Mariner, not having the Fear of God before his Eyes, but being moved and seduced by the Instigation of the Devil, the Thirtieth Day of October, in the Ninth Year of the Reign of our Sovereign Lord, William the Third, by the Grace of God, of England, Scotland, France, and Ireland, King, Defender of the Faith, &c. by Force and Arms, &c. upon the High Sea, near the Coast of Malabar, in the East-Indies, and within the Jurisdiction of the Admiralty of England, in a certain Ship, called the Adventure-Galley (whereof the said William Kidd then was Commander) then and there being, feloniously, voluntarily, and of his Malice afore-thought, then and there did make an Assault, in and upon one William Moore, in the Peace of God, and of our said Sovereign Lord the King, to wit, then and there being, and to the Ship afore-said, call'd the Adventure-Galley, then and there belonging; and that the afore-said William Kidd, with a certain Wooden Bucket, bound with Iron Hoops, of the Value of Eight-pence, which he the said William Kidd then and there had and held in his right Hand, did violently, feloniously, voluntarily, and of his Malice afore-thought, beat and strike the afore-said William Moore, in and upon the right Part of the Head of him the said William Moore, a little above the right Ear of the said William Moore, then and there upon the High Sea, in the Ship afore-said, and within the Jurisdiction of the Admiralty of England afore-said, giving the said William Moore, then and there with the Bucket afore-said, in and upon the afore-said right Part of the Head of him the said William Moore, a little above the right Ear of the said William Moore, one mortal Bruise; of which mortal Bruise the afore-said William Moore, from the said Thirtieth Day of October, in the Ninth Year afore-said, until the One and Thirtieth Day of the said Month of October, in the Year afore-said, upon the High Sea afore-said, in the Ship afore-said, and within the Jurisdiction of the Admiralty of England afore-said, did languish, and languishing did live; upon which One and Thirtieth Day of October, in the Ninth Year afore-said, the afore-said William Moore upon the High Sea afore-said, near the afore-said Coast of Malabar, in the East-Indies afore-said, in the Ship afore-said, called the Adventure-Galley, and within the Jurisdiction of the Admiralty of England afore-said, did die; and so the Jurors afore-said, upon their Oath afore-said, do say, That the afore-said William

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Kidd, feloniously, voluntarily, and of his Malice afore-thought, did kill and murder the afore-said William Moore, upon the High Sea afore-said, and within the Jurisdiction of the Admiralty of England afore-said, in manner and form afore-said, against the Peace of our said Sovereign Lord the King, his Crown and Dignity, &c.

How say'st thou, *William Kidd*, art thou guilty of this Murder, whereof thou standest indicted, or not guilty?

Kidd. Not guilty.

Cl. of Arr. How wilt thou be tried?

Kidd. By God and my Country.

Cl. of Arr. God fend thee a good Deliverance. *Nicholas Churchill, James Howe, Robert Lamley, William Jenkins, Gabriel Loff, Hugh Parrot, Richard Barlicorn, Abel Owens, Darby Mullins*, hold up your Hands. You the Prisoners at the Bar, those Men that you shall hear called, and personally appear, are to pass between our Sovereign Lord the King, and you, upon Trial of your several Lives and Deaths. If therefore you, or any of you, will challenge them, or any of them, your Time is to speak to them as they come to the Book to be sworn, and before they be sworn.

Kidd. My Lord, I desire Council may be assigned me.

Mr. Recorder. Capt. Kidd, I told you it would be your Time, when the Jury was called, to offer what you had to offer; therefore, if you have any Thing now to say to the Court, you had best say it.

Kidd. I beg I may have Council, *Dr. Oldish*, and *Mr. Lemmon*, that they may be heard on my behalf.

Mr. J. Powel. If he desires it, you may be Council for him, provided there be any Matter of Law that he has to plead; otherwise he must be tried.

Dr. Oldish. My Lord, he moves that his Trial for Piracy may be put off for several Reasons; one is, there is one *Davis*, that is a necessary Witness for him; he was taken a Passenger into the Ship, and therefore could not be concerned in any Piracy: Now this *Davis* stands indicted, so that he is deprived of this Person, who is a necessary Witness for him in this Case.

Mr. Coniers. He is not indicted yet; he may call him if he thinks fit.

Mr. J. Powel. If he be indicted, yet he may be a Witness.

Dr. Oldish. My Lord, we desire he may be here.

Mr. J. Powel. Where is he?

Cl. of Arr. He is in Newgate.

Mr. J. Powel. Let him be sent for.

Dr. Oldish. My Lord, it is very fit his Trial should be delay'd for some time, because he wants some Papers very necessary for his Defence. It's very true, he is charged with Piracies in several Ships; but they had French Passes when the Seizure was made. Now if there were French Passes, it was a lawful Seizure.

Mr. J. Powel. Have you those Passes?

Kidd. They were taken from me by my Lord Bellamont; and these Passes would be my Defence.

Dr. Oxenden. Had you any other Passes when you took the Armenian Ship?

Dr. Oldish. If those Ships that he took had French Passes, there was just Cause of Seizure, and it will excuse him from Piracy.

P p

Kidd.

Kidd. The Passes were seized by my Lord *Bellamont*, that we will prove as clear as the Day.

Mr. Lemmon. My Lord, I desire one Word as to this Circumstance; he was doing his King and Country Service, instead of being a Pirate: For in this very Ship there was a *French Pass*, and it was shewn to *Mr. Davis*, and carried to my Lord *Bellamont*, and he made a Seizure of it. And there was a Letter writ to testify it, which was produced before the Parliament; and that Letter has been transmitted from Hand to Hand, so that we cannot at present come by it. There are several other Papers and Letters that we cannot get; and therefore we desire the Trial may be put off till we can procure them.

L. C. B. Ward. Where are they?

Mr. Lemmon. We cannot yet tell whether they are in the Admiralty-Office, or whether *Mr. Jodrell* hath them.

Mr. J. Powel. Let us see on what you go. You talk of *French Passes*; you should have been prepared to make Affidavit of it. What Ship was that which had the *French Passes*?

Mr. Lemmon. The same we were in, the same he is indicted for.

Mr. J. Powel. Make out this, *Mr. Lemmon*?

Mr. Lemmon. My Lord, we desire *Mr. Davis* may be sent; for he will prove it.

L. C. B. Ward. Send for *Edward Davis*.

Mr. Fell. My Lord, will you have him brought into Court?

L. C. B. Ward. Yes.

Mr. Soll. Gen. They have had a Fortnight's Notice to prepare for the Trial.

Dr. Oldish. We petitioned for Money, and the Court ordered fifty Pounds; but the Person that received it went away, and we had none till last Night.

Dr. Oxenden. I ordered that the Money might be paid into his own Hands, that he might be sure to have it.

Mr. Crawley, Register, declar'd, That he paid the Fifty Pounds into his own Hands on *Tuesday Morning*.

L. C. B. Ward. You ought to make it out, that there is a reasonable Cause to put off the Trial, or else it cannot be allowed.

Mr. Lemmon. My Lord, we will be ready To-morrow Morning.

L. C. B. Ward. They ought to have had due Notice; what Notice have they had?

Mr. Soll. Gen. A Fortnight's Notice, this Day Fortnight.

Dr. Oldish. My Lord, he should have had his Money delivered to him.

Kidd. I had no Money nor Friends to prepare for my Trial till last Night.

L. C. B. Ward. Why did you not signify so much to the King's Officers?

Mr. Soll. Gen. My Lord, this we will do; Let *Davis* be brought into Court; and if that be a just Excuse, we are contented. In the mean time, let him be tried for the Murder, wherein there is no Pretence of want of Witnesses or Papers.

Officer. *Davis* is here, my Lord.

Cl. of Arr. Set all aside but *Capt. Kidd.* *William Kidd*, You are now to be tried on the Bill of Murder; the Jury is going to be sworn; if you have any Cause of Exception, you may speak to them as they come to the Book.

Will. Kidd. I shall challenge none; I know nothing to the contrary but they are honest Men.

The JURY sworn, were,

<i>Nathaniel Long,</i>	}	<i>Henry Sherbrook,</i>
<i>Jo. Ewers,</i>		<i>Henry Dry,</i>
<i>Jo. Child,</i>		<i>Richard Greenaway,</i>
<i>Ed. Reeves,</i>		<i>Jo. Sherbrook,</i>
<i>Tho. Clark,</i>		<i>Tho. Emms,</i>
<i>Nath. Green,</i>		<i>Rog. Mott.</i>

After Proclamation made (as usual) the Court proceeded to the Trial, as follows:

Cl. of Arr. W. Kidd,—hold up thy Hand. (*Which he did.*) You Gentlemen of the Jury, look upon the Prisoner, and hearken to his Cause. He stands indicted by the Name of *William Kidd, &c.* as before in the Indictment. Upon this Indictment he has been arraigned, and thereunto has pleaded *Not Guilty*, and for his Trial has put himself on God and his Country, which Country you are. Your Charge is to enquire, Whether he be guilty of the Murder whereof he stands indicted, in Manner and Form as he stands indicted, or Not Guilty, &c.

Mr. Knap. My Lord, and you Gentlemen of the Jury.

This is an Indictment of Murder. The Indictment sets forth, *That William Kidd, on the 30th of October, on the high Sea, on the Coast of Malabar, did assault one William Moore, on board a Ship called the Adventure, whereof William Kidd was Captain, struck him with a wooden Bucket, booped with Iron, on the Side of the Head, near the right Ear, and that of this Bruise he died the next Day, and so that he has murdered the same Person.* To this Indictment he pleaded *Not Guilty*: If we prove him Guilty, you must find him so.

Mr. Soll. Gen. My Lord, and Gentlemen of the Jury, we will prove this as particularly as can be, that *William Kidd* was Captain of the Ship, and that *William Moore* was under him in the Ship, and that without any Provocation he gave him this Blow whereof he died.

Mr. Coniers. My Lord, it will appear to be a most barbarous Fact, to murder a Man in this manner; for the Man gave him no manner of Provocation. This *William Moore* was a Gunner in the Ship, and this *William Kidd* abuses him, and calls him *Loufy Dog*; and, upon a civil Answer, he takes this Bucket and knocks him on the Head, whereof he died the next Day. Call *Joseph Palmer*, and *Robert Bradinham.* (*Who appear'd, and were sworn.*) *Joseph Palmer*, give my Lord and the Jury an Account of what you saw done by *William Kidd*, on the Coast of *Malabar*, as to *William Moore* his Gunner.

Joseph Palmer. About a Fortnight before this Accident fell out, *Capt. Kidd* met with a Ship on that Coast, that was called the *Loyal Captain*. And about a Fortnight after this, the Gunner was grinding a Chissel aboard the *Adventure*, on the high Sea near the Coast of *Malabar*, in the *East-Indies*.

Mr. Coniers. What was the Gunner's Name?

Joseph Palmer. *William Moore*: And *Capt. Kidd* came and walked on the Deck, and walks by this *Moore*; and when he came to him, says, *Which way could you have put me in a Way to take this Ship, and been clear?* Sir, says *William Moore*, I never spoke such a Word, nor ever thought such a Thing. Upon which *Capt. Kidd* called him a *Loufy Dog*. And says *William Moore*, *If I am a Loufy Dog, you have made me so; you have brought me to Ruin, and many more.*

more. Upon his saying this, says Captain Kidd, *Have I ruin'd you, ye Dog?* and took a Bucket bound with Iron Hoops, and struck him on the right Side of the Head, of which he died the next Day.

Mr. Cowper. What was the Gunner doing at that Time that he gave him the Blow?

Joseph Palmer. He was grinding a Chissel at the Time that he struck him.

Mr. Cowper. Did he give him the Blow immediately after he gave him that Answer?

Joseph Palmer. He walk'd two or three times backward and forward upon the Deck before he struck the Blow.

Mr. J. Turton. What did Captain Kidd say first?

Joseph Palmer. *Which way could you have put me in a Way of taking this Ship, and been clear?* Says the Gunner, *I never said so, nor thought any such Thing.*

Mr. Cowper. Hark you, Friend, explain that Matter.

Mr. Baron Hatfell. What was the Occasion of those Words;

Palmer. It was concerning this Ship.

L. C. B. Ward. What Ship was it? Name the Ship.

Palmer. It was the *Loyal Captain*. Captain Kidd said to William Moore, *Which way could you have put me in the Way to have taken this Ship, and been clear?* Says William Moore, *I never said such a Thing, nor thought it.* Upon that he call'd him *Lousy Dog*.

L. C. B. Ward. Was that Ship taken?

Palmer. No, she was gone.

Mr. Coniers. You say he call'd him *Lousy Dog*?

Palmer. Yes.

Mr. Coniers. What did William Moore say to him then?

Palmer. He said, *If I am a Lousy Dog, you have brought me to it; you have ruin'd me and many more.* Upon this, says Captain Kidd, *Have I brought you to Ruin, you Dog?* Repeating it two or three times over, and took a turn or two upon the Deck, and then takes up the Bucket, and strikes him on the Head.

Mr. Cowper. You say he made a turn or two on the Deck, and then struck him.

Palmer. Yes.

Mr. Coniers. Tell my Lord what pass'd next after the Blow.

Palmer. He was let down the Gun-room, and the Gunner said, *Farewel, farewell, Captain Kidd has given me my last.* And Captain Kidd stood on the Deck, and said, *You're a Villain.*

Mr. Cowper. How near was Captain Kidd to him when he said he had given him his last?

Palmer. He was near him.

Mr. Cowper. Was he within hearing of what Moore said?

Palmer. Yes, he was within seven or eight Foot.

Mr. Sol. Gen. Did you apprehend that he died of that Blow?

Palmer. He was in perfect Health before that.

Mr. Sol. Gen. What did the Surgeon think of it?

Palmer. The Surgeon is here.

Mr. Sol. Gen. Did you see him afterwards?

Palmer. No, I did not see him after till he was dead.

Mr. Cowper. How did the Wound appear when you saw him?

Palmer. After he was dead, the Surgeon was call'd to open his Head, and Captain Kidd said, *You are damn'd busy without Orders.*

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Mr. Cowper. Tho' we ask you Questions, you must turn your Face there, towards the Jury. Give the Jury an Account of what you saw.

Palmer. I felt on his Head, and I felt something give way, and about the Wound there was a Bruise.

Mr. Cowper. You say you saw him when he was carried off, after the Blow; How did his Head appear then? Was he bloody?

Palmer. There was not much Blood came from him.

L. C. B. Ward. Was you by when these Words were spoken?

Palmer. Yes, my Lord.

L. C. B. Ward. Did you see the Prisoner give the Blow with the Bucket upon those Words?

Palmer. Yes, my Lord.

L. C. B. Ward. How long was it before he went down the Deck?

Palmer. Presently.

L. C. B. Ward. Did he complain of the Wound?

Palmer. He said, *Farewel, farewell, Captain Kidd has given me my last.*

L. C. B. Ward. Was this Moore in a good Condition of Health before this Blow was given him?

Palmer. Yes, my Lord.

L. C. B. Ward. And afterwards he complain'd?

Palmer. Yes, my Lord.

L. C. B. Ward. When he was dead, what Marks were on his Head?

Palmer. On the right Side of his Head, on this Place (pointing to his own Head) it was bruised a considerable breadth; and in one Place I could feel the Skull give way.

Mr. Cowper. How long after the Blow did he die?

Palmer. The next Day following.

Mr. Cowper. And you say you saw him dead then?

Palmer. Yes, Sir.

L. C. B. Ward. Captain Kidd, if you will ask him any Questions, you may.

Kidd. My Lord, I would ask this Man what this Moore was doing when this thing happen'd?

L. C. B. Ward. Mr. Palmer, you hear what he says; What was Moore doing?

Palmer. He was grinding a Chissel.

Kidd. What was the Occasion that I struck him?

Palmer. The Words that I told you before.

Kidd. Was there no other Ship?

Palmer. Yes.

Kidd. What was that Ship?

Palmer. A Dutch Ship.

Kidd. What were you doing with the Ship?

Palmer. She was becalm'd.

Kidd. This Ship was a League from us, and some of the Men would have taken her, and I would not consent to it; and this Moore said I always hinder'd them making their Fortunes: Was not that the Reason I struck him? Was there a Mutiny on board?

Palmer. No; you chased this Dutchman, and in the way took a Malabar Boat, and chased this Ship all the whole Night; and they shew'd their Colours, and you put up your Colours.

Kidd. This is nothing to the Point: Was there no Mutiny aboard?

Palmer. There was no Mutiny, all was quiet.

Kidd. Was there not a Mutiny, because they would go and take that Dutchman?

Palmer. No, none at all.

Mr. Coniers. Call Robert Bradinbam.

Jury. What was the Cause that he struck him?

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Palmer.

Palmer. A Fortnight before this was done, we met with this *Loyal Captain*, of which *Capt. Hoar* was Commander, and he came on board *Captain Kidd's Ship*, and *Captain Kidd* went on board his, and then *Captain Kidd* let this Ship go. About a Fortnight after this, the Gunner was grinding his Chissel on the Deck, and *Captain Kidd* said to him, *Which way could you have put me in a Way to take this Ship, and been clear?* To which he reply'd, *I never said such a Thing, nor thought of such a Thing.* Whereupon *Captain Kidd* call'd the Gunner *Loufy Dog*; and, says *Moore*, *If I am a Loufy Dog, you have made me so; you have brought me to Ruin, and a great many more.* And says *Captain Kidd*, *Have I brought you to Ruin, you Dog?* and after struck him with the Bucket. These were all the Words that pass'd.

Mr. J. Powel. Was *Captain Kidd* aboard that Ship?

Palmer. Yes, and *Captain Hoar* was aboard him.

Mr. J. Powel. Was there any body nigh at that Time?

Palmer. Yes; there were eight or nine Men, that had Musquets and other Arms, and they were for taking the Ship, and *Captain Kidd* was against it, and so it was not done.

Kidd. My Lord, I was in the Cabin, and heard a Noise, and came out; and *William Moore* said, *You ruin us, because you will not consent to take Captain Hoar's Ship.* Says a *Dutchman*, *I will put Captain Kidd in a Way to take this Ship, and come off fairly.*

L. C. B. Ward. You may ask him any Questions you have a mind to, but you must reserve what you have to say for your self till you come to make your Defence.

Mr. Soll. Gen. *Mr. Palmer*, do you know of any other Provocation to strike him besides those Words?

Palmer. I know of no other Provocation.

Mr. Coniers. Set up *Robert Bradinbam.* (*Who appear'd.*) *Mr. Bradinbam*, in what Office was you in the Ship?

Bradinbam. I was Surgeon of the Ship.

Mr. Coniers. Of what Ship?

Bradinbam. The *Adventure Galley*, whereof *Captain Kidd* was Master.

Mr. Coniers. Was you there when the Blow was given?

Bradinbam. No.

Mr. Coniers. Was you sent for when *Captain Kidd* had given the Gunner the Wound upon the Head?

Bradinbam. I was sent for to his Assistance after he was wounded, and I came to him, and ask'd him how he did? he said, *He was a dead Man, Captain Kidd had given him his last Blow.* And I was by the Gun-room, and *Captain Kidd* was walking there, and I heard *Moore* say, *Farewel, farewell, Captain Kidd has given me my last Blow;* and *Captain Kidd*, when he heard it, said, *Damn him, he is a Villain.*

Mr. Coniers. Did you hear him say so?

Bradinbam. I did hear it.

Mr. Cowper. Was it in a way of Answer to what he said?

Bradinbam. Yes.

Mr. Cowper. How long did he live after the Blow?

Bradinbam. He died the next Day. The Wound was but small, the Skull was fractur'd.

Mr. Cowper. Do you believe he died of the Wound?

Bradinbam. Yes.

Mr. Cowper. Had you any Discourse with *Captain Kidd* after this about this Man's Death.

Bradinbam. Some Time after this about two Months, by the Coast of *Malabar*, *Captain Kidd* said, *I do not care so much for the Death of my Gunner as for other Passages of my Voyage; for I have good Friends in England, that will bring me off for that.*

L. C. B. Ward. *Mr. Kidd*, will you ask him any Questions?

Kidd. I ask him, Whether he knew of any Difference between this Gunner and me before this happen'd?

Bradinbam. I knew of no Difference between them at all.

Mr. Soll. Gen. *Mr. Kidd*, Have you any Thing more to ask him?

Kidd. No.

Mr. Coniers. Then we have done for the King.

L. C. B. Ward. Then you may make your Defence. You are charg'd with Murder, and you have heard the Evidence that has been given, What have you to say for your self?

Kidd. I have Evidence to prove it is no such thing, if they may be admitted to come hither. My Lord, I will tell you what the Case was: I was coming up within a League of the *Dutchman*, and some of my Men were making a Mutiny about taking her, and my Gunner told the People he could put the Captain in a Way to take the Ship, and be safe. Says I, *How will you do that?* The Gunner answer'd, *We will get the Captain and Men aboard.* And what then? *We will go aboard the Ship, and plunder her, and we will have it under their Hands that we did not take her.* Says I, *this is Judas like, I dare not do such a Thing.* Says he, *We may do it, we are Beggars already.* Why, says I, *may we take this Ship because we are Poor?* Upon that a Mutiny arose: So I took up a Bucket, and just throw'd it at him, and said, *You are a Rogue to make such a Motion.* This I can prove, my Lord.

L. C. B. Ward. Call your Evidence.

Mr. Cowper. *Mr. Palmer*, was there any Mutiny in the Ship when this Man was killed?

Palmer. There was none.

L. C. B. Ward. *Captain Kidd*, call what Evidence you will.

Kidd. They are Prisoners; I desire they may be call'd up.

L. C. B. Ward. Whatever other Crimes they may be guilty of, they may be Witnesses for him in this Case.

Mr. Baron. Hatsell. *Mr. Palmer*, did he throw the Bucket at him, or strike him with it?

Palmer. He held it by the Strap in his Hand.

Kidd. Call *Abel Owens.* (*Who appear'd.*) Can you tell which Way this Bucket was thrown?

Mr. J. Powel. What was the Provocation of throwing this Bucket?

Owens. I was in the Cook-room, and hearing some Difference on the Deck, I came out, and the Gunner was grinding a Chissel on the Grindstone, and the Captain and he had some Words, and the Gunner said to the Captain, *You have brought us to Ruin, and we are Desolate.* And, says he, *Have I brought you to Ruin? I have not brought you to Ruin, I have not done an ill Thing to ruin you; you are a sawcy Fellow to give me these Words.* And then he took up the Bucket, and did give him the Blow.

Kidd. Was there not a Mutiny among the Men?

Owens. Yes, and the bigger part was for taking the

the Ship; and the Captain said, *You that will take the Dutch-man, you are the strongest, you may do what you please; if you will take her, you may take her; but if you go from aboard, you shall never come aboard again.*

L. C. B. Ward. When was this Mutiny you speak off?

Abel Owens. When we were at Sea.

L. C. B. Ward. How long was it before this Man's Death?

Owens. About a Month.

Mr. J. Powel. At this Time when the Blow was given, did Moore the Gunner endeavour to make any Mutiny?

Owens. No.

Mr. J. Powel. Was there any Mutiny then?

Owens. None at all.

Kidd. Did not he say, He could put me in a Way to take the Dutchman, and be clear?

Owens. I know there were several of them would have done it, but you would not give Consent to it.

Kidd. No, but this was the Reason I threw the Bucket at him.

L. C. B. Ward. Captain Kidd, he tells you this was a Month before you struck him.

Jury. My Lord, we desire he may be asked, Whether he did throw the Bucket, or strike him with it?

L. C. B. Ward. Answer the Jury to that Question.

Owens. He took it with the Strap, and struck him with it.

Kidd. Did not I throw it at him?

Owens. No, I was near you when you did it.

Mr. Coniers. Did you see the Stroke given?

Owens. I did see the Stroke given.

L. C. B. Ward. Captain Kidd, Will you call any more?

Kidd. Yes, my Lord. Call Richard Barlicorn.

Mr. J. Powel. What Questions would you have him ask'd?

Kidd. R. Barlicorn, what was the Reason that Blow was given to the Gunner?

Barlicorn. At first when you met with the Ship, there was a Mutiny, and Two or Three of the Dutchmen came aboard; and some said, she was a rich Vessel, and they would take her: And the Captain said, *No, I will not take her.* And there was a Mutiny in the Ship, and the Men said, *If you will not, we will.* And he said, *If you have a mind, you may; but they that will not, come along with me.*

Kidd. Do you think William Moore was one of those that was for taking her.

Barlicorn. Yes.

L. C. B. Ward. How long was that before Moore died, do you know?

Barlicorn. No, I did not keep a Journal.

L. C. B. Ward. Was it after Moore died.

Barlicorn. No Sir, it was before Moore died.

Mr. Coniers. How long before?

Barlicorn. I believe it was about a Month or Three Weeks, I cannot tell which.

L. C. B. Ward. You say there was a Mutiny in the Ship, what was the Mutiny about?

Barlicorn. About taking the Ship.

L. C. B. Ward. What was the Ship's Name?

Barlicorn. The *Loyal Captain*. And the Captain said, *If they take the Ship, they should never come aboard again.*

L. C. B. Ward. Was you by when Moore received this Blow?

Barlicorn. No, I was not by then.

Kidd. Do you know of any Quarrel between this Moore and I before that Accident?

Barlicorn. No, I did not.

Mr. J. Powel. Was there any Mutiny in the Ship when this Moore died?

Barlicorn. They were talking of it.

Kidd. Was there not a Dutchman close by us, when this Blow was given?

Barlicorn. Yes, Sir.

Kidd. He was going to make another Mutiny, and I prevented him.

Mr. J. Powel. Did Moore endeavour to make any Mutiny at that Time?

Barlicorn. The Ship was gone at that Time.

Mr. J. Powel. How long had she been gone?

Barlicorn. About a Week.

Mr. Bar. Hatfell. Was there any Mutiny about the Dutch Ship you saw?

Barlicorn. The Dutch Ship? Not that I know of; but there was a Mutiny aboard the *Loyal Captain*.

Kidd. Do you not know of another Mutiny?

Mr. Bar. Hatfell. Do you know of any other Mutiny?

Barlicorn. No.

Kidd. At that very time they were going to make a Mutiny?

L. C. B. Ward. Will you ask him any more Questions?

Kidd. What Discourse had I with Moore at that Time?

Barlicorn. I was aboard our Ship, but did not see the Blow given.

Kidd. They were saying they would take her, and he said, he could put me in a Way to take her, without coming to any harm.

L. C. B. Ward. What occasion could those Words be of a Mutiny?

Barlicorn. There were many of the Men would have gone with Arms, and taken that Ship without the Captain's Consent.

L. C. B. Ward. At that Time when this Moore was killed, was there any Mutiny?

Barlicorn. No.

L. C. B. Ward. When was it that Moore said, they might have taken this Ship?

Barlicorn. At the same Time when the Ship was in Company with us.

L. C. B. Ward. That was a Week or Fortnight before?

Barlicorn. No, Sir, the *Loyal Captain* was with in sight of us.

Mr. Bar. Hatfell. What, when Moore was killed?

Barlicorn. No, not then. William Moore lay sick a great while before this Blow was given; and the Doctor said, when he visited him, This Blow was not the Cause of his Death.

L. C. B. Ward. Then they must be confronted. Do you hear, Bradinbam, what he says? He says you said, That Blow was not the Cause of his Death. Did you ever say so?

Bradinbam. My Lord, I never said so.

L. C. B. Ward. Did you see that young Man there?

Bradinbam. Yes, he was aboard the Ship.

L. C. B. Ward. Was Moore sick before that Blow?

Bradinbam.

Bradinbam. He was not sick at all before.

Barlicorn. He was sick sometime before, and this Blow did but just touch him; and the Doctor said, he did not die on the Occasion of this Blow.

Mr. J. Gold. Did you ever say so, *Mr. Bradinbam*?

Bradinbam. No, my Lord.

Mr. Sol. Gen. You say he did but just touch him; Were you present when the Blow was given?

Barlicorn. No, but I saw him after he was dead, and I was by when the Doctor said, he did not die of that Blow.

Mr. Cowper. What did he die of?

Barlicorn. I cannot tell, he had been sick before, we had many sick Men aboard.

Mr. Sol. Gen. How long did he lie after this Blow, before he died?

Barlicorn. I cannot tell justly how long it was.

L. C. B. Ward. How long do you think? You took notice of the Blow, how long did he live after that?

Barlicorn. I believe about a Week.

L. C. B. Ward. And the two Witnesses swore he died the next Day.

Barlicorn. I cannot tell justly how long he lived afterwards.

Jury. We desire to know whether he knew what was the Occasion of this Blow?

Barlicorn. All the Reason I can give is, because it was thought he was going to breed a Mutiny in the Vessel.

L. C. B. Ward. Did you hear of that by any body?

Kidd. Was *Bradinbam* in the Mutiny? Declare that.

L. C. B. Ward. *Mr. Kidd*, why do you ask that Question?

Kidd. I ask him whether *Bradinbam* was not in any Mutiny in the Ship.

L. C. B. Ward. Why do you ask that?

Barlicorn. If any Thing was to be, he was as forward as any one.

L. C. B. Ward. You say he was as forward as any; but it does not appear any one made a Mutiny at this time.

Barlicorn. I do not know, Sir.

L. C. B. Ward. Have you any more to call?

Kidd. My Lord, here is another Witness.

L. C. B. Ward. What is your Name?

Hugh Parrot. *Hugh Parrot.*

L. C. B. Ward. *Mr. Kidd*, what do you ask him?

Kidd. I ask you whether *Bradinbam* was in a Mutiny in my Ship.

Hugh Parrot. I cannot say whether he was or no.

L. C. B. Ward. *Captain Kidd*, you are tried for the Death of this *Moore*; now why do you ask this Question? What do you infer from hence? You will not infer, that if he was a Mutineer, it was lawful for you to kill *Moore*.

Kidd. Do you know the Reason why I struck *Moore*?

Hugh Parrot. Yes, because you did not take the *Loyal Captain*, whereof *Captain Hoar* was Commander.

L. C. B. Ward. Was that the Reason he struck *Moore*, because the Ship was not taken?

Hugh Parrot. I Shall tell you how it happen'd, according to the best of my Knowledge. My Commander fortun'd to come up with this *Captain Hoar's* Ship, and some were for taking her, and

some not; and afterwards there was a little sort of Mutiny, and some rose in Arms, the greatest Part, and they said they would take this Ship, and the Commander was not for it; and so they resolv'd to go away in the Boat, and take her. *Captain Kidd* said, *If you desert my Ship, you shall never come aboard again, and I will force you into Bombay, and I will carry you before some of the Council there*: Infomuch as my Commander stilled them again, and they remained on Board. And about a Fortnight afterward there pass'd some Words between this *William Moore* and my Commander; and then says he, *Captain, I could have put you in a Way to have taken this Ship, and been never the worse for it*. He says, *Would you have me take this Ship? I cannot answer it, they are our Friends*; and my Commander was in a Passion; and with that I went off the Deck, and I understood afterwards the Blow was given, but how I cannot tell.

Mr. J. Powel. *Captain Kidd*, have you any more to ask him, or have you any more Witnesses to call?

Kidd. I could call all of them to testify the same thing, but I will not trouble you to call any more.

L. C. B. Ward. Have you any more to say for your self?

Kidd. I have no more to say, but I had all the Provocation in the World given me; I had no design to kill him, I had no Malice or Spleen against him.

L. C. B. Ward. That must be left to the Jury to consider the Evidence that has been given; you make out no such matter.

Jury-man. My Lord, I desire the Petitioner may give an Account, whether he did do any Thing in order to his Cure.

L. C. B. Ward. He is to be tried according to Law; the King's Evidence hath been heard, and he has the Liberty to produce what Evidence he can for himself; Will you put him to produce more Evidence than he can? If he has any more to say, it will be his Interest to say what he can; the Court is willing to hear him as long as he hath any Thing to offer for himself, either upon that Account or any Thing else.

Kidd. It was not designedly done, but in my Passion, for which I am heartily sorry.

L. C. B. Ward. Gentlemen of the Jury, the Prisoner at the Bar, *William Kidd*, is Indicted for the Murder of *William Moore*, and whether he be guilty of this Murder, or not guilty, it is your part to determine on the Evidence that has been given. The Fact charged against him is this, That the Prisoner at the Bar, *William Kidd*, being the Commander of the Ship, called the *Adventure-Galley*, and the deceased *William Moore* the Gunner in that Ship; That upon the High Sea, near the Coast of *Malabar*, in the *East-Indies*, and within the Jurisdiction of the Admiralty of *England*, in *October*, in the Ninth Year of his Majesty's Reign, 1697, the Prisoner, *William Kidd*, out of his Malice fore-thought, did strike the Deceased, *William Moore*, with a Bucket hooped with Iron, on the right Side of the Head, and that that Blow was the Occasion of the Death of the said *William Moore*; that this was done on the 30th of *October*, and that his Death ensued on the 31st of *October*, being the next Day. This is the Fact charged upon him.

Now

Now you have heard the Evidence that has been given on the King's Part, and you will weigh it well. You hear the first Witness that has been produc'd on behalf of the King, is *Joseph Palmer*. He tells you he was present on board this Ship, at the Time when the Blow was given: And he says, there had been some Discourse between the Prisoner *William Kidd*, and the Deceased *Moore*, concerning taking a Ship, that was called the *Loyal Captain*, and that Captain *Kidd* said to him, *How could you have put me in a Way to take that Ship, and be clear?* No, says *Moore*, *I said no such Thing*. The Reply Captain *Kidd* made to him was, *He was a Lousy Rogue*. The Answer of the Deceased was this, *If I am so, you have made me so; you have ruined me and a great many others*. With that, says Captain *Kidd*, *Have I ruined you, you Dog?* And up he took a Bucket hoop'd with Iron, and gave him a Blow on the right Side of his Head. And thereupon he complained and said, *You have given me my last Blow*. And then *Moore* went down below Deck, and he saw him no more till the next Day, and then he was dead; and he felt upon his Head, and perceived a Bruise in one Part of it, as broad as a Shilling, and he felt the Skull was broke; and he does take on him to say, that he believes that Blow was the Occasion of his Death. Being ask'd, Whether he knew in what State of Health he was before? he says, He was in a healthy Condition; he was grinding a Chissel at that Time when the Blow was given; and that Blow he believes was the Occasion of his Death. And being asked, Whether he heard any other Words, or saw or knew any Thing that could be any Cause of Provocation? he says, He knew no more than the Reply of the Party deceased; *If I am a lousy Dog, you have made me so, and have been my Ruin*: And then having taken two or three Turns upon the Deck, he gave him the Blow; and then *Moore* went down the Deck, and used these Words, *You have given me my last Blow*, or to that Effect.

Gentlemen, You have heard the Surgeon also, *Robert Bradinham*; and he tells you, He did not see the Blow given, but he was sent for after, and the Deceased said, *Captain Kidd had given him his last Blow*: And thereupon he did examine him as a Surgeon, and does believe that Blow on the Head was the Occasion of his Death; and he did observe it as well as he could.

Juryman. My Lord, I think *Bradinham* said, He was not then by when the Prisoner gave the Blow.

L. B. C. Ward. I did not say he was: He says He was sent for after the Blow; and when he came, the Deceased said, he gave it him, and what would be the Consequence.

Now these two being cross-examined by the Prisoner, *William Kidd*, whether they did not know of some Mutiny in the Ship, that might be the Occasion of his giving this Blow; they have told both their Stories, of what Discourse there was of taking this Ship, the *Loyal Captain*, and of what Design there was upon the *Dutch Ship* after. Now the first of these was a Fortnight before this happen'd, and the other a Week; so that there was then no Occasion of Mutiny, nor do they know of any Mutiny at that Time.

Now, Gentlemen, he has produced for him-

self three Witnesses. The first that he calls is *Abel Owens*; and this Witness has not in his Testimony made for the Prisoner, but in effect confirmed what the other Witnesses for the King said: For he tells you he was by when the Blow was given, and gives you an Account how this Thing was; That there was some Discourse between them, much what to the Effect aforesaid, both as to what Capt. *Kidd* said to *Moore*, and what *Moore* replied; and that Capt. *Kidd* should say to *Moore*, *You are a saucy Fellow*, or to that Purpose; and *Moore* said, *You have ruined me, and a great many others*; and with that the Prisoner took up the Bucket, and struck him with it. And he being asked, If there were any Provocation or Occasion why this Blow was given, and whether there was any Mutiny at that Time, as he pretended? he says, He knew of none, only he speaks of one about a Month before.

They have call'd two other Witnesses; one is *Richard Barlicorn*; he is the Prisoner's Servant; and though he be his Servant, yet the Law allows him to be a Witness for him, and the Credit of his Testimony is left to you. Now what has he said? He has told you something different Stories. He thinks there was a Mutiny in the Ship. And being ask'd about what Time? he thinks it was about a Month or three Weeks before; and, upon further Examination, faith, there was no Mutiny when *Moore* was killed. He is willing to say what he can for his Master, and believes Mr. *Kidd* did not design to do any Harm to that Man; for he heard the Surgeon say, that Blow was not the Occasion of his Death. Now, in Contradiction to that, *Bradinham*, the Surgeon, says, he never did say so, but believes that this Blow was the Occasion of his Death. You have heard what Objections the young Man's Testimony is liable to, and you will consider his whole Evidence.

The last Witness the Prisoner has called, is *Hugh Parrot*. He says, there was something of these Words, and that the Deceased did say, he could have put the Captain in a Way to have taken the Ship; and hereupon Words arose, and the Captain was in a Passion; and that then he went away, and understood afterwards the Blow was given, but how he could not tell.

Now, Gentlemen, this being the Matter of Fact, the Prisoner is indicted upon it for Murder. Now to make the killing of a Man to be Murder, there must be Malice prepenſe, either express or implied: The Law implies Malice, when one Man, without any reasonable Cause or Provocation, kills another. You have had this Fact opened to you. What Mutiny or Discourse might be a Fortnight or Month before, will not be any Reason or Cause for so long Continuance of a Passion. But what did arise at that Time, the Witnesses tell you. The first Witness tells you, the first Words that were spoken, were by Mr. *Kidd*; and upon his Answer, Mr. *Kidd* calls him *Lousy Dog*. The Reply was, *If I am so, you have made me so; you have ruined me, and a great many more*. Now, Gentlemen, I leave it to you to consider whether that could be a reasonable Occasion or Provocation for him to take a Bucket, and knock him on the Head and kill him. You have heard the Witnesses have made it out that he was a healthy Man, and they are of Opinion that the Blow was the Occasion of his Death. Now for the Prisoner,

or

on such a Saying, and without any other Provocation, to take a Bucket and knock the Deceased on the Head, and kill him, must be esteem'd an unjustifiable Act: For, as I said, if one Man kill another without Provocation, or reasonable Cause, the Law presumes and implies Malice; and then such killing will be Murder, in the Sense of the Law, as being done out of Malice prepenſe. If there be a sudden falling out, and fighting, and one is killed in heat of Blood, then our Law calls it Manſlaughter: But in such a Case as this, that happens on slight Words, the Prisoner called the Deceased a *Louſy Dog*; and the Deceased said, *If I be ſo, you have made me ſo*; Can this be a reasonable Cause to kill him? And if you believe them to be no reasonable Cause of Provocation, and that this Blow was given by the Prisoner, and was the Occaſion of *Moore's* Death, as the Witneſſes alledge, I cannot ſee what Diſtinction can be made, but that the Prisoner is guilty of Murder. Indeed, if there had been a Mutiny at that Time, and he had ſtruck him at the Time of the Mutiny, there might have been a reaſonable Cause for him to plead in his Defence, and it ought to have been taken into Conſideration; but it appears, that what Mutiny there was, was a Fortnight at leaſt before: Therefore, Gentlemen, I muſt leave it to you: If you believe the King's Witneſſes, and one of the Prisoner's own, that this Blow was given by the Prisoner in manner aforeſaid, and are ſatisfied that it was done without reaſonable Cause or Provocation, then he will be guilty of Murder: And if you do believe

him guilty of Murder, upon this Evidence, you muſt find him ſo: If not, you muſt acquit him.

Kidd. My Lord, I have Witneſſes to produce for my Reputation.

L. C. B. Ward. Mr. *Kidd*, we gave you Time to make your Defence? Why did not you produce them? You were aſked more than once, if you had any more to ſay; and you ſaid, you would call no more Witneſſes.

Kidd. I can prove what Service I have done for the King.

L. C. B. Ward. You ſhould have ſpoken ſooner: But what would that help in this Caſe of Murder? You ſaid you had no more to ſay before I began.

Then an Officer was ſworn to keep the Jury, and about an Hour after the Jury returned, and gave in their Verdict.

Cl. of Arr. Gentlemen, answer to your Names. *Nath. Long.*

Nath. Long. Here, &c.

Cl. of Arr. Are you all agreed of your Verdict? *Omnes.* Yes.

Cl. of Arr. Who ſhall ſay for you?

Omnes. Foreman.

Cl. of Arr. *William Kidd*, hold up thy Hand. (*Which he did.*) Look upon the Prisoner. Is he guilty of the Murder whereof he ſtands indicted, or not guilty?

Foreman. Guilty.

Cl. of Arr. Look to him, Keeper.



The

The Trial of *William Kidd, Nicholas Churchill, James Howe, Robert Lamley, William Jenkins, Gabriel Loffe, Hugh Parrot, Richard Barlicorn, Abel Owens, and Darby Mullins*, for *Piracy and Robbery*, on a Ship called the *Quedagh Merchant*.

THE Jurors for our Sovereign Lord the King, do, upon their Oath, present, That William Kidd, late of London, Mariner; Nicholas Churchill, late of London, Mariner; James Howe, late of London, Mariner; Robert Lamley, late of London, Mariner; William Jenkins, late of London, Mariner; Gabriel Loffe, late of London, Mariner; Hugh Parrot, late of London, Mariner; Richard Barlicorn, late of London, Mariner; Abel Owens, late of London, Mariner; and Darby Mullins, late of London, Mariner; The 30th Day of January, in the Ninth Year of the Reign of our Sovereign Lord, William the Third, by the Grace of God, of England, Scotland, France, and Ireland, King, Defender of the Faith, &c. by Force and Arms, &c. upon the High Sea, in a certain Place distant about ten Leagues from Cuttween, in the East-Indies, and within the Jurisdiction of the Admiralty of England, did piratically and feloniously set upon, board, break, and enter a certain Merchant Ship, called the *Quedagh Merchant*, then being a Ship of certain Persons (to the Jurors aforesaid unknown); and then and there piratically and feloniously, did make an Assault in and upon certain Mariners (whose Names to the Jurors aforesaid are unknown) in the same Ship, in the Peace of God, and of our said now Sovereign Lord the King, then and there being, piratically and feloniously did put the aforesaid Mariners of the same Ship, in the Ship aforesaid, upon the High Sea, in the Place aforesaid, distant about ten Leagues from Cuttween aforesaid, in the East-Indies aforesaid, and within the Jurisdiction aforesaid, piratically and feloniously, did steal, take, and carry away the said Merchant Ship, called the *Quedagh Merchant*, and the Apparel and Tackle of the same Ship, of the Value of 400 l. of lawful Money of England; seventy Chests of Opium, of the Value of 1400 l. of lawful Money of England; two Hundred and fifty Bags of Sugar, of the Value of 100 l. of lawful Money of England; twenty Bales of raw Silk, of the Value of 400 l. of lawful Money of England; an hundred Bales of Callicoes, of the Value of 200 l. of lawful Money of England; two hundred Bales of Muslins, of the Value of 1000 l. of lawful Money of England; and three Bales of Romels, of the Value of 30 l. of lawful Money of England; the Goods and Chattels of certain Persons (to the Jurors aforesaid unknown) then and there, upon the High Sea aforesaid, in the aforesaid Place, distant about ten Leagues from Cuttween aforesaid, in the East-Indies aforesaid, and within the Jurisdiction aforesaid, being found in the aforesaid Ship, in the Custody and Possession of the said Mariners in the same Ship, from the said Mariners of the said Ship, and from their Custody and Possession, then and there, upon the High Sea aforesaid, in the Place aforesaid, distant about ten Leagues from Cuttween aforesaid, in the East-Indies aforesaid, and within the Jurisdiction aforesaid, against the Peace of our said now Sovereign Lord the King, his Crown and Dignity, &c.

VOL. V.

Cl. of Arr. SET William Kidd, Nicholas Churchill, &c. to the Bar. (And so of the rest.) Will. Kidd, hold up thy Hand. (Which he did, and so the rest.)

You the Prisoners at the Bar, those Men that you shall hear call'd, and that personally appear, are to pass between our Sovereign Lord the King and you, upon Trial of your several Lives and Deaths. If therefore you, or any of you, will challenge any of them, your Time is to speak to them as they come to the Book to be sworn, and before they be sworn.

And there being no Challenges, the Twelve that were sworn on the Jury were as follow:

John Cooper,	}	P. Walker,
Jo. Hall,		William Hunt,
Jo. James,		John Micklethwait,
Peter Parker,		Richard Chiswell,
Caleb Hook,		Abraham Hickman,
R. Rider,		George Grove.

Cl. of Arr. Cryer. Count these: John Cooper. Cryer. One, &c. Twelve good Men and true, stand together, and hear your Evidence.

Then the usual Proclamation for Information was made; and the Prisoners being bid to hold up their Hands, the Clerk of Arraignments charg'd the Jury with them thus:

Cl. of Arr. You of the Jury, look upon the Prisoners, and hearken to their Cause. They stand indicted by the Names of William Kidd, &c. (as before in the Indictment.) Upon this Indictment they have been Arraign'd, and thereunto have severally pleaded, *Not Guilty*; and for their Trial put themselves on God and their Country, which Country you are. Your Charge is, to enquire whether they be guilty of the Piracy and Robbery whereof they stand indicted in Manner and Form as they stand indicted, or not guilty, &c.

Nic. Churchill. My Lord, I beg your Opinion, whether I may not plead the King's Pardon?

L. C. B. Ward. Let us see your Pretences: You shall have all legal Defences and Advantages allowed to you.

Nic. Churchill. I came in upon his Majesty's Proclamation.

L. C. B. Ward. Have you the King's Proclamation? If you have, let us see it.

Churchill. We had Notice of it at Guiana, and we deliver'd up our selves to Col. Bafs, Governor of East-Jersey, and I have it under his Hand. I beg your Lordship would appoint me Council to plead my Case.

The Paper was shewn, and read.

Mr. Crawley. I know not when it was.

Churchill. I had Notice of it at Guiana: I have been two Years in Custody.

Q q

L. C. B. Ward.

L. C. B. *Ward*. How long have you been a Prisoner?

Churchill. Almost two Years; two Years next July.

L. C. B. *Ward*, and the rest of the Judges. The Proclamation (for what you say your self) does not reach your Case.

Howe, *Churchill*, *Mullins*. We came in, upon the Proclamation, all the same Day.

Mr. J. *Powel*. How can you make it appear you surrender'd?

Prisoners. Here is an Affidavit made of it by the Governor's Secretary; and there's the Gentleman himself, Col. *Baſs*.

Mr. J. *Powel*. You must make it out, that you have come in within the Conditions of that Proclamation, if you have any Benefit by it.

L. C. B. *Ward*. Let the Proclamation be read. (*Which was done accordingly; and it here follows:*

By the KING, a Proclamation.

William R.

*W*hereas We being informed, by the frequent Complaints of our good Subjects trading to the East-Indies, of several wicked Practices committed on those Seas, as well upon our own Subjects as those of our Allies, have therefore thought fit (for the Security of the Trade of those Countries, by an utter Extirpation of the Pirates in all Parts Eastward of the Cape of Good Hope, as well beyond Cape Comorin as on this side of it, unless they shall forthwith surrender themselves, as is herein after directed) to send out a Squadron of Men of War, under the Command of Captain Thomas Warren. Now We, to the Intent that such who have been guilty of any Acts of Piracy in those Seas, may have Notice of our most gracious Intention, of extending our Royal Mercy to such of them as shall surrender themselves, and to cause the severest Punishment according to Law to be inflicted upon those who shall continue obstinate, have thought fit, by the Advice of our Privy Council, to issue this Proclamation; hereby Requiring and Commanding all Persons who have been guilty of any Act of Piracy, or any ways Aiding or Assisting therein, in any Place Eastward of the Cape of Good Hope, to surrender themselves within the several respective Times herein after limited, unto the said Captain Thomas Warren, and the Commander in chief of the said Squadron for the Time being, and to Israel Hayes, Peter Dellanoye, and Christopher Pollard, Esquires, Commissioners appointed by Us for the said Expedition, or to any Three of them, or, in case of Death, to the major Part of the Survivors of them. And We do hereby declare, That We have been graciously pleas'd to empower the said Captain Thomas Warren, and the Commander in chief of the said Squadron for the Time being, Israel Hayes, Peter Dellanoye, and Christopher Pollard, Esquires, Commissioners aforesaid, or any Three of them, or, in case of Death, to the major Part of the Survivors of them, to give Assurance of our most gracious Pardon unto all such Pirates in the East-Indies, viz. all Eastward of the Cape of Good Hope, who shall surrender themselves for Piracies or Robberies committed by them upon the Sea or Land; Except nevertheless such as they shall commit in any Place whatsoever after Notice of our Grace and Favour hereby declared; And also excepting all such Piracies and Robberies as shall be committed

from the Cape of Good Hope Eastward, to the Longitude or Meridian of Socatora, after the last Day of April, 1699, and in any Place from the Longitude or Meridian of Socatora Eastward, to the Longitude or Meridian of Cape Comorin, after the last Day of June, 1699, and in any Place whatsoever Eastward of Cape Comorin after the last Day of July, 1699; And also excepting Henry Every alias Bridgman, and William Kidd.

Given at our Court at *Kenſington*, the Eighth Day of December, 1698, in the Tenth Year of our Reign.

GOD save the KING.

Clerk. There is no Day mention'd in this Paper when they surrender'd themselves.

Mr. *Moxon*. My Lord, about the Year 1698, there was a Special Commission given to four Persons, and they were to proceed in their Voyage to the Indies, and they carried a great Number of Proclamations, That all the Pirates in such and such Places should surrender themselves: Now they came to *St. Helena* with them, and Captain *Warren* was sent to *St. Mary's*, and he was to deliver some of these Proclamations there, and the Commissioner had then the Ambassador to the Great Mogul on board, and this Captain *Warren* these Proclamations. *Warren* comes and delivers the Proclamations out, and, among the rest, the Prisoner at the Bar having Notice of this, he goes to the Governor, and confesses he had been a Pirate, and desired them to take Notice that he surrendered himself; and we have the Governor here, to give an Account of this Matter.

L. C. B. *Ward*. The Proclamation says, They must surrender themselves to such and such Persons by Name: See if it be not so. (*Then the Proclamation was read again.*) Here are several Qualifications mentioned; you must bring your selves under them, if you would have the Benefit of it.

Dr. *Newton*. Let them shew that they surrender'd themselves to the Persons they were to surrender to.

Mr. *Moxon*. My Lord, we will prove we gave Notice within the Time, by this Paper.

Mr. *Soll. Gen.* There is no Time mention'd in it. (*The Affidavit was read.*) Charles Hally, Gent. maketh Oath, That in the Year 98, there being Notice of his Majesty's Gracious Pardon to such Pirates as should surrender themselves, James *Howe*, Nicholas *Churchill*, and *Darby Mullins*, in May, 1699, did surrender themselves to *Jeremiah Baſs*, and he did admit them to Bail.

L. C. B. *Ward*. There are Four Commissioners named in the Proclamation: There is no Governor mention'd that is to receive them, only those Four Commissioners.

Mr. *Moxon*. But, my Lord, consider the Nature of this Proclamation, and what was the Design of it, which was, to invite Pirates to come in.

Mr. *Coniers*. We must keep you to the Proclamation: Here is not enough to put off the Trial.

L. C. B. *Ward*. If you had brought your selves within the Case of the Proclamation, we should be very glad: You that offer it, must consider it is a Special Proclamation, with divers Limitations;

tions; and if you would have the Benefit of it, you must bring your selves under the Conditions of it. Now there are Four Commissioners named, that you ought to surrender to; but you have not surrendered to any one of these, but to Colonel *Bass*, and there is no such Man mentioned in this Proclamation.

Mr. *Knapp*. My Lord, and Gentlemen of the Jury, the Indictment sets forth, That the Prisoners at the Bar, on the Thirtieth of *January*, in the Ninth Year of his Majesty's Reign, ten Leagues distant from *Cutbeem*, did Piratically seize and rob a certain Ship call'd, *The Quedagh Merchant*, and put the Men in fear of their Lives; and the said Ship, with her Apparel, Tackle, and Goods, did then and there, upon the High Sea, take and carry away, against the Peace of our Sovereign Lord the King, his Crown and Dignity: To this Indictment they have pleaded, Not guilty: If we prove it upon them, you must find them guilty.

Dr. *Newton*, Advocate for the Admiralty. My Lord, and Gentlemen, the Prisoners at the Bar, Captain *William Kidd*, late Commander of the *Adventure Galley*, and Nine other Mariners in the same Vessel, stand indicted for feloniously and piratically assaulting and taking a Ship, call'd *The Quedagh Merchant*, on the High Sea near *Cutbeem*, in the *East-Indies*, about the Thirtieth of *January*, in the Ninth Year of his Majesty's Reign: The Ship was considerable for its Force and Bulk, being about four hundred Tun; and more considerable for its Lading, having on board to the Value of many Thousand Pounds.

This Captain *Kidd*, who thus acted the Pirate himself, went from *England* in *April*, 1699, with a Commission, dated the 26th of *January* preceeding, to take and seize Pirates in the *Indian Seas*, which were then very much and very dangerously infested by them, to the great Hazard, and Loss, and Ruin of the Merchant.

The Ship carry'd thirty Guns, and there were on board about eighty Men; but the Captain being come to *New-York*, in *July* 96, pretending, as indeed it was design'd he should, and he had undertaken to make that Design good, that he was going to *Madagascar* (which was the known and common Receptacle of the Pirates in those Seas) to take Pirates, and free the Seas from those Disturbers of the Commerce of Mankind; so many came in to him, being invited by Articles publickly set up by him in that Place, that his Number quickly encreas'd to one hundred and fifty-five Men; a Force sufficient, if he had meant well, to have made him useful to the Publick; and to prove as mischievous, if his Designs were otherwise: And what those were, will quickly appear.

After calling in at several Places for Provisions, and, among others, at *Madagascar*, in *July* 97, he sail'd to *Bobs-Key*, a small Island at the Entrance of the *Red-Sea*, and a convenient Station for the observing what Vessels went from thence to the *Indies*; and now, instead of taking Pirates, he becomes one himself, and the greatest and the worst of all. Here he staid three Weeks, in expectation of the *Mocca Fleet*, to make his Benefit and his Fortune out of it; for, whatever he had before pretended, this was his real Design, and now so possess'd his Mind, that he could not refrain from declaring, and that often, to his

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Men; That now he should make his Voyage, and ballast his Ship with Gold and Silver. After long Expectation, the Fleet, on the 14th of *August*, to the Number of Fourteen, came by; he fell in with the middle of them, fir'd several Guns at 'em; but finding they had an *English* and *Dutch* Convoy, that Design happily fail'd of the wish'd-for Success.

This Disappointment however did not discourage him, but that he proceeded on for the Coast of *Malabar*, where he knew the Trade was considerable, and hoped his Advantage would be proportionable in the disturbing it; and there accordingly, for several Months, he committed many great Piracies and Robberies, taking the Ships and Goods of the *Indians* and others at Sea, *Moors* and *Christians*, and torturing cruelly their Persons, to discover if any Thing had escaped his Hands; burning their Houses, and killing, after a barbarous manner, the Natives on the Shore; equally cruel, dreaded and hated both on the Land and at Sea.

These Criminal Attempts and Actions had rendered his Name (to the Disgrace and the Prejudice of the *English* Nation) too well known, and deservedly detested, in those remote Parts of the World; and he was now look'd upon as an Arch-Pirate, and the common Enemy of Mankind; and accordingly two *Portuguese* Men of War went out in pursuit of him, and one met with him and fought him for several Hours; but *Kidd's* Fortune then reserv'd him for another manner of Trial.

Amongst the great Number of Vessels he took on that Coast, was the Ship he stands indicted for, *The Quedagh Merchant*, being then on a trading Voyage from *Bengal* to *Surat*, the Commander *English*, Captain *Wright*, the Owners *Armenian* Merchants, and others. He had taken *Moors* before, but *Moors* and *Christians* ate all alike to Pirates, they distinguish not Nations and Religions.

Those on board the Vessel offer'd Thirty thousand *Rupees* for her Ransom, but the Ship was too considerable to be parted with, even for so great a Sum; so *Kidd* sold Goods out of her, on the neighbouring Coast, to the Value of Ten or Twelve thousand Pounds, out of which he took whatever he could pretend to for Ammunition and Provisions, with forty Shares for himself, and the Remainder was disposed of amongst the Crew, and particularly those who are here indicted with him, who accompanied him, who assisted him throughout in all his Piracies, and who now too share the Spoils and the Guilt with him.

With this Ship and another, and the Remainder of the Goods not sold on the Coast, he sail'd once more for *Madagascar*, where he arrived in the Beginning of *May* 98, and there again what was left on board was divided according to the same Proportions, and amongst the same Persons as before, each Mariner having about three Bales to his Share.

Then the Jury brought in their Verdict against William Kidd, for Murder: And Dr. Newton proceeded.

It is not to be omitted, That at his Return to *Madagascar*, there came on board him some Persons from the Ship *The Resolution*, formerly the

Qq 2

Mocca

Mocca Frigate (for the piratical seizing of which Vessel there have been formerly Trials and Convictions in this Place) of which Captain *Culliford*, a notorious Pirate, now in Custody, and against whom two Bills have been found for Piracy, by the Grand-Jury, was the Commander. They at first seem'd to be afraid of *Kidd*, but without any Ground; as his former Actions had demonstrated, and the Sequel shewed: They, who were harden'd Pirates, and long inured to Villanies, could scarce think that any Man could so betray the Trust and Confidence the Publick had placed in him, and said, They heard he was come to take and hang them; but Captain *Kidd* assur'd them, that he had no such Design, and that he had rather his Soul should broil in Hell, than do them any Harm; bid them not be afraid, and swore he would be true to them; and here, indeed, he did not break his Word. This was his Way of being true to his Trust, and making good the Ends of his Commission, in acting with the greatest Treachery, and the greatest Falseness, that ever Man did: And, to make all that has been represented of him true, Captain *Kidd* and Captain *Culliford* went on board, treated, and presented each other; and, instead of taking *Culliford*, as it was his Duty to have done, and his Force was sufficient to have perform'd it, he gave him Money and Ammunition, two Great Guns and Shot, and other Necessaries to fit him out to Sea, that he might be in a Condition the better to take and seize other innocent Persons.

His own Ship he now left, and went on board the *Quedagh Merchant*; several of his Men then went from him, but not the Prisoners, they were all along Well-wishers and Assistants to him, fought for him, divided the Plunder with him, and are now come to be try'd with him.

This, Gentlemen, is the Crime he is indicted for, Piracy; the growing Trouble, Disturbance, and Mischief of the Trading World, and the peaceable Part of Mankind, the Scandal and Reproach of the *European* Nations, and the Christian Name (I wish I could not say, that the *Kidds* and the *Averys* had not made it more particularly so of the *English*) amongst *Mahometans* and *Pagans*, in the extremest Parts of the Earth; which turns not only to the Disadvantage of the immediate Sufferers, but of all such as traffick in those Countries, whether Companies or single Merchants, who are to suffer for the Misfortunes of others, with whom, it may be, they have no Dealings, and for the Villainies of such, whom they and all Mankind equally and justly detest and abhor.

This is the Person that stands indicted at that Bar, than whom no one in this Age has done more Mischief, in this worst kind of Mischief; or has occasioned greater Confusion and Disorder, attended with all the Circumstances of Cruelty and Falshood, and a Complication of all manner of Ill.

If therefore these Facts shall be prov'd upon him, you will then, Gentlemen, in finding him guilty, do Justice to the injured World, the *English* Nation (our common Country) whose Interest and Welfare so much depend on the Increase and Security of Trade; and, lastly, to your selves, whom the Law has made Judges of the Fact.

Mr. Soll. Gen. My Lord, and Gentlemen of

the Jury, I am of Council for the King, against the Prisoners at the Bar, in this Case, with the Doctor that has open'd the Matter from the Beginning. These Prisoners at the Bar went out with Commissions for good Purposes, tho' they made use of them to very bad ones. Gentlemen of the Jury, I must tell you, The Charge upon which you are to enquire, is only upon a certain Ship, call'd *The Quedagh Merchant*, and to that we shall apply our Evidence. What was taken in her has been open'd already: All we will do now, is to call our Witnesses, and make out, to your Satisfaction, the Things charg'd upon them.

Mr. Coniers. My Lord, we shall prove this Charge by the Persons that were Evidence before, *Robert Bradinbam*, and *Joseph Palmer*: They went out with Captain *Kidd* in his Voyage, and he began it in April, 1696. I believe 'twill be necessary, that they give some Account before this Piracy was committed, which was not, in Time, till February, 1697. They will give you an Account of some Plunders that happen'd before this, and then of the taking of this Ship, and the dividing it amongst them.

Mr. J. Powel. When went they out?

Mr. Coniers. They began their Voyage in April, 1696, and took this Ship in February, 1697. They did, all along that Voyage, commit several Plunders on several Ships they thought a Prey: Their Design was, not to take Pirates, but to take what they could get out of any Ships, Friends or Enemies; for in this Ship, *The Quedagh Merchant*, which was a *Moorish* Ship, there were several *Armenians*; and they offered them a great Sum of Money to redeem the Ship, but they refus'd it; and they disposed of the Goods, and divided the Money; and for the Proof of that, we will call Mr. *Bradinbam*.

Mr. J. Powel. I understand, that he had a Commission; therefore if any one has a Commission, and he acts according to it, he is not a Pirate; but if he take a Commission for a Colour, that he may be a Pirate, it will be bad indeed: And therefore, if you can prove, that he was a Pirate all along, this will be a great Evidence against him.

Mr. Coniers. My Lord, we will prove that; so that the Commission was but a Colour. Mr. *Bradinbam*, pray give my Lord and the Jury an Account when you began your Voyage, and your Proceedings afterwards.

Bradinbam. Some time in the Year 1696, about the Beginning of May, I and others were with Captain *Kidd*; and we sail'd from *Plymouth*, designing for *New-York*; and in the Way we met with a *French* Banker, and took her.

Mr. Coniers. Tell the Court what Ship it was you went in, and with whom.

Bradinbam. We went with Captain *Kidd*, in the *Adventure Galley*.

Mr. Coniers. What Number of Men had you when you went first out?

Bradinbam. About seventy or eighty Men.

Mr. Coniers. What Force of Guns had you?

Bradinbam. We had thirty Guns.

Mr. Coniers. In what Office was Captain *Kidd* in the Ship?

Bradinbam. He was the Commander of her.

Mr. Coniers. Now tell my Lord and the Jury what Time you left *England*, and how you proceeded.

Bradinbam.

Bradinbam. In May, 1696, we left *Plymouth*, and went to *New-York*, and in the Way met with a *French Ship*, and took her: And when we came to *New-York*, Captain *Kidd* put up Articles, That if any Men would enter themselves on board his Ship, they should have their Shares of what should be taken; and he himself was to have Forty Shares.

Mr. Coniers. What Number of Men did he get after these Articles were publish'd?

Bradinbam. He carried from *New-York* an Hundred and fifty-five Men.

Mr. Coniers. Whither did he sail then?

Bradinbam. To the *Madera's*, from thence to *Bonavis*, from thence to *St. Jago*, from thence to *Madagascar*, from thence to *Joanna*, from thence to *Mabala*, from *Mabala* to *Joanna* again, and from thence to the *Red-Sea*; and there we waited for the *Mocca Fleet*: They passed us one Night, and we pursued them, and went among them, but he found they were too strong for him, and was fain to leave them.

Mr. Cowper. How long did you lie in wait for that Fleet?

Bradinbam. A Fortnight or three Weeks.

Mr. Cowper. Did he express himself so, That he did lie in wait for that Fleet?

Bradinbam. Yes; he said, that he did design to make a Voyage out of them.

Mr. Cowper. Did he not lie in wait for any *French Effects* in that Fleet?

Bradinbam. No, only for the *Moorish Fleet*.

Mr. Cowper. What do you mean by the *Moorish Fleet*?

Bradinbam. The Natives of *India*, the *Mabometans*.

Mr. Cowper. Where did you lie in wait for that Fleet?

Bradinbam. In the *Red-Sea*.

Mr. Cowper. In the Mouth of it?

Bradinbam. Yes.

Mr. Cowper. Is it a fit Place for that Purpose?

Bradinbam. Several Sail of Ships may lie there.

Mr. Cowper. Did you expect them?

Bradinbam. Yes; Captain *Kidd* waited for them.

Mr. Coniers. How long did you stay there?

Bradinbam. About a Fortnight.

Mr. Coniers. Did you do any thing in that time to get Intelligence?

Bradinbam. Captain *Kidd* sent his Boat three times to *Mocca*, to see if they could make any Discovery; and the two first times they could make none; but the third time they brought word the Ships were ready to sail; and accordingly they came, and we failed after them, and fell in with them, and Captain *Kidd* fired at them.

Mr. Cowper. You say, he sent his Boat three times for Intelligence: Can you remember what Answer they brought?

Bradinbam. The two first times they brought no Intelligence; but the third time they brought Word, that fourteen or fifteen Ships were ready to sail.

Mr. Coniers. What Colours did they say they had?

Bradinbam. I cannot tell that. When Captain *Kidd* had fetched them up, he found they were under Convoy, and so he left them: And then

he was going to the Coast of *Malabar*, and by the Way met with Capt. *Parker*.

Mr. J. Powel. Did they fire any Guns at the *Mocca Fleet*?

Bradinbam. Yes; Capt. *Kidd* fired divers Guns at them.

Mr. Coniers. After such time as you left the *Mocca Fleet*, what happen'd after that? Recollect your self.

Bradinbam. We took a Ship, that Capt. *Parker* was Commander of, between *Carawar* and the *Red-Sea*.

Mr. Coniers. What Ship was this that Captain *Parker* was Commander of?

Bradinbam. A *Moorish Ship*, she came from *Bombay*, and Capt. *Parker* was the Master.

Mr. Coniers. What did you take from this Ship?

Bradinbam. Capt. *Kidd* took out *Parker*, and a *Portuguese* for a *Linguister*.

Mr. Coniers. A *Linguister*, What do you mean by that?

Bradinbam. An Interpreter; he took out of her a Bale of Coffee, a Bale of Pepper, about twenty Pieces of *Arabian Gold*, and ordered some Men to be taken and hoisted up by their Arms, and drub'd with a naked Cutlace.

Mr. Coniers. Why did he do that?

Bradinbam. That they might confess what Moneey they had.

Mr. Coniers. Were those *Frenchmen* that were thus used?

Bradinbam. No, they were *Moors*.

Mr. Coniers. Was there any Demand made of those Men, Capt. *Parker*, and the *Portuguese*?

Bradinbam. Yes; the *English Factory* sent for this *Parker* and the *Portuguese*, and he deny'd that he had any such Persons on board, for he kept them in a Hole.

Mr. Coniers. Do you know any Thing more?

Bradinbam. Then he went to Sea, and that Night he met with a *Portuguese Man of War*; the next Morning he came up with her, and the *Portuguese* first fired at Captain *Kidd*, and he at him again; they fought four or five Hours. Capt. *Kidd* had ten Men wounded.

Mr. Coniers. So that there was nothing more than Fighting?

Bradinbam. No.

Mr. Coniers. Go on. What did you do next?

Bradinbam. We went to the Coast of *Malabar*.

Mr. Coniers. What did you go thither for?

Bradinbam. We went to one of the *Malabar Islands* for Wood and Water, and Captain *Kidd* went a-shore, and several of his Men, and plundered several Boats, and burnt several Houses, and ordered one of the Natives to be ty'd to a Tree, and one of his Men to shoot him.

Mr. Coniers. Pray go on: What was the Reason of his shooting this *Indian*?

Bradinbam. One of his Men, that was his Cooper, had been a-shore, and some of the Natives had cut this Man's Throat, and that was the Reason he ordered his Men to serve this Man so.

Mr. Coniers. Pray go on, and give an Account of what afterwards.

Bradinbam. Then we came back again to the *Malabar Coast*, and cruised; and in *October* he killed his Gunner, *William Moore*.

Mr.

Mr. *Coniers*. Tell what happened next after that.

Mr. *Cowper*. Was this the *October* next after he left *England*, or the Year following?

Bradinbam. It was in *October*, 1697.

Mr. *Coniers*. Well, go on.

Bradinbam. Some time in *November* he took a *Moorish* Ship belonging to *Surat*; there were two *Dutchmen* belonging to her, the rest were *Moors*. Captain *Kidd* chased this Ship under *French* Colours; and when the *Dutchman* saw that, he put out *French* Colours too. And Captain *Kidd* came up with them, and commanded them on board; and he ordered a *Frenchman* to come upon Deck, and to pretend himself Captain: And so this Commander comes aboard, and comes to this *Monsieur Le Roy* that was to pass for the Captain, and he shews him a Paper, and said it was a *French* Pass. And Captain *Kidd* said, *By God, Have I catch'd you? You are a free Prize to England.* We took two *Horses*, some *Quilts*, &c. and the Ship he carried to *Madagascar*. In *December* he took a *Moorish* Ketch; she was taken by the Boat; we had one Man wounded in taking of her.

Mr. *Coniers*. When was this done?

Bradinbam. In *December*, 1697.

Mr. *Coniers*. What, did you plunder then?

Bradinbam. Our People took the Vessel ashore, and Captain *Kidd* took out of her thirty *Tubs* of *Sugar*, a *Bale* of *Coffee*, &c. and then he order'd the Vessel to be turned a-drift.

Mr. *Coniers*. What followed in *January*?

Bradinbam. *January* the 20th, Captain *Kidd* took a *Portuguese* that came from *Bengal*: He took out of her two Chests of *Opium*, some *East-India* Goods, and Bags of *Rice*, &c.

Mr. *Coniers*. How long did you keep this Ship?

Bradinbam. He kept this *Portuguese* Ship about seven Days; he took out of her some *Butter*, *Wax*, and *East-India* Goods: He kept her till he was chased by seven or eight Sail of *Dutch*, and then he left her.

Mr. *Coniers*. My Lord, now we are come to that on which the Indictment is founded. Mr. *Bradinbam*, give a particular Account of that.

Bradinbam. Some time in *January*, Captain *Kidd* took the *Quedagh Merchant*; he gave her chase under *French* Colours: He came up with her, and commanded the Master aboard; and there came an old *Frenchman* in the Boat; and after he had been aboard awhile, he told Captain *Kidd* he was not the Captain, but the Gunner; and Captain *Kidd* sent for his Captain on board his Ship.

Mr. *Coniers*. Who was that?

Bradinbam. Mr. *Wright*.

Mr. *Coniers*. What Countryman was he?

Bradinbam. An *Englishman*. He was sent for aboard, and he came; and Captain *Kidd* told him, he was his Prisoner; and he ordered his Men to go aboard, and take Possession of the Ship, and disposed of the Goods on that Coast, to the Value of Seven or Eight thousand Pounds.

Mr. *Coniers*. What Persons were aboard her?

Bradinbam. There was Captain *Wright*, and two *Dutchmen*, and a *Frenchman*, and some *Armenians*, and the rest *Moors*.

Mr. *Coniers*. Did these *Armenians* make any Offer of any Money for their Ransom?

Bradinbam. Captain *Kidd* told them, they should be ransomed, if they made an Offer that he liked of; so they offered him Twenty thousand *Rupees*. He told them, that was but a small Parcel of Money, and the Cargo was worth a great deal more.

Mr. *Coniers*. Who did the Cargo belong to?

Bradinbam. To those *Armenians*, as I was inform'd by Captain *Wright*.

Mr. *Coniers*. What did he do with them?

Bradinbam. He disposed of some of them on the Coast of *India*.

Mr. *Coniers*. What did he do with the Proceed of the Goods he sold?

Bradinbam. He shared the Money.

Mr. *Coniers*. Had these Men (the other Prisoners) any of the Shares?

Bradinbam. Yes, all of them. You were a Half-share Man, and you a Half-share Man, (pointing at two of them)

Mr. *Coniers*. Mr. *Bradinbam*, you say Captain *Wright* came aboard *Kidd's* Ship.

Bradinbam. Yes.

Mr. *Coniers*. Did he discourse with him?

Bradinbam. I was not with him, for he kept his Cabin to himself.

Mr. *Coniers*. But you are sure he came aboard?

Bradinbam. Yes.

Mr. *Coniers*. And he was an *Englishman*?

Bradinbam. Yes.

Mr. *Coniers*. How did Captain *Kidd* behave himself to the Ships or Boats there?

Bradinbam. He boarded several Ships, and took out of them what was for his Turn.

Mr. *Coniers*. How did he use those that he traded with?

Bradinbam. Some of them came aboard several times, and he traded with them: But some of them came aboard when he was going away, and he plundered them, and sent them ashore without any Goods.

Mr. *Coniers*. What Countrymen were those he served thus?

Bradinbam. *Mabometans*: They had dealt with him before considerably.

Mr. *Coniers*. How much did he take from them?

Bradinbam. About Five Hundred Pieces of Eight.

Mr. *Coniers*. How do you know that?

Bradinbam. I saw it told afterwards. We went to *Madagascar* afterwards, and by the Way met with a *Moorish* Ship, and took out of her several Casks of *Butter*, and other Things.

Mr. *Cowper*. What were the Crew of this Ship?

Mr. *J. Powel*. They are indicted for the *Quedagh Merchant*. Were all the Prisoners in that Action? You have given an Historical Account from the Beginning, that he was a meer Plunderer: But now you are to come to the *Quedagh*, for which they are indicted; go not beyond it.

Mr. *Coniers*. Look on the several Prisoners at the Bar, and tell whether any of the Prisoners were at the Taking of the *Quedagh Merchant*.

Cl. of Arr. Was *William Kidd* there at the Time the Ship was taken?

Bradinbam.

Bradinbam. Yes.

Cl. of Arr. Was *Nicholas Churchill* there?

Bradinbam. Yes.

Cl. of Arr. Do you know *James Howe*? Was he there?

Bradinbam. Yes.

Cl. of Arr. Had he a Share?

Bradinbam. Yes.

Cl. of Arr. Had *Robert Lamley* a Share?

Bradinbam. Yes: He was a Servant, and had but half a Share of the Money, and a whole Share of the Goods.

Cl. of Arr. *William Jenkins*, was he there, and had a Share?

Bradinbam. Yes.

Cl. of Arr. *Gabriel Loffe*, did you know what he had?

Bradinbam. He had half a Share of the Money, and a whole Share of the Goods.

Cl. of Arr. *Hugh Parrot*, what had he?

Bradinbam. Half a Share.

Cl. of Arr. Had *Richard Barlicorn* a Share?

Bradinbam. He had half a Share of Money, and a whole Share of Goods.

Cl. of Arr. Had *Abel Owens* any?

Bradinbam. He had half a Share.

Abel Owens. Had I any of it?

Bradinbam. You had it: You took it.

Cl. of Arr. What had *Darby Mullins*?

Bradinbam. He had half a Share of the Money, and a whole Share of the Goods.

Mr. Coniers. Now we have fully proved this as to the *Quedagh Merchant*.

Dr. Newton. When you came to *Madagascar*, what was done there?

Bradinbam. There came a *Canoo* to us with some *English Men* in her; they were formerly acquainted with Captain *Kidd*, and they told him, they had heard that he was come to take them, and hang them.

Dr. Newton. Who were they?

Bradinbam. They belong'd to the *Moco Frigate*.

Mr. Coniers. Give a particular Account of that Matter.

Bradinbam. When we came to *Madagascar*, there came a *Canoo* off to us.

Mr. Coniers. From whom?

Bradinbam. From the *Moco Frigate*, Captain *Culliford* was the Commander; and there were some white Men in her, that had formerly been acquainted with Captain *Kidd*; they heard that he was come to take them, and hang them. He told them it was no such thing, for he was as bad as they.

Mr. Coniers. Were they thought to be Pirates?

Bradinbam. They were so.

Mr. Coniers. What was it that Captain *Kidd* said?

Bradinbam. He assured them it was no such thing; and afterwards went aboard with them, and swore to be true to them; and he took a Cup of *Bombae*, and swore to be true to them, and assist them; and he assisted this Captain *Culliford* with Guns, and an Anchor, to fit him to Sea again.

L. C. B. Ward. How came you to know all this? Was you aboard then?

Bradinbam. I was aboard then, and I heard the Words.

Dr. Newton. Were any of the Goods divided at *Madagascar*?

Bradinbam. Yes.

Mr. Coniers. Now look on the Prisoners again: You say, after he met with this Captain *Culliford*, you went and had a Division made; pray give an Account of it.

Bradinbam. When we came to *Madagascar*, Captain *Kidd* ordered the Goods to be carried ashore, and shared; and he had forty Shares himself.

Cl. of Arr. Had *Nicholas Churchill* a Share?

Bradinbam. Yes.

Cl. of Arr. Had *James Howe* a Share?

Bradinbam. Yes.

Cl. of Arr. Had *Robert Lamley* a Share?

Bradinbam. Yes.

Cl. of Arr. Had *William Jenkins* a Share?

Bradinbam. Yes.

Cl. of Arr. Had *Gabriel Loffe* a Share?

Bradinbam. Yes.

Cl. of Arr. Had *Hugh Parrot* a Share?

Bradinbam. Yes.

Cl. of Arr. Had *Richard Barlicorn* a Share?

Bradinbam. Yes.

Cl. of Arr. Had *Abel Owens* a Share?

Bradinbam. Yes.

Cl. of Arr. Had *Darby Mullins* a Share?

Bradinbam. Yes.

Cl. of Arr. So that you say, every one of the Prisoners at the Bar had a Share.

Bradinbam. Yes.

Mr. Coniers. What became afterwards of the *Adventure Galley*?

Bradinbam. She was so leaky, that she had two Pumps going; and when she came to shore, they left her, because she was not fit to go to Sea again: And so Captain *Kidd* went aboard the *Scuddee Merchant*, and designed to make a Man of War of her.

Mr. Coniers. What is that *Scuddee Merchant*? Do you mean the *Quedagh Merchant*?

Bradinbam. Yes.

L. C. B. Ward. What became of that Ship afterwards?

Bradinbam. I left him at *Madagascar*, after the Money and Goods were divided; and can give no Account afterwards.

Dr. Newton. But you say, Capt. *Kidd* went aboard the *Quedagh*.

Bradinbam. Yes.

Mr. Coniers. My Lord, we have done as to this Witness; if they will ask any Thing they may.

Cl. of Arr. Will any of you ask him any Questions?

Kidd. He says, when he went out first from *England*, he went out of *Plymouth* in *May*, which he did not; for we went in *April*, therefore this is a Contradiction.

L. C. B. Ward. Mr. *Kidd*, if you will ask him any Questions, you may. Do you desire he should be positive when you went from *Plymouth*?

Bradinbam. It was about the First of *May*, my Lord.

L. C. B. Ward. What Year?

Bradinbam. In the Year 1696.

Cl. of Arr. *Nicholas Churchill*, will you ask him any Questions?

Churchill. I would have went ashore at *Cara-war*, but the Captain would not let me.

L. C. B. Ward. It is proved, that you was at the

the taking of the *Quedagh Merchant*, and dividing the Goods.

Churchill. Yes, my Lord; but I could not help it; I was forced to do what the Captain ordered me.

Cl. of Arr. James Howe, will you ask him any Questions?

James Howe. Have not I obeyed my Captain in all his Commands?

L. C. B. Ward. There is no doubt made of that. If any of you will ask him any Questions, you may.

Kidd. Did you not see any *French Passes* aboard the *Quedagh Merchant*?

Bradinbam. You told me you had *French Passes*; I never did see them.

Kidd. Did you never declare this to any body, that you saw these *French Passes*?

Bradinbam. No, I never did see any; but I only said, I heard you say you had them.

Churchill. Had I any Share?

Bradinbam. Yes.

Churchill. How will you prove that?

Jenkins. My Lord, I ask him, Whether I was not a Servant?

L. C. B. Ward. Ask the Witness what Questions you will.

Bradinbam. My Lord, he was a Servant.

L. C. B. Ward. Who was he Servant to?

Bradinbam. To *George Bullen*.

Jenkins. My Lord, I beg you will examine my Indenture, for I have it in my Pocket; I had nothing aboard that Ship, but what my Master had.

Bradinbam. But you had a Share of the Goods: I cannot tell whether your Master had it afterwards.

Cl. of Arr. Gabriel Loffe, have you any Question to ask him?

Gab. Loffe. I have nothing to say to him, but to ask him, Whether I did ever disobey my Captain's Commands, or was any ways mutinous on board the Ship?

Bradinbam. No, I cannot say you did.

Cl. of Arr. Hugh Parrot, do you ask him any Questions?

Parrot. No.

Cl. of Arr. Richard Barlicorn, do you ask him any more Questions?

Barlicorn. I ask him, Whether I was not the Captain's Servant?

L. C. B. Ward. Yes, he says you was.

Cl. of Arr. Abel Owens, will you ask him any Questions?

Owens. I have nothing to say; but depend upon the King's Proclamation.

Cl. of Arr. Darby Mullins, have you any Questions to ask him?

Mullins. My Lord, he knows I had nothing but what Captain *Kidd* was pleased to give me.

L. C. B. Ward. Was he a Servant to Captain *Kidd*, or no?

Bradinbam. He had a half Share of Money, and a whole Share of Goods.

Mr. J. Powel. What was the Reason some had whole Shares, and some half Shares?

Bradinbam. Some were able Seamen, and some Landmen or Servants. There were in all one hundred and sixty Shares, whereof Capt. *Kidd* had forty; and some of the Men had whole Shares, and some only half Shares.

Mr. Cowper. You told us at first, that in your

Passage to *New-York*, you took a *French Banker*, and that he condemned her at *New-York*.

Bradinbam. Yes.

Mr. Cowper. Did he offer to carry any other Ships he took, to be condemned?

Bradinbam. No, Sir, never.

Mr. Coniers. Call *Joseph Palmer*. (*Who appeared.*) *Mr. Palmer*, give my Lord, and the Jury, an Account, whether you were one of the Men that went with Capt. *Kidd* in the *Adventure-Galley*.

Palmer. Yes, I was.

Mr. Coniers. Then give an Account when you left *England*; and of your Proceedings in your Voyage.

Palmer. About the Last of *April*, or the Beginning of *May*, 1696, we went out of *Phymouth* to *New-York*, and by the Way took a *French Banker*. And in *July* we came to *New-York*. About the 6th of *February* we went to *Maderas*.

Mr. Coniers. When you were at *New-York*, was there any Publication of any Thing, to invite Men to come in to Captain *Kidd*?

Palmer. Yes, there were Articles set up for Men to come aboard Captain *Kidd's* Ship: He was to have forty Shares for his Ship, and every Man was to have a Share; and they were to give him six Pounds a Man for their Arms.

Mr. Coniers. How many Men was his Complement?

Palmer. When we came from *New-York*, he had between one hundred and fifty and one hundred and sixty Men.

Mr. Coniers. Give an Account what you did after this: Whither did you go then?

Palmer. We went from *New-York* to *Maderas*, and from thence to *Bonavist*, and there we took in Salt; and from thence we went to *St. Jago*, and there we bought Provisions; and from thence we went to *Madagascar*. When we were not far from the *Cape of Good Hope*, he met with Capt. *Warren*, with three Sail of Men of War beside himself; there was the *Tyger*, and the *King fisher*, and another Ship; and Capt. *Kidd* kept them Company about three or four Days, and after that went to *Madagascar*, and some time in *February* arrived there; and there we watered and victualled. We came to *Malabar* about the First of *June*. Then we went to *Joanna*, and from thence to *Mabala*; and from thence to *Joanna* again: And then we met with some *Indian Merchants*; so we watered the Ship there, and did them no Harm: And from thence we went to *Mabala*, where Captain *Kidd* graved his Ship. We had a great Sickness in the Ship, and sometimes we lost four or five Men in a Day. And afterwards we went to *Joanna* again, and there came aboard several *French Men* and several *English Men* that had lost their Ship. Those *French Men* lent Captain *Kidd* some Money to mend his Ship. And after this, we came to a Place called *Mab-bee*, in the *Red-Sea*, and took in Water, and *Guinea Corn*, that he took from the Natives: And from thence we went to *Babs-Key*.

Mr. Coniers. What Time was it that you came to that *Babs-Key*?

Palmer. In *July*, 1697.

Mr. Coniers. Now pray tell us what passed there?

Palmer. When Capt. *Kidd* came to *Babs-Key*, he stay'd there about three Weeks.

Mr. Coniers. Why did you stay there? Tell us the Reason of it.

Palmer.

Palmer. I heard him say, *Come Boys, I will make Money enough out of that Fleet.*

Mr. Coniers. Out of what Fleet?

Palmer. The *Mocca Fleet*. When we came to the Key, he ordered some of his Men to look out as Spies. He sent his Boat three times to make a Discovery, and he gave them Orders, either to take a Prisoner, or to get an Account what Ships lay there. And the Boat went twice, and brought no News; but the third time they brought Word, that there were fourteen or fifteen Ships lying there ready to sail; some of them had *English Colours*, some *Dutch Colours*, and some *Moorish Colours*; and there was a great Ship with red Colours, with her Fore-top-sail loose, ready to sail. And Captain Kidd ordered his Men to take Care these Ships did not pass by in the Night.

Mr. Coniers. You say, he order'd his Men to watch this Fleet: How did he order them?

Palmer. He order'd them by a List in their Turns, to look out for the coming of this Fleet: And so after four or five Days the Fleet came down in an Evening, about the 14th or 15th of August: The next Morning Captain Kidd went after them, and he fell into the Midst of the Fleet, and there was a *Dutch Convoy*, and an *English* one among them. He went into the Midst of the Fleet, and fired a Gun after a *Moorish Ship*, and the two Men of War fired at us, but did no Harm, for they did not reach us. So we left the Fleet, and from thence went to *Carawar*.

Mr. Coniers. Tell what passed there.

Palmer. Then we met with a small Vessel belonging to *Aden*.

Mr. Coniers. What Country did it belong to?

Palmer. Black People, only there was one *Thomas Parker*, and a *Portuguese*, *Don Antonio*, on Board.

Mr. Coniers. Was he the Commander of the Ship?

Palmer. I cannot tell.

Mr. Coniers. What did Captain Kidd do with this Ship?

Palmer. He took this *Parker* for a Pilot, and the *Portuguese* for Linguister.

Mr. Coniers. What do you mean by that Word Linguister?

Palmer. An Interpreter, to speak *Spanish* and *Portuguese*.

Mr. Coniers. Did he take any Thing out of the Ship besides the Men?

Palmer. He took a Bale of Pepper, and a Bale of Coffee, and let the Ship go. But after this we went to *Carawar*.

Mr. Coniers. Before you let the Ship go, how were the Men used by him?

Palmer. He ordered some of the Men to be hoisted up by their Arms, and drubb'd with a naked Cutlafs: They were laid with their Hands backward.

Mr. Coniers. When they were hoisted up, give an Account how they were used, and for what Reason.

Palmer. They were beat with a naked Cutlafs, to make them discover what Money was aboard.

Mr. Coniers. What was the next Thing?

Palmer. He took out this *Parker* for a Pilot, and *Antonio*, the *Portuguese*, for a Linguister. I heard there was Money taken, but I did not see it.

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Mr. Coniers. What did he do with those Men?

Palmer. He kept them as the other Men were kept.

Mr. Coniers. Was there any Demand made of these Men?

Palmer. When we came to *Carawar*, the Factory demanded them, and he denied them.

Mr. Coniers. What Factory is this?

Palmer. An *English* Factory. There were one *Harvey* and *Mason* came to demand these Men.

Mr. Coniers. And what said Captain Kidd to them?

Palmer. He deny'd that he had any such Men; and he kept them in the Hold, I believe, a Week. Several of his Men would have left him if they could.

Mr. Coniers. What did he do after this?

Palmer. He put to Sea, and met with a *Portuguese* Man of War, and fought her: He engaged her five or six Hours, and afterwards left her; and then he bought some Hogs of the Natives. After he went from this *Carawar*, he went to *Porto*, and took in some Hogs there. And then went to the Island of *Malabar*, and watered his Ship; and his Cooper went ashore, and the Natives cut his Throat. And after this Capt. Kidd sent some Men ashore, and order'd them, that if they should meet any of the Natives, they should kill 'em, and plunder 'em.

Mr. Coniers. Go on, Sir.

Palmer. After that they went to the Coast of *Malabar* again, and in *November* met with a Ship, and took her: One *Schipper Mitchel* was the Commander; she was a *Moorish* Ship.

Mr. Coniers. What became of her?

Palmer. Capt. Kidd carried her to *Madagaskar*.

Mr. Coniers. What Goods were in her?

Palmer. There were two Horses, and ten Bales of Cotton, that he sold to the Natives.

Mr. Coniers. Did he send for any aboard at this Time?

Palmer. There was a *Frenchman* that was to pretend himself the Captain. He took her under *French* Colours, and haled her in *French*; and this *Monsieur le Roy* was to pass for Captain, and he shewed his *French* Pass, and—

Mr. Coniers. Give an Account of his personating the Captain. Who order'd him so to do?

Palmer. Capt. Kidd order'd him so to do; and they haled him in *French*, and he came aboard, and he had a *French* Pass. And then Capt. Kidd told him, he was Captain.

Mr. Coniers. And he took the Ship?

Palmer. Yes, the Cotton and Horses, and sold them afterwards.

Mr. Coniers. Whither went you next?

Palmer. We coasted about the Coast of *Malabar*.

Mr. Coniers. Did you meet with any Boats there?

Palmer. Yes, several.

Mr. Coniers. What did you do with them?

Palmer. Capt. Kidd robb'd and plunder'd them, and turned them adrift again.

Mr. Coniers. What was the next Thing you did?

Palmer. About the First of *January* we met with a *Portuguese* Ship.

Mr. Coniers. Where?

Palmer. On the same Coast we took her.

Mr. Coniers. What did you do with that Ship?

R r

Palmer.

Palmer. He kept her a Week, and took out two Chests of *Indian Goods*, and thirty Jars of Butter, and a Tun of Wax, and half a Tun of Iron, and an hundred Bags of Rice.

Mr. Coniers. Did you take those Goods you mentioned?

Palmer. Yes, and carried them aboard the *Adventure Galley*.

Mr. Coniers. What was the next Ship you met with?

Palmer. The *Quedagh Merchant*.

L. C. B. Ward. Be very plain and particular in this, and how she was taken; for this is the Ship in the Indictment, and for taking which the Prisoners are tried.

Palmer. About the Last of *January* she was taken: I was not then aboard the Galley, for then I was aboard the *November*, and was ordered to get Water. After three or four Days I went aboard; but I was not aboard at the Time she was taken. About three or four Days after, I saw her, and *Capt. Kidd* was aboard; and I believe there were taken out of her Goods to the Value of ten or twelve Thousand Pounds; which were sold, some before they were put ashore, and some after.

Mr. Coniers. To whom were they sold?

Palmer. To the *Banians*. *Capt. Kidd* kept the Seamen to help to sail the Ships.

L. C. B. Ward. What became of the Money the Goods were sold for?

Palmer. It was shared.

L. C. B. Ward. What Share had the Captain?

Palmer. He had forty Shares.

Cl. of Arr. What Share had *William Kidd*?

Palmer. He had forty Shares.

Cl. of Arr. In Goods, or Money?

Palmer. In both Goods and Money.

Cl. of Arr. Look upon *Nich. Churchill*; what had he?

Palmer. He had near two Hundred Pounds of each, which was a Man's Share.

Cl. of Arr. Look upon *James Howe*; Had he any Share?

Palmer. Yes, a whole Share.

Cl. of Arr. Had *Robert Lamley* any Share?

Palmer. He had half a Share of the Money, and a whole Share of the Goods.

Cl. of Arr. *William Jenkins*, Had he any Share?

Palmer. He had half a Share of the Money, and a whole Share of the Goods.

Cl. of Arr. Had *Gabriel Loffe* any Share?

Palmer. He had half a Share of the Money, and a whole Share of the Goods.

Mr. Coniers. Why had they no more?

Palmer. They were Land-men.

Cl. of Arr. *Hugh Parrot*, Had he any?

Palmer. He had a whole Share.

Cl. of Arr. Had *Richard Barlicorn* any Share?

Palmer. He had half a Share.

Cl. of Arr. Had *Abel Owens* any?

Palmer. He had a whole Share.

Cl. of Arr. Had *Darby Mullins* any Share?

Palmer. He had a whole Share.

Mr. Coniers. What became of the rest of the Goods.

Palmer. They were carried to *Madagascar*.

Mr. Coniers. Who ordered the Goods to be hoisted out and shared? Who ordered that?

Palmer. At the Beginning I was not there.

Mr. Coniers. Who ordered it?

Palmer. *Capt. Kidd*: And most of the Goods were ashore before I came back; and before I came back, he had his Share, and most of the rest.

Mr. Coniers. How many of the Prisoners at the Bar had their Share of the Goods?

Palmer. All these Men.

Cl. of Arr. Whose Shares were divided to them before you went away?

Palmer. None; but only they were prepared in order to be divided.

L. C. B. Ward. Did you hear any of them say, they had any Shares.

Palmer. Yes, *Hugh Parrot*, and *Gabriel Loffe*.

Cl. of Arr. What say you to *William Kidd*? Did he own he had any Share?

Palmer. No.

Cl. of Arr. Did you hear *Nicholas Churchill* say he had any?

Palmer. No, I did not; I cannot say, I heard them say so.

Cl. of Arr. Did you hear *Gabriel Loffe* and *Hugh Parrot* say, they had any Shares?

Palmer. Yes, I heard them say so.

Mr. Coniers. Whither did you proceed next?

Palmer. We left *Capt. Kidd* there; I went no further with him.

Mr. Coniers. I ask you, Whether you met with any Ships besides what you mentioned?

Palmer. When we came to *Madagascar*, in the latter end of *April*, or beginning of *May*, 1696, there was a Ship call'd, *The Resolution*, which was formerly call'd *The Moco Frigate*; several of the Men came off to *Capt. Kidd*, and told him, they heard he came to take, and hang them. He said, that it was no such Thing, and that he would do them all the Good he could. And *Captain Culliford* came aboard of *Capt. Kidd*, and *Capt. Kidd* went aboard of *Culliford*.

Mr. Coniers. Who was that *Culliford*?

Palmer. The Captain of the Ship. And on the Quarter-deck they made some Bomboo, and drank together; and *Capt. Kidd* said, Before I would do you any Harm, I would have my Soul fry in Hell-fire; and wished Damnation to himself several times, if he did. And he took the Cup, and wished that might be his last, if he did not do them all the Good he could.

Mr. Powel. Did you take these Men to be Pirates?

Palmer. They were reckoned so.

Dr. Newton. Did *Captain Kidd* make *Culliford* any Presents?

Palmer. Yes, he had four Guns of him.

Dr. Newton. Of whom?

Palmer. Of *Captain Kidd*; he presented him with them.

Mr. Powel. Was there not a Present on the other Side?

Palmer. I believe there was, I have heard so; I heard *Culliford* say, I have presented *Captain Kidd* to the Value of four or five Hundred Pounds.

Mr. Cowper. Were these Kindnesses done to *Culliford*, after *Culliford's* Men said, they heard *Capt. Kidd* came to hang them?

Palmer. Yes.

Mr. Cow-

Mr. Cowper. What did Captain Kidd do after that?

Palmer. He went aboard the *Quedagh Merchant*.

Mr. Cowper. What did he do with his own Ship?

Palmer. She was leaky, and he left her.

Mr. Cowper. Did he carry, or attempt to carry, any of the Ships he took, in order to condemn them, besides that *French Banker*?

Palmer. He never did, nor talked of any such thing.

L. C. B. Ward. Mr. Kidd, Will you ask this Witness any Questions?

Kidd. I ask him, Whether I had no *French Passes*?

Palmer. Indeed, Captain Kidd, I cannot tell. I did hear him say, that he had *French Passes*, but I never saw them.

L. C. B. Ward. Those Goods that were taken out of the *Quedagh Merchant*, whose Goods were they supposed to be?

Palmer. The *Armenian Merchants*. I have heard Capt. Kidd say several times, he had *French Passes*.

Kidd. And did you hear no Body else so so?

Palmer. No.

Cl. of Arr. Churchill, Will you ask any Questions?

Churchill. My Lord, I have no Questions to ask him.

Cl. of Arr. James Howe, Will you ask him any Questions?

J. Howe. No.

Cl. of Arr. Robert Lamley, Will you ask him any Questions?

R. Lamley. No.

Cl. of Arr. William Jenkins, Will you ask him any Questions?

William Jenkins. Had I half a Share?

Palmer. You received half a Share of Money, and a whole Share of Goods.

Will. Jenkins. You know that I was a Servant, and had nothing in this Voyage but what my Master had.

Cl. of Arr. Gabriel Loffe, Will you ask him any Questions?

Gabriel Loffe. No.

Cl. of Arr. Hugb Parrot, Will you ask him any Questions?

Hugb Parrot. No.

Cl. of Arr. Richard Barlicorn, Will you ask him any thing?

Richard Barlicorn. No.

Cl. of Arr. Abel Owens, Will you ask him any thing?

Abel Owens. No.

Cl. of Arr. Darby Mullins, Will you ask him any thing?

Darby Mullins. No.

Kidd. It is in vain to ask any Questions.

L. C. B. Ward. Then you may make your own Defence. Come, Mr. Kidd, what have you to say in your own Defence?

Kidd. I had a Commission to take the *French*, and *Pirates*; and in order to that, I came up with two Ships, that had *French Passes* both of them. I called you all a Deck to consult; And did not a great many of the Men go aboard? Did not you go? You know, Mr. Palmer, I would have

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given these Ships to them again, but you would not; you all voted against it.

Palmer. This Man (pointing to the *Armenian*, that was in Court) offered you twenty thousand Rupees for the Ship, and you refused it.

Kidd. Did not I ask, Where will you carry this Ship? And you said, we will make a Prize of her; we will carry her to *Madagascar*.

Palmer. Says Captain Kidd to his Men, These *Armenians* make such a Noise for the Ship, that I must say, my Men will not part with her; but there was not a quarter Part of the Men concerned in it. The *Armenians* came crying and wringing their Hands: Upon which, says Capt. Kidd, I must say, my Men will not give them the Ship. And so some of the Men went on the Fore-castle, and pretended, they would not give them the Ship; but there was not a quarter Part of the Men concerned in it.

L. C. B. Ward. Did those Goods belong to *Frenchmen*, or *Armenians*?

Palmer. To *Armenians*.

L. C. B. Ward. What was that Pretence of a *French Pass* that was on Board the *Quedagh Merchant*?

Palmer. I saw none.

Kidd. But you have heard of it.

Palmer. I have heard of it, but never saw it.

L. C. B. Ward. Mr. Kidd, have you any more to say? You speak of a Commission that you had; you may have it read if you please.

Kidd. I desire to have them both read.

L. C. B. Ward. Yes, they shall.

Then his Commission of Reprisals upon the *French* was read.

WILLIAM the Third, by the Grace of God, of England, Scotland, France and Ireland, King, Defender of the Faith, &c. Whereas We have taken into Our Consideration the Injuries, Spoils, and Acts of Hostility committed by the French King and his Subjects, unto, and upon the Ships, Goods, and Persons of our Subjects extending to their grievous Damages, and amounting to great Sums; and that notwithstanding the many and frequent Demands made for Redress and Reparation, yet none could ever be obtain'd: We did therefore, with the Advice of our Privy Council, think fit, and ordered, That general Reprisals be granted against the Ships, Goods, and Subjects of the French King; so that as well Our Fleets and Ships, as also all other Ships and Vessels, that shall be Commissioned by Letters of Marque, or general Reprisals, or otherwise, shall or may lawfully seize, and take all Ships, Vessels, and Goods belonging to the French King, or his Subjects, or Inhabitants within any of the Territories of the French King: And such other Ships, Vessels, and Goods, as are, or shall be liable to Confiscation, and bring the same to Judgment in our High Court of Admiralty of England, or such other Court of Admiralty as shall be lawfully Authorized in that behalf, according to the usual Course and Laws of Nations. And whereas William Kidd is thought fitly qualified, and hath Equipped, Furnished, and Victualled a Ship called, The Adventure Galley,

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of

of the Burthen of about Two hundred eighty-seven Tuns, whereof the said William Kidd is Commander. And whereas he the said William Kidd hath given Security with Sureties by Bond to Us, in Our said High Court of Admiralty, according to the Effect and Form set down in certain Instructions made the second Day of May, One thousand Six hundred Ninety-three, and in the Fifth Year of our Reign, a Copy whereof is given to the said Captain William Kidd. Know ye therefore that We, by these Presents, grant Commission to, and do License and Authorize the said William Kidd to set forth in warlike Manner the said Ship call'd, The Adventure Galley, under his own Command, and therewith by Force of Arms to Apprehend, Seize, and Take the Ships, Vessels, and Goods belonging to the French King and his Subjects, or Inhabitants within the Dominions of the said French King, and such other Ships, Vessels, and Goods, as are, or shall be liable to Confiscation, and to bring the same to such Port as shall be most convenient, in order to have them legally adjudged in Our High Court of Admiralty, or such other Court of Admiralty as shall be lawfully Authorized in that behalf; which being Condemned, it shall and may be lawful for the said William Kidd, to sell and dispose of such Ships, Vessels, and Goods, so adjudged and condemned, in such sort and manner as by the Course of Admiralty hath been accustomed (except in such Cases where it is otherwise directed by the said Instructions and the Act of Parliament thereunto annexed.) Provided always, that the said William Kidd keep an exact Journal of his Proceedings, and therein particularly take Notice of all Prizes which shall be taken by him, the Nature of such Prizes, the Times and Places of their being taken, and the Values of them, as near as he can judge; as also of the Station, Motion and Strength of the Enemy, as well as he or his Mariners can discover by the best Intelligence he can get; and also whatsoever else shall come unto him, or any of his Officers, or Mariners, or be discovered or declared unto him or them, or found out by Examination, or Conference with any Mariners or Passengers of, or in any of the Ships or Vessels taken, or by any other Person, or Persons, or by any other Ways or Means whatsoever touching or concerning the Designs of the Enemy, or any of their Fleets, Vessels, or Parties, and of their Stations, Ports, and Places, and of their Intents therein; and of what Merchant Ships or Vessels of the Enemy's bound out, or home, or to any other Place, as he, or his Officers, or Mariners shall hear of, and what else material in those Cases may arrive to his, or their Knowledge; of all which he shall from Time to Time, as he shall, or may have Opportunity, transmit an Account to our Commissioners for executing the Office of Lord High-Admiral of England, or their Secretaries; and to keep a Correspondence with them by all Opportunities that shall present. And further Provided, That nothing be done by the said William Kidd, or any of his Officers, Mariners, or Company, contrary the true Meaning of Our aforesaid Instructions; but that the said Instructions shall be by them, and each and every of them, as far as they, or any of them are therein concern'd, in all Particulars well and duly perform'd and observed. And we pray and desire all Kings, Princes, Potentates, Estates, and Republicks, being our Friends and Allies, and all

others to whom it shall appertain, to give the said William Kidd all Aid, Assistance and Succour in their Ports with his said Ship, Company and Prizes, without doing, or suffering to be done, to him any Wrong, Trouble or Hindrance; We offering to do the like, when We shall be by them thereunto desired. And We will and require all Our own Officers whatsoever, to give him Succour and Assistance as Occasion shall require. This Our Commission to continue in force till farther Order to the contrary from Us, or Our Commissioners for executing the Office of Lord High-Admiral of England. In Witness whereof We have caused the Great-Seal of Our High Court of Admiralty of England to be hereunto affixed. Given at London the Eleventh Day of December, in the Year of Our Lord, One thousand Six hundred Ninety-five, and in the Seventh Year of Our Reign.

ORLANDO GEE, Reg.

Mr. J. Powel. Capt. Kidd, Can you make it appear there was a French Pass aboard the *Quedagh Merchant*.

Will. Kidd My Lord, these Men say, They heard several say so.

Mr. Coniers. But all came from you.

L. C. B. Ward. If there was a French Pass in the Ship, you ought to have condemned her as Prize.

Then his other Commission was read for Cruising against the Pirates.

WILLIAM R.

WILLIAM III. By the Grace of God, King of England, Scotland, France, and Ireland, Defender of the Faith, &c. To Our trusty and well-beloved Captain William Kidd, Commander of the Ship *Adventure Galley*, or to any other, the Commander for the Time being, Greeting. Whereas We are informed, That Captain Thomas Too, John Ireland, Captain Thomas Wake, and Captain William Maze, or Mace, and other Our Subjects, Natives, or Inhabitants of New-England, New-York, and elsewhere, in Our Plantations in America, have associated themselves with divers other wicked and ill-disposed Persons, and do, against the Law of Nations, daily commit many and great Piracies, Robberies, and Depredations upon the Seas in the Parts of America, and in other Parts, to the great Hindrance and Discouragement of Trade and Navigation, and to the Danger and Hurt of Our loving Subjects, Our Allies, and all others Navigating the Seas upon their lawful Occasions: Now Know Ye, That We being desirous to prevent the aforesaid Mischiefs, and, as far as in Us lies, to bring the said Pirates, Free-Booters, and Sea-Rovers to Justice, have thought fit, and do hereby Give and Grant unto you the said Captain William Kidd (to whom Our Commissioners for Exercising the Office of Our Lord High-Admiral of England, have Granted a Commission as a private Man of War, bearing Date the Eleventh Day of December, One thousand Six

Six hundred and Ninety-five) and unto the Commander of the said Ship, for the Time being, and unto the Officers, Mariners, and others, who shall be under your Command, full Power and Authority, to Apprehend, Seize, and Take into your Custody, as well the said Captain Thomas Too, John Ireland, Captain Thomas Wake, and Captain William Maze, or Mace, as all such Pirates, Free-Booters, and Sea-Rovers, being either Our own Subjects, or of any other Nations associated with them, which you shall meet upon the Coast or Seas of America, or in any other Seas, or Ports, with their Ships and Vessels, and also such Merchandizes, Money, Goods, and Wares, as shall be found on Board, or with them, in case they shall willingly yield themselves: But if they will not submit without Fighting, then you are by Force to compel them to yield. And We do also require you to bring, or cause to be brought, such Pirates, Free-Booters, and Sea-Rovers, as you shall seize, to a legal Trial, to the End they may be proceeded against according to Law in such Cases. And We do hereby charge, and command all Our Officers, Ministers, and other Our loving Subjects whatsoever, to be Aiding and Assisting to you in the Premises. And we do hereby enjoin you to keep an exact Journal of your Proceeding in the Execution of the Premises, and therein to set down the Names of such Pirates, and of their Officers and Company, and the Names of such Ships and Vessels as you shall by virtue of these Presents seize and take, and the Quantities of Arms, Ammunition, Provision, and Loading of such Ships, and the true Value of the same, as near as you can judge. And we do hereby strictly charge, and command you, as you shall answer the same at your utmost Peril, That you do not in any manner offend, or molest any of Our Friends or Allies, their Ships, or Subjects, by Colour or Pretence of these Presents, or the Authority thereby Granted. In Witness whereof, We have caused Our Great-Seal of England to be affixed to these Presents. Given at Our Court at Kensington, the Twenty-sixth Day of January, One thousand Six hundred Ninety-five, in the Seventh Year of Our Reign.

L. C. B. Ward. Now you have had the Commissions read, What do you excuse your self by? What Use do you make of them to justify or defend your self?

Will. Kidd. About this *Quedagh Merchant*.

L. C. B. Ward. What, would you have her a French Ship?

Kidd. Under a French Commission. The Master was a Tavern-keeper at Suratt: Do not you know that, Mr. Palmer?

Palmer. I was not on board when this Pass came; I never saw it.

L. C. B. Ward. But then you should have condemned this Ship, if she had been a French Ship, or had a French Pass.

Kidd. The Evidence says, It was by my Order that the Goods were taken out; I was not at the sharing of the Goods, I knew nothing of it.

L. C. B. Ward. Out of the Goods that were taken, some were sold in the Country there, and the Produce of them was so much Money; it is proved, That that Money was divided; and pursuant to the Articles set up, you were to have

forty Shares, and the rest of the Men whole, or half Shares, as they deserved. Now this Money both these Men swear it was taken by you: And the first swears, That the Goods not sold then, that remained in the Ship, were also divided, and that you had forty Shares of them: And the other says, He did not see the Goods divided, but two of the Men acknowledged it.

Kidd. My Lord, this Frenchman was aboard five or six Days before I understood there was any Englishmen aboard. Well, said I, What are you? An Englishman, I am Master. What have you to shew for it? Nothing says he. When they see a French Pass, they will not let the Ship go.

Mr. J. Powel. You have produced Letters Patents that impowered you to take Pirates; Why did you not take *Culliford*?

Kidd. A great many of the Men were gone ashore.

Mr. J. Powel. But you presented him with Great Guns, and swore you would not meddle with them.

L. C. B. Ward. When the Question was put, Are you come to take us, and hang us? You answered, I will fry in Hell before I will do you any Harm.

Kidd. That is only what these Witnesses say.

L. C. B. Ward. Did you not go aboard *Culliford*?

Kidd. I was not aboard *Culliford*.

L. C. B. Ward. These Things prefs very hard upon you. We ought to let you know what is observed, that you may make your Defence as well as you can.

Kidd. I desire Mr. Davis may be called. (He was called accordingly, and appeared.) Mr. Davis, pray give an account whether you did not see a French Pass?

L. C. B. Ward. You are his Witness; you must answer what he asks you.

Mr. Davis. I came a Passenger from *Madagascar*, and from thence to *Amboyna*, and there he sent his Boat ashore, and this Man was ashore; and there was one said, Capt. Kidd was published a Pirate in *England*; and he gave those Passes to him to read. The Captain said, they were French.

L. C. B. Ward. Who gave them?

Mr. Davis. Capt. Kidd gave them.

L. C. B. Ward. Did you know any Thing of taking the *Quedagh Merchant*?

Mr. Davis. No, no.

L. C. B. Ward. Then you cannot say, they have any relation to the *Quedagh Merchant*.

Mr. Davis. No, not I.

Kidd. You heard Capt. Elms say, They were French Passes.

Mr. Davis. Yes, I heard Capt. Elms say, They were French Passes. Says he, if you will, I can turn them into Latin.

Mr. Bar. Hatfield. Have you any more to say, Capt. Kidd.

Kidd. I have some Papers, but my Lord *Bellamont* keeps them from me, that I cannot bring them before the Court.

Cl. of Arr. Have you any more to say?

Kidd. I have some to call, that will bear Testimony to my Reputation.

L. C. B. Ward. Call whom you please, we will not abridge you.

Kidd.

Kidd. Call Mr. *Bradinbam*. I desire this of him, whether he never saw the *French Passes*, and whether he did not tell *Col. Bafs* so?

Bradinbam. I never saw a *French Pass*; I only heard so.

Col. Bafs. I have heard Mr. *Bradinbam* say, He heard *Capt. Kidd* say, he had *French Passes* on Board; but I never heard him say, he saw them *Passes*.

Kidd. He just now denied that he ever saw the *French Passes*, or heard of them.

L. C. B. Ward. He says so now, that he never saw them, only he heard you say so. *Col. Bafs*, have you heard him say the *Passes* related to the *Quedagh Merchant*?

Col. Bafs. He has often said, he heard *Kidd* say the *French Passes* were aboard.

Cl. of Arr. Have you any more *Witnesses* to call?

Kidd. I desire Mr. *Say* may be called: He is in the Prison, I desire he may be sent for.

L. C. B. Ward. We will give you all the liberty you can expect. If you have any more, you were best call them all together. In the mean time, what say you, *Churchill*?

Churchill. I desire *Col. Bafs* may be called, and that this Affidavit may be read.

L. C. B. Ward. *Col. Bafs*, what have you to say for *N. Churchill*?

Col. Bafs. My Lord, I only wait for his Question.

L. C. B. Ward. *Churchill*, What will you ask *Col. Bafs*?

Churchill. Whether I did not surrender my self to him.

L. C. B. Ward. If you can make your Case come within the Proclamation, you must make it appear, that you surrendered according to the Directions of it.

Churchill. My Lord, we came in, in the Year 1699, and surrendered our selves to *Col. Bafs*.

L. C. B. Ward. If you can make it appear that you surrendered your selves in pursuance of that, to the Persons appointed to receive your Surrender, that will be somewhat to the Point; but *Col. Bafs* had not Power by that Proclamation to receive your Surrender; and therefore you cannot have any Benefit by it, unless you bring your Case within it. But you may call *Col. Bafs*, if you will.

Churchill. My Lord, we came in upon that Proclamation, and might have gone away any Day if we would; we but stay'd in the Country, and we never offered to go away till it was my Lord *Bellamont's* Pleasure to send for us.

L. C. B. Ward. You may call *Col. Bafs*, and hear what he says.

Churchill. *Col. Bafs*, will you be pleased to tell my Lord, whether we did not surrender our selves to you in pursuance of the King's Proclamation.

Col. Bafs. My Lord, about the 29th of May, 1699, I had an Account of some Persons, that were supposed Pirates, that were come to surrender themselves; and on my Landing, these two Persons came to me, and surrendered to me the 4th of June, 1699. And I told them, I must refer their Case to his Majesty at home,

L. C. B. Ward. Who were they that surrendered to you?

Col. Bafs. *Nicholas Churchill*, and *James Howe*. *L. C. B. Ward.* Where were you Governour?

Col. Bafs. At the Province of *West-Jersey*. *Dr. Oxenden.* How came they here?

Col. Bafs. I left them under Bail. *L. C. B. Ward.* Did you send them over?

Col. Bafs. No, my Lord, I came to *England* before: I left them in Custody. They were sent over Prisoners by my Successor.

L. C. B. Ward. What did they say to you when they surrendered themselves to you?

Col. Bafs. They said they had been in the *Indies*, and that they had committed several Piracies, and desired they might have the Benefit of his Majesty's Proclamation.

L. C. B. Ward. What Pirates did they mention to you?

Col. Bafs. They mentioned the *Moca Frigate*, and *Capt. Kidd*.

Dr. Oxenden. Had you the Proclamation? *Col. Bafs.* No; but I had seen one of them.

L. C. B. Ward. Did you take your self allowed to receive their Surrender?

Col. Bafs. No, my Lord, I did not.

Cl. of Arr. *Nicholas Churchill*, have you quite done?

N. Churchill and *James Howe.* Yes, Sir, we came in upon his Majesty's Proclamation.

Cl. of Arr. *Robert Lamley*, what have you to say?

Robert Lamley. My Lord, I was but a Servant. *L. C. B. Ward.* Who was you a Servant to?

Robert Lamley. To Mr. *Owens*. *L. C. B. Ward.* How does that appear?

Robert Lamley. The Surgeon knows it.

Bradinbam. My Lord, he was concern'd with the Cook.

Robert Lamley. My Lord, here is my Indenture. (*Which was read.*)

Cl. of Arr. *William Jenkins*, what have you to say?

William Jenkins. I have nothing to say, but I was a Servant to Mr. *Bullen*.

L. C. B. Ward. Where is your Witness to prove it?

Jenkins. Both the King's Witnesses know it. *Bradinbam* and *Palmer.* My Lord, he was his Servant.

Cl. of Arr. *Gabriel Loffe*, what say you for your self?

Loffe. My Lord, about the Year 1696, I entered my self on Board *Capt. Kidd*, and went out with him, and I never disobeyed his Command in any Thing.

L. C. B. Ward. Did he go out under the first Commission?

Palmer. He came aboard at *New-York*.

L. C. B. Ward. Did you take him in before, or after the Articles were set up?

Palmer. After the Articles were set up.

L. C. B. Ward. Did *Capt. Kidd* take any Notice of his Commission in the Articles?

Palmer. Yes, my Lord, he did mention them. I have a Copy of the Articles.

Mr. Crawley. *Mr. Palmer*, Are these Articles the Copy of the Articles set up by *Capt. Kidd* at *New-York*?

Palmer. Yes.

Mr.

Mr. J. Gould. Did you examine them?

Palmer. To the best of my Knowledge they were a true Copy.

Mr. J. Tourton. Did you compare them with the Original?

Palmer. No, my Lord.

Cl. of Arr. Gabriel Loffe, Have you any more to say?

Loffe. Yes, a great deal more to ask the Evidence.

Cl. of Arr. What will you ask them?

Loffe. Whether I did not obey the Captain.

Mr. J. Tourton. There is no Scruple to be made of that.

Loffe. I went out to serve his Majesty under his Commission.

L. C. B. Ward. But how came you to take part of the Money?

Loffe. I had what they pleased to give me.

L. C. B. Ward. You must needs imagine, that when Capt. Kidd did these extravagant Things, and divided the Money and Goods, that he did not act according to his Commission. What could you think of it?

Cl. of Arr. Hugh Parrot, what have you to say for your self?

Parrot. My Lord, in the Year 1695, in the Month of October, I sailed out of Plymouth in a Merchant-man, bound for Cork in Ireland, there to take in Provisions; thence to the Island of Barbados; and in sight of the Island of Barbados, I was taken by a French Privateer, and carried to Martinico; and thence coming in a Transport-ship, I was brought to Barbados; there I ship'd my self in a Vessel bound to Newfoundland, and thence to Maderas: And then I went to Madagascar, and there I stay'd some short time after, and came in Company with Capt. Kidd; and then the Commander and I had a falling out, and so I went ashore at that Island: And understanding that Capt. Kidd had a Commission from the King, I came aboard Capt. Kidd's Ship, and ever since have been with him.

L. C. B. Ward. Did you come in after he had been at New-York?

Parrot. This was in the Year 1697.

L. C. B. Ward. You have acted with him, and shared with him. Could you imagine he was acting according to his Commission, when he was doing these Things?

Parrot. I thought I was safe where the King's Commission was.

L. C. B. Ward. The Commission was to take Pirates, and not to turn Pirates.

Parrot. Mr. Palmer, did you ever see me guilty of an ill Thing? Did I ever disobey my Captain?

Palmer. You were always obedient to your Commander.

Parrot. Then I came to Madagascar with Captain Kidd, where I might have gone aboard a known Pirate, but I refused it, and kept close to my Captain: And when I came to New-England, I might have gone away as others did; but I had my Liberty at Boston for about a Week, and went up and down, and I surrender'd my self.

L. C. B. Ward. You did not surrender your self, but only you had a Liberty to go away, and did not.

Parrot. I thought there was no need of it. My

Lord, I desire you would ask the Witnesses whether I ever disobeyed the Captain's Commands.

L. C. B. Ward. They say no otherwise, but that you went willingly.

Cl. of Arr. Richard Barlicorn, what have you to say?

Barlicorn. My Lord, I beg leave that I may produce some Evidence for my Reputation. Here is a Certificate from the Parish where I was born.

L. C. B. Ward. That will signify nothing; we cannot read Certificates; they must speak *Viva Voce*.

Barlicorn. Call Benjamin Bond, Daniel Phillips, and James Newton.

L. C. B. Ward. What do you call these Witnesses for?

Barlicorn. To give an Account of my Reputation, what they know of me.

Benj. Bond. I knew him when he was a Child, and he was very civil and honest; I lived near him till he was 13 or 14 Years old: And he came of honest Parents, and behaved himself very civilly all that Time.

L. C. B. Ward. Have you known any Thing of him since?

Bond. No, my Lord.

L. C. B. Ward. What have you to say further?

Barlicorn. My Lord, I was a Servant to Capt. Kidd, and have been with him six Years; and I have a Certificate from several of my Relations that will testify it.

Cl. of Arr. Richard Barlicorn, have you any Thing more to say?

Barlicorn. I am a Servant to Captain Kidd.

L. C. B. Ward. How long have you been so? Where was it that you came first to be his Servant?

Barlicorn. At Carolina.

Cl. of Arr. Abel Owens, what say you for your self?

Owens. My Lord, I desire the Privilege of the Proclamation. I entered my self into the King's Service. I have been in the King's Service, according to his Majesty's Proclamation. I desire it may be read. (*Which was done.*)

L. C. B. Ward. You desire the Benefit of this Proclamation; but you must bring your self under the Qualifications it requires, if you would have any Benefit of it.

Mr. Crawley. He has a Certificate of it.

L. C. B. Ward. Is it within the Proclamation?

Mr. Crawley. The Certificate is dated the 15th of March, 1700, from Mr. Riches, a Justice of the Peace in Southwark.

L. C. B. Ward. Mr. Riches, I suppose, did believe he was within this Proclamation.

Mr. J. Gould. The Pardon extends to all Persons for Piracies committed before that Time, if they surrender themselves to such and such, and enter themselves on board one of his Majesty's Ships.

Mr. Coniers. A Justice of the Peace is not within the Proclamation.

Cl. of Arr. Have you any more to say?

Owens. Only to desire the Benefit of that Proclamation.

L. C. B. Ward. He surrender'd himself to Justice Riches, and then entered himself aboard one of his Majesty's Ships; and then there was Evidence

dence against him when on board, and he was seized: This may be fit to recommend him to the King's Mercy, but it is not a Defence against the Accusation.

Cl. of Arr. Darby Mullins, What do you say for your self?

Mullins. I came in upon the King's Act of Grace; I came ashore with the rest of the People.

L. C. B. Ward. What have you to shew, to entitle you to the Benefit of the Proclamation.

Mullins. I was ready to die of the Bloody-Flux, and not able to go my self, but I sent my Name in to the Governour.

L. C. B. Ward. Where was you when you was so sick?

Mullins. In *West-Jersey*. I came ashore in *Cape May*. I was sick like to die all the Way from *Madagascar*, expecting every Minute to die with the Bloody-Flux.

Dr. Oxenden. How came you to leave Captain Kidd?

Mullins. He used me very hardly, and therefore I left him.

L. C. B. Ward. You had a Dividend of the Money and Goods.

Mullins. He gave it me, and afterwards took it from me.

L. C. B. Ward. Was he your Master?

Mullins. I had no Master.

Dr. Oxenden. How did you come to *Jersey*?

Mullins. I came there with Capt. *Shelley*; he is in Court.

Dr. Oxenden. You were aboard Capt. *Culliford*.

Mullins. I came home, in hopes to get the King's Pardon.

L. C. B. Ward. That which you say is very odd; though you quitted Capt. Kidd's Ship, you went into *Culliford's*.

L. C. B. Ward. Capt. Kidd, you said you had more to say just now; if you have, let us hear it.

Kidd. I desire this Man may be heard two or three Words.

L. C. B. Ward. What is his Name?

Kidd. Mr. Say.

Mr. Say. I happened to be at the *Treasury-Office* in *Broad-street* to receive some Money, and Mr. *White* was there; and he asked me, Will you go along with me, and see one *Elbury*, that is in the *Marshalsea* for Debt? Says I, I am a Stranger to him, I do not care to go. Says he, Bear me Company. So I went with him, and when I came there, I saw Capt. Kidd's Men. And this Mr. *Elbury* was in Company with Capt. Kidd's Surgeon. Says I, I am a Brother of the Quill, I should be glad to drink a Glass with you. We stay'd there but a little while, and asked what that Man was? says he, He his Capt. Kidd's Surgeon. Upon this I said, Here is a mighty Noise about Capt. Kidd; says he, I believe he has done but what he can answer, or that can do him any hurt. Says I, Where have you been with him? He said, at *Madagascar*.

L. C. B. Ward. Mr. *Bradinbam* was with them, there is no doubt of that. It is not to be questioned, that he would not say any Thing ill of them then. Capt. Kidd, have you any Thing more to say.

Kidd. Call Capt. *Humphrys*. (*Who appeared.*)

L. C. B. Ward. What Questions would you ask him?

Kidd. What do you know of me?

Humphrys. I knew you, Sir, in the *West-Indies* in the beginning of the late War; and I know you had the Applause of the General, as I can shew by the General's Letter. I know nothing further of you.

Kidd. Did you know any Thing that I was guilty of any Piracies?

Humphrys. No; but you had a general Applause for what you had done from time to time.

L. C. B. Ward. How long was this ago?

Humphrys. Twelve Years ago.

L. C. B. Ward. That was before he was turned Pirate.

Kidd. Call Capt. *Bond*. (*Who appeared*)

L. C. B. Ward. What do you call him for?

Kidd. Capt. *Bond*, Pray will you give an Account what you know of me.

Bond. I know you was very useful at the beginning of the War in the *West-Indies*.

Mr. B. Hatfell. To be sure they had a good Opinion of him in 1695, when they granted him the Commission.

Kidd. There is nothing in the World can make it appear I was guilty of Piracy; I kept Company with Capt. *Warren* for six Days.

Mr. Coniers. I believe you kept Company more with Captain *Culliford*, than with Captain *Warren*.

Kidd. I never design'd to do any such Thing.

Mr. Coniers. My Lord, we will say nothing at all, but leave it to your Lordship to direct the Jury.

Kidd. I have many Papers for my Defence, if I could have had them.

L. C. B. Ward. What Papers were they?

Kidd. My *French Passes*.

L. C. B. Ward. Where are they?

Kidd. My Lord *Bellamont* had them.

L. C. B. Ward. If you had had the *French Passes*, you should have condemned Ships.

Kidd. I could not, because of the Mutiny in my Ship.

L. C. B. Ward. If you had any Thing of Disability upon you, to make your Defence, you should have objected it at the beginning of your Trial; what you mean by it now I cannot tell. If you have any Thing more to say, you may say it, the Court is ready to hear you.

L. C. B. Ward. Gentlemen of the Jury, the Prisoners at the Bar, *W. Kidd*, *N. Churchill*, *J. Howe*, *R. Lamley*, *W. Jenkins*, *Gab. Loffe*, *Hugh Parrot*, *Rich. Barlicorn*, *Abel Owens*, and *Darby Mullins*, in Number Ten, stand all here Indicted for the Crime of Piracy, charged to be committed by them. And the Instance of the Crime, is for Feloniously and Piratically Seizing and Taking the Ship called *The Quedagh-Merchant*, with the Apparel and Tackling thereof, to the value of 400*l.* and divers Goods mentioned in the Indictment, to the Value of 4500*l.* the Goods of several Persons unknown, from the Mariners of the said Ship, and this at High Sea, within the Jurisdiction of the Court of Admiralty, about ten Leagues from *Cut-teen* in the *East-Indies* the 30th of *January*, 1697, and in the 8th Year of his Majesty's Reign. Now whether all, or any, and which of these Prisoners, are guilty of this Crime of Piracy laid in this

this Indictment, or not guilty, it is your Part to determine according to the Evidence that has been given on both Sides. The Crime charged on them is Piracy, that is, Seizing and Taking this Ship and Goods in it, piratically and feloniously: The Time and Place is laid also in the Indictment. To make good this Accusation, the King's Council have produced their Evidence; and two Witnesses have been examined in this Case, each of them were in the Ship which took the *Quedagh Merchant*, and very well acquainted with all the Proceedings; that is, *Robert Bradinbam*, and *Joseph Palmer*. The first has given you an historical Account of the whole Proceedings of Capt. Kidd, from his first going out of *England* in the *Adventure-Galley*, to the Time of this Fact charged on them. They tell you, That about *May*, 1696, the King intrusted this Capt. Kidd with two Commissions, and they were both read to you: By one of them, under the Admiralty-Seal, he was authorized to set out as a Privateer the *Adventure-Galley*, and therewith to take and seize the Ships and Goods belonging to the *French* King, or his Subjects, and such other as were liable to Confiscation. And by the other Commission, under the Broad-Seal of *England*, Authority was given for the Taking of some Pirates by Name, and all other Pirates in the several Places therein mentioned; but in no sort to offend or molest any of the King's Friends or Allies, their Ships or Subjects, by Colour thereof. And by both Commissions, Command was given to bring all such Ships and Goods, as should be taken, to legal Trials and Condemnations. They tell us, That this Ship set out from *Phymouth* about *May*, 1696, and that in their Passage, they did take a *French* Ship, and they did condemn that Ship. Now, Gentlemen, you must bear this in your Minds, that to make it Piracy, it must be the taking piratically and feloniously upon the High Sea, within the Jurisdiction of the Admiralty of *England*, the Goods of a Friend, that is, such as are in Amity with the King. Now you see what Way they went to work, and what Measures they took. Captain Kidd goes out, and goes to *New-York*; and when he was there, he has a Project in his Head, of setting up Articles between himself and the People that were willing to be concerned with him: For now, whether it seems more probable from what followed, that Captain Kidd designed to manage himself according to the Measures given him, and the Powers of his Commissions, or any other Way, you must consider; for it is told you, That between one hundred and fifty and one hundred and sixty Men came in under these Articles, whereof the other Prisoners were part and concerned in them. And as to those Articles, the Import of them was, That whatever should be taken by these People in their Expeditions, should be divided into one hundred and sixty Parts, whereof Capt. Kidd was to have forty Shares for his Part, and the rest were to have according to the Merit of each Party, some whole Shares, and some half Shares.

Now after these Articles, you perceive what Progress they made, and what Course they took; they went from one Place to another, and used a pretty deal of Severity wherever they came. A Design they had to go into the *Red-Sea*, and they had Expectations of the *Mocca* Fleet that lay at *Mocca*, and they sent their Spies three times to get Intel-

ligence: The two first times they could make no Discovery; but the third time they made an effectual Discovery, that the Fleet was ready to sail; and in the mean time Capt. Kidd lay there in Expectation of this Fleet; and, as the first Witness tells you, Capt. Kidd said, He intended to make a Voyage out of this Fleet. Well, he had a Discovery of this Fleet, and they came accordingly; and they tell you, that he and his Men in the Ship did attack one of the Ships: But these Ships being guarded by two Men of War, he could make nothing of them; however, he shewed what his Intention and Design was. Could he have proved, that what he did was in pursuance of his Commissions, it had been something: But, what had he to do to make any Attack on these Ships, the Owners and Freighters whereof were in Amity with the King? This does not appear to be an Action suitable to his Commission. After he had done this, he came to Land, and there, and afterwards at Sea, pursued strange Methods, as you have heard. The seeming Justification he depends on, is his Commissions. Now it must be observ'd how he acted with relation to them, and what Irregularities he went by. He came to a Place in the *Indies*, and sent his Cooper ashore, and that Cooper was killed by the Natives; and he uses Barbarity, and ties an *Indian* to a Tree, and shoots him to Death. Now he went from Place to Place, and committed Hostilities upon several Ships, dealing very severely with the People.

But this being something foreign to the Indictment, and not the Facts for which the Prisoners at Bar are indicted, we are confined to the *Quedagh Merchant*; but what he did before, shews his Mind and Intention not to act by his Commissions, which warrant no such Things. Gentlemen, you have an Account, that he met with this Ship, *The Quedagh Merchant*, at Sea, and took her; that this Ship belonged to People in Amity with the King of *England*; that he seized this Ship, and divers Goods were taken out of her and sold, and the Money divided pursuant to the Heads contained in those Articles set up at *New-York*. The Witnesses that speak to that, come home to every one of the Prisoners: They tell you, that this Dividend was made; that Captain Kidd had forty Shares of the Money, and the rest of the Prisoners had their Proportions according to the Articles, some whole Shares, and some a half Share of that Money. After they had seized on the Ship, you hear of a certain Sort of Project, that a *Frenchman* should come and pretend himself the Master, and produce, or pretend to produce, a *French* Pass, under a Colour that these People's Ship and Goods, who were *Moors*, should be *Frenchmens* Ship and Goods, or sailed under a *French* Pass, and so justify what he did under the Colour of his Commission from the King. Now no Man knows the Mind and Intention of another, but as it may be discovered by his Actions. If he would have this to be understood to be his Intention, or that it was a Reality, that he took this as a *French* Ship, or under a *French* Pass, then he ought to have had the Ship and Goods inventoried, and condemned according to Law, that he might have had what Proportion belonged to him, and that the King might have had what belonged to him, as his Commissions directed: But here was nothing of that done, but the Money and Goods that were taken were shared; and you

have an Account likewise how some of the Goods were sold, and the Money disposed of, and how the remaining Goods were disposed of; and one Witness speaks positively of the Distribution of the Goods that remain'd unfold, that they were divided according to the same Proportions as the Articles mentioned, and every one of the Prisoners had his Share: There belong'd Forty Shares to Capt. Kidd, and Shares and half Shares to the rest.

Now this is the great Case that is before you, on which the Indictment turns: The Ship and Goods, as you have heard, are said by the Witnesses, to be the Goods of the *Armenians*, and other People that were in Amity with the King; and Captain Kidd would have them to be the Goods of *Frenchmen*, or at least, that the Ship was sailed under *French Passes*. Now if it were so, as Capt. Kidd says, it was a lawful Prize, and liable to Confiscation; but if they were the Goods of Persons in Amity with the King, and the Ship was not navigated under *French Passes*, it is very plain it was a piratical taking of them. Gentlemen, it is to be considered what Evidence Capt. Kidd hath given to prove that Ship and Goods to belong to the *French King*, or his Subjects, or that the Ship was sailed under a *French Pass*, or, indeed, that there ever was a *French Pass* shewn or seen. He appeals indeed to the Witnesses over and over again, Did you never see it? No, say they: Nor did not you, saith he, say you saw it? No, saith the Witness, I said, that Capt. Kidd said, he had a *French Pass*, but I never saw it. Now after all, the taking the *Quedagh Merchant* is brought down to Mr. Kidd, and the Prisoners with others, and the Distribution of the Money produced by the Sale of the Goods, among Mr. Kidd and his Crew, whereof every one of these Prisoners were present at the same time, and had Proportions.

Now, Gentlemen, this must be observed; If this was a Capture on the High Sea, and these were the Goods of Persons in Amity with the King, and had no *French Pass*, then it is a plain Piracy. And if you believe the Witnesses, here is a taking of the Goods and Ships of Persons in Amity, and converting them to their own Use: Such a taking at Land as this would be Felony, and being at Sea it will be Piracy; for this is a taking the Ship from the right Owners, and turning it to their own Use. So that you have Evidence as to the seizing of the Ship, and dividing the Money rising from the Goods sold, and sharing the Remainder according to the Articles.

Now, what does Captain Kidd say to all this? He has told you, he acted pursuant to his Commission; but that cannot be, unless he gives you Satisfaction, that the Ship and Goods belonged to the *French King*, or his Subjects, or that the Ship had a *French Pass*; otherwise neither of them will excuse him from being a Pirate; for if he takes the Goods of Friends, he is a Pirate; he had no Authority for that; there is no Colour from either of his Commissions for him to take them: And as to the *French Passes*, there is nothing of that appears by any Proof, and, for ought I can see, none saw them but himself, if there were ever any. It is proved, That the People that were Owners of the Goods made him very large Offers to redeem the Ship (Twenty thousand *Rupees*, as I remember); but he would not accept their Proposal, but said, *That is a small Sum, the Cargoe is worth*

*a great deal more, or to that effect: And further said, He must answer these People, that his Men will not part with it: And a French Man was to be set up for a mock Business, as you have heard; and if the Witnesses say true, they were said by the Captain of the Ship to be, and were reputed to be, the Ship and Goods of Friends, and not of Enemies; and if they were so, and had no French Pass, then is he, and those that were concerned with him, guilty of piratically taking this Ship, and of piratically seizing the Goods in the Ship; and neither of his Commissions will justify such an Action as this. If he had acted pursuant to his Commission, he ought to have condemned the Ship and Goods, if they were a French Interest, or sailed under a French Pass; but by his not condemning them, he seems to shew his Aim, Mind, and Intention, that he did not act in that Case by virtue of his Commission, but quite contrary to it; for he takes the Ship, and shares the Money and Goods, and is taken in that very Ship by my Lord Bellamont, and he had continued in that Ship till that Time; so there is no Colour or Pretence appears, that he intended to bring this Ship to England, to be condemned, or to have condemned it in any of the English Plantations, having disposed of the whole Cargoe as aforesaid. Here I must leave it to you, to consider whether, according to the Evidence that appears, there is any Ground for him to say, he has acted by his Commission in taking the *Quedagh Merchant* and Goods in her, or whether he has not acted contrary thereunto.*

Now, for himself, he has called some Persons here, to give an Account of his Reputation, and of his Services done in the *West-Indies*; and one of them says, about ten or twelve Years he did good Service there. Why so he might, and might have, and 'tis very like he had, such Reputation when the King trusted him with these Commissions, else I believe he had never had them; so that whatever he might be so many Years ago, that is not a Matter to be insisted on now, but what he hath been since, and how he hath acted in this Matter charged against him: So that, Gentlemen, as to Mr. Kidd, I must leave to you, whether he is guilty of Piracy or no; and if you believe him guilty upon the Evidence, you will find him so; if not, you will acquit him.

Now for the other Prisoners, it is proved they were all concerned in taking and sharing the Ship and Goods in the Indictment; yet their Circumstances differ pretty much among themselves. There are three of them, that it has been made out to you, and owned by the King's Witnesses, that they were Servants. *Robert Lamley, Will. Jenkins, Richard Barlicorn.* All these are made out to be Servants, and you have had the Indentures of two of them produced, and the King's Witnesses prove them so, and they were admitted to be Servants. Now, Gentlemen, there must go an Intention of the Mind, and a Freedom of the Will, to the committing a Felony or Piracy. A Pirate is not to be understood to be under Constraint, but a free Agent; for in this Case, the bare Act will not make him guilty, unless the Will make it so. Now a Servant, it is true, if he go voluntarily, and have his Proposition, he must be accounted a Pirate; for then he acts upon his own Account, and not by Compulsion. And these Persons, according to the Evidence, received their

Part,

Part, but whether they accounted to their Masters for their Shares afterwards, yea or no, as they pretend, but make no Proof of it, I must leave that to you; and therefore there is a Consideration to be had of them: For if these Men did go under the Compulsion of their Masters, to whom they were Servants, and not voluntarily, and upon their own Accounts, it may difference their Case from others, who went and acted willingly in this Matter, and upon their own Accounts. So that as to those that were Servants under the Command of their Masters, that were present with them, I must leave it to you, whether you will distinguish between them and the others, that were not Servants, but free Agents. It is true, a Servant is not bound to obey his Master, but in lawful Things, which they say they thought this was, and that they knew not to the contrary, but that their Masters acted according to the King's Commission; and therefore their Case must be left to your Consideration, whether you think them upon the whole Matter Guilty or no. If you believe them Guilty, you will find them so, otherwise you will acquit them.

For the other Persons, some of them pretend they came in on his Majesty's Proclamation, and for that you must consider the Evidence, and take it all together, and consider whether you are satisfied by what they have said or prov'd, that they have brought themselves within the Benefit of the King's Favour by that Proclamation. You have heard it read, and observ'd the Qualifications and Directions by it, and the Terms upon which the Pardon was promised, which are not made out to you, to be complied with by them; they may apply another way for the King's Mercy; this Court must proceed according to the Rules of Law and Justice: But then all of them hold on this; We were, say they, under the Captain, and acted under him as their Commander: And, Gentlemen, so far as they acted under his lawful Commands, and by Virtue, and in Pursuance of his Commissions, it must be admitted they were justifiable, and ought to be justify'd: But how far forth that hath been, the Actions of the Captain and their own, will best make it appear. It is not contested, but that these Men knew, and were sensible of what was done and acted, and did take Part in it, and had the Benefit of what was taken shared amongst them: And if the taking of this Ship and Goods was unlawful, then these Men can claim no Advantage by these Commissions, because they had no Authority by them to do what they did, but acted quite contrary to them. What had they to do to enter into such Articles, and to act as they did? You must consider the Evidence given here, according to the Rules of the Law; and if you are satisfied, that they have knowingly and wilfully been concerned or partaken with Capt. Kidd, in taking this Ship, and dividing the Goods, and that Piratically and Feloniously, then they will be Guilty within this Indictment. It is worthy of Consideration what appears upon the Evidence, that they met with one reputed to be a notorious Pirate, call'd *Culliford*; he was esteemed an Arch-Pirate, and known to be so; yet this Capt. Kidd, that was commission'd to take Pirates, instead of taking him, grows to such an Intimacy with him, that he said he would have his Soul fry in Hell, before he would hurt him,

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or to that Effect; and so they made Presents one to another; and Capt. Kidd left three of his Men with him. Whilst Men pursue their Commissions they must be justify'd; but when they do Things not authorized, or never acted by them, it is as if there had been no Commission at all. I have distinguished the Evidence as well as my Memory serves me, and must leave it to you to determine upon the whole Matter, who are Guilty, and who not; and such as you are satisfied to be Guilty, you will find so, and such as you are not satisfied to be Guilty, you will acquit.

[Then the Jury withdrew, and after Half an Hour's Stay, brought in their Verdict.]

Cl. of Arr. Gentlemen of the Jury, answer to your Names, *John Cowper*, &c.

J. Cowper. Here, &c.

Cl. of Arr. Are you agreed of your Verdict?

Omnes. Yes.

Cl. of Arr. Who shall say for you?

Omnes. Foreman.

Cl. of Arr. *Will. Kidd*, Hold up thy Hand. (Which he did.) How say you, Is he Guilty of the Piracy whereof he stands Indicted, or not Guilty? (And so of the rest.)

Foreman. Guilty.

Cl. of Arr. Is *Nicholas Churchill* Guilty, or not Guilty?

Foreman. Guilty.

Cl. of Arr. Is *James Howe* Guilty, &c.?

Foreman. Guilty.

Cl. of Arr. Is *Robert Lamley* Guilty, &c.?

Foreman. Not Guilty.

Cl. of Arr. Is *William Jenkins* Guilty, &c.?

Foreman. Not Guilty.

Cl. of Arr. Is *Gabriel Loffe* Guilty, &c.?

Foreman. Guilty.

Cl. of Arr. Is *Hugh Parrot* Guilty, &c.?

Foreman. Guilty.

Cl. of Arr. Is *Richard Barlicorn* Guilty, &c.?

Foreman. Not Guilty.

Cl. of Arr. Is *Abel Owens* Guilty, &c.?

Foreman. Guilty.

Cl. of Arr. Is *Darby Mullins* Guilty, &c.?

Foreman. Guilty.

Then *William Kidd*, and the other nine Persons, were further Arraigned upon four Indictments, in manner following:

Cl. of Arr. *William Kidd*, Hold up thy Hand. (Which he did, and so the other Nine.)

You stand indicted by the Name of *William Kidd*, late of *London*, Mariner, &c.

The Jurors for our Sovereign Lord the King do, upon their Oath, Present, That *William Kidd*, late of *London*, Mariner; *Nicholas Churchill*, late of *London*, Mariner; *James Howe*, late of *London*, Mariner; *Robert Lamley*, late of *London*, Mariner; *William Jenkins*, late of *London*, Mariner; *Gabriel Loffe*, late of *London*, Mariner; *Hugh Parrot*, late of *London*, Mariner; *Richard Barlicorn*, late of *London*, Mariner; *Abel Owens*, late of *London*, Mariner; and *Darby Mullins*, late of *London*, Mariner; the 20th Day of *September*, in the Ninth Year of the Reign of our Sovereign Lord *William* the Third, by the Grace of God, of *England*, *Scotland*, *France* and *Ireland*, King, Defender of the

the Faith, &c. by Force and Arms, &c. upon the High Sea, in a certain Place, distant about Fifty Leagues from the Port of *Carrawar*, in the *East-Indies*, and within the Jurisdiction of the Admiralty of *England*, did piratically and feloniously set upon, board, break and enter a certain Ship call'd *A Moorish Ship*, then being a Ship of certain Persons (to the Jurors aforesaid unknown) and then and there piratically and feloniously did make an Assault, in and upon certain Mariners (whose Names to the Jurors aforesaid are unknown) in the same Ship in the Peace of God, and of our said now Sovereign Lord the King, then and there being, piratically and feloniously did put the aforesaid Mariners of the same Ship, in the Ship aforesaid then being, in corporal Fear of their Lives, then and there in the Ship aforesaid upon the High Sea, in the Place aforesaid, distant about Fifty Leagues from the Port of *Carrawar* aforesaid, in the *East-Indies* aforesaid, and within the Jurisdiction aforesaid, piratically and feloniously did steal, take and carry away One hundred Pound Weight of Coffee, of the Value of Five Pounds of lawful Money of *England*, Sixty Pound Weight of Pepper, of the Value of Three Pounds of lawful Money of *England*, One hundred Weight of *Myrrh*, of the Value of Five Pounds of lawful Money of *England*, and Twenty Pieces of *Arabian Gold*, of the Value of Eight Pounds of lawful Money of *England*, the Goods, Chattels and Moneys of certain Persons (to the Jurors aforesaid unknown) then and there upon the High Sea aforesaid, in the aforesaid Place, distant about Fifty Leagues from the Port of *Carrawar* aforesaid, in the *East-Indies* aforesaid, and within the Jurisdiction aforesaid, being found in the aforesaid Ship, in the Custody and Possession of the said Mariners in the said Ship, from the said Mariners of the said Ship, and from their Custody and Possession, then and there upon the High Sea aforesaid, in the Place aforesaid, distant about 50 Leagues from the Port of *Carrawar* aforesaid, in the *East-Indies* aforesaid, and within the Jurisdiction aforesaid, against the Peace of our said now Sovereign Lord the King, his Crown and Dignity, &c.

How say'st thou, *William Kidd*, Art thou guilty of this Piracy and Robbery, whereof thou standest Indicted, or not guilty?

William Kidd. Not guilty.

Cl. of Arr. Culprit, How wilt thou be tried?

Kidd. By God and my Country.

Cl. of Arr. God send thee a good Deliverance. (And so of the other Nine.)

Cl. of Arr. William Kidd, Hold up thy Hand. (Which he did: And so the other Nine.)

You stand indicted by the Name of *William Kidd*, late of *London*, Mariner. (And so of the rest.)

The Jurors for our Sovereign Lord the King, do upon their Oath Present, That *William Kidd*, late of *London*, Mariner; *Nicholas Churchill*, late of *London*, Mariner; *James Howe*, late of *London*, Mariner; *Robert Lamley*, late of *London*, Mariner; *William Jenkins*, late of *London*, Mariner; *Gabriel Loffe*, late of *London*, Mariner; *Hugh Parrot*, late of *London*, Mariner; *Richard Barlicorn*, late of *London*, Mariner; *Abel Owens*, late of *London*, Mariner; and *Darby Mullins*, late of *London*, Mari-

ner; the 27th Day of *November*, in the 9th Year of the Reign of our Sovereign Lord *William* the Third, by the Grace of God, of *England*, *Scotland*, *France* and *Ireland*, King, Defender of the Faith, &c. by Force and Arms, &c. upon the High Sea, in a certain Place, distant about four Leagues from *Callicut* in the *East-Indies*, and within the Jurisdiction of the Admiralty of *England*, did piratically and feloniously set upon, board, break, and enter a certain Ship called, *A Moorish Ketch*, then being a Ship of certain Persons (to the Jurors aforesaid unknown) and then and there piratically and feloniously did make an Assault in, and upon certain Mariners (whose Names to the Jurors aforesaid are unknown) in the same Ship, in the Peace of God, and of our said now Sovereign Lord the King, then and there being, piratically and feloniously did put the aforesaid Mariners of the same Ship, in the Ship aforesaid then being, in corporal Fear of their Lives, then and there in the Ship aforesaid, upon the High Sea, in the Place aforesaid, distant about four Leagues from *Callicut* aforesaid, in the *East-Indies* aforesaid, and within the Jurisdiction aforesaid, piratically and feloniously did steal, take and carry away the same Ship, and the Apparel and Tackle of the same Ship, of the Value of Five hundred Pounds of lawful Money of *England*; Eleven Bales of Cotton, of the Value of Sixty Pounds of lawful Money of *England*; two Horses, each of them of the Price of Twenty Pounds of lawful Money of *England*; and Fifty *Indian Quilts* of the Value of Five Pounds of lawful Money of *England* (the Goods and Chattels of certain Persons to the Jurors aforesaid unknown) then and there upon the High Sea aforesaid, in the aforesaid Place, distant about four Leagues from *Callicut* aforesaid, in the *East-Indies* aforesaid, and within the Jurisdiction aforesaid, being found in the aforesaid Ship, in the Custody and Possession of the said Mariners in the same Ship, from the said Mariners of the said Ship, and from their Custody and Possession, then and there upon the High Sea aforesaid, in the Place aforesaid, distant about four Leagues from *Callicut* aforesaid, in the *East-Indies* aforesaid, and within the Jurisdiction aforesaid, against the Peace of our said now Sovereign Lord the King, his Crown and Dignity, &c.

Hou say'st thou, *William Kidd*, Art thou Guilty, of this Piracy and Robbery whereof thou standest indicted, or not Guilty?

Will. Kidd. Not Guilty.

Cl. of Arr. Culprit, How wilt thou be tried?

Kidd. By God and my Country.

Cl. of Arr. God send thee a good Deliverance. (And so of the other Nine.)

Cl. of Arr. William Kidd, Hold up thy Hand. (Which he did: And so the other Nine.)

You stand indicted by the Name of *William Kidd*, late of *London*, Mariner. (And so the rest.)

"The Jurors for our Sovereign Lord the King, do, upon their Oath, Present, That *William Kidd*, late of *London*, Mariner; *Nicholas Churchill*, late of *London*, Mariner; *James Howe*, late of *London*, Mariner; *Robert Lamley*, late of
"Lon-

" London, Mariner; *William Jenkins*, late of London, Mariner; *Gabriel Loffe*, late of London, Mariner; *Hugh Parrot*, late of London, Mariner; *Richard Barlicorn*, late of London, Mariner; *Abel Owens*, late of London, Mariner; and *Darby Mullins*, late of London, Mariner; the Twenty-eighth Day of December, in the Ninth Year of the Reign of our Sovereign Lord *William the Third*, by the Grace of God of England, Scotland, France and Ireland, King, Defender of the Faith, &c. by Force and Arms, &c. upon the High Sea, in a certain Place, distant about four Leagues from *Callicut*, in the *East-Indies*, and within the Jurisdiction of the Admiralty of England, did piratically and feloniously set upon, board, break and enter a certain Ketch, call'd, *A Moorish Ketch*, then being a Ketch of certain Persons (to the Jurors aforesaid unknown) and then and there piratically and feloniously did make an Assault in, and upon certain Mariners (whose Names to the Jurors aforesaid are unknown) in the same Ship, in the Peace of God, and of our said now Sovereign Lord the King, then and there being, piratically and feloniously did put the aforesaid Mariners of the same Ketch, in the Ketch aforesaid then being, in corporal Fear of their Lives, then and there in the Ketch aforesaid, upon the High Sea, in the Place aforesaid, distant about four Leagues from *Callicut* aforesaid, in the *East-Indies* aforesaid, and within the Jurisdiction aforesaid, piratically and feloniously did steal, take and carry away the said Ketch, and the Apparel and Tackle of the same Ketch, of the Value of Fifty Pounds of lawful Money of England; thirty Tubs of Sugar-candy, of the Value of Fifteen Pounds of lawful Money of England; six Bales of Sugar, of the Value of Six Pounds of lawful Money of England; and ten Bales of Tobacco, of the Value of Ten Pounds of lawful Money of England, the Goods and Chattels of certain Persons (to the Jurors aforesaid unknown) then and there upon the High Sea aforesaid, in the aforesaid Place, distant about four Leagues from *Callicut* aforesaid, in the *East-Indies* aforesaid, and within the Jurisdiction aforesaid, being found in the aforesaid Ketch, in the Custody and Possession of the said Mariners in the same Ketch, from the said Mariners of the said Ketch, and from their Custody and Possession, then and there upon the High Sea aforesaid, in the Place aforesaid, distant about four Leagues from *Callicut* aforesaid, in the *East-Indies* aforesaid, and within the Jurisdiction aforesaid, against the Peace of our said now Sovereign Lord the King, his Crown and Dignity, &c.

How say'st thou, *William Kidd*, Art thou Guilty of the Piracy and Robbery whereof thou standest indicted, or not Guilty?

Will. Kidd. Not Guilty.

Cl. of Arr. How wilt thou be try'd?

Will. Kidd. By God and my Country.

Cl. of Arr. God send thee a good Deliverance. (And so of the other Nine.)

Cl. of Arr. *William Kidd*, hold up thy Hand. (Which he did: And so the other Nine.)

You stand indicted by the Name of *Will. Kidd*, late of London, Mariner, &c. (And so of the rest.)

" The Jurors for our Sovereign Lord the King, do, upon their Oath, Present, That *William Kidd*, late of London, Mariner; *Nicholas Curchill*, late of London, Mariner; *James Howe*, late of London, Mariner; *Robert Lamley*, late of London, Mariner; *William Jenkins*, late of London, Mariner; *Gabriel Loffe*, late of London, Mariner; *Hugh Parrot*, late of London, Mariner; *Richard Barlicorn*, late of London, Mariner; *Abel Owens*, late of London, Mariner; and *Darby Mullins*, late of London, Mariner; the Twentieth Day of January, in the Ninth Year of the Reign of our Sovereign Lord, *William the Third*, by the Grace of God, of England, Scotland, France, and Ireland, King, Defender of the Faith, &c. by Force and Arms, &c. upon the High Sea, in a certain Place, distant about twelve Leagues from *Callicut* in the *East-Indies*, and within the Jurisdiction of the Admiralty of England, did piratically and feloniously set upon, board break, and enter a certain Ship, call'd, *A Portuguese Ship*, then being a Ship of certain Persons (to the Jurors aforesaid unknown) and then and there piratically and feloniously did make an Assault in and upon certain Mariners, Subjects of the King of Portugal (whose Names to the Jurors aforesaid are unknown) in the same Ship, in the Peace of God, and of our said now Sovereign Lord the King, then and there being, piratically and feloniously did put the aforesaid Mariners of the same Ship, in the Ship aforesaid then being, in corporal Fear of their Lives, then and there in the Ship aforesaid, upon the High Sea, in the Place aforesaid, distant about twelve Leagues from *Callicut* aforesaid, in the *East-Indies* aforesaid, and within the Jurisdiction aforesaid, piratically and feloniously did steal, take, and carry away two Chests of Opium, of the Value of Forty Pounds of lawful Money of England; eighty Bags of Rice, of the Value of Twelve Pounds of lawful Money of England; one Tun of Bees-wax, of the Value of Ten Pounds of lawful Money of England; thirty Jars of Butter, of the Value of Ten Pounds of lawful Money of England; and half a Tun of Iron, of the Value of Four Pounds of lawful Money of England, the Goods and Chattels of certain Persons (to the Jurors aforesaid unknown) then and there upon the High Sea aforesaid, in the aforesaid Place, distant about twelve Leagues from *Callicut* aforesaid, in the *East-Indies* aforesaid, and within the Jurisdiction aforesaid, being found in the aforesaid Ship, in the Custody and Possession of the said Mariners in the same Ship, from the said Mariners of the same Ship, and from their Custody and Possession, then and there upon the High Sea aforesaid, in the Place aforesaid, distant about twelve Leagues from *Callicut* aforesaid, in the *East-Indies* aforesaid, and within the Jurisdiction aforesaid, against the Peace of our said now Sovereign Lord the King, his Crown and Dignity, &c.

How say'st thou, *William Kidd*, Art thou guilty of the Piracy and Robbery whereof thou standest indicted, or not guilty?

Will. Kidd. Not guilty.

Cl.

Cl. of Arr. How wilt thou be tried?

Will. Kidd. By God and my Country.

Cl. of Arr. God send thee a good Deliverance.
(*And so of the other Nine.*)

[*Then the Court adjourn'd till To-morrow Morning Eight a-Clock.*]

The further Proceedings against William Kidd, and the other Nine Prisoners, on the four Indictments, May the Ninth, 1701.

Cl. of Arr. CALL William Kidd, Nicholas Churchill, James Howe, Robert Lamley, William Jenkins, Gabriel Loffe, Hugh Parrot, R. Barlicorn, Abel Owens, and Darby Mullins to the Bar. You the Prisoners at the Bar, William Kidd, &c. those Men that you shall hear call'd, and personally appear, are to pass between our Sovereign Lord the King and you, upon Trial of your several Lives and Deaths: If therefore you, or any of you, will challenge them, or any of them, your Time is to speak unto them as they come to the Book to be sworn, and before they be sworn. Call William Smith. (*Who appear'd; and there being no Challenges, the Twelve that were sworn are as follows.*)

The JURY.

<i>Will. Smith,</i>	}	<i>Peter Gray,</i>
<i>Benj. Hooper,</i>		<i>Rob. Comfort,</i>
<i>Jo. Hibbert,</i>		<i>Tho. Hollis,</i>
<i>Jo. Pettit,</i>		<i>Will. Ford,</i>
<i>Will. Hatch,</i>		<i>Tho. Stephens,</i>
<i>Jos. Chaplain,</i>		<i>J. Dodson.</i>

Cl. of Arr. Cryer, count these: William Smith. Cryer. One, &c.

Cl. of Arr. Benjamin Hooper.

Cryer. Two, &c. Twelve good Men and true, stand together and hear your Evidence.

[*Then the usual Proclamation for Information was made; and the Prisoners being bid to hold up their Hands, the Clerk of Arraignments charg'd the Jury with them thus.*]

Cl. of Arr. "You of the Jury, look upon the Prisoners, and hearken to their Cause. They stand indicted by the Names of William Kidd, &c. (*as before in the Indictment.*) Upon this Indictment they have been arraign'd, and thereunto have severally pleaded, Not guilty; and for their Trial put themselves on God and their Country, which Country you are. Your Charge is to enquire, Whether they be guilty of the Piracy and Robbery whereof they stand indicted, or not guilty, &c."

Nich. Churchill. May it please you, my Lord, I came in upon his Majesty's Proclamation; and if that do not do, I throw my self upon the Mercy of the Honourable Bench.

Mr. Bar. Hatfell. If they will withdraw their Plea, and confess the Indictment, they may.

Nich. Churchill and James Howe. We refer our selves to the King's Proclamation.

Dr. Oxenden. But do you confess the Matter of the Indictment? You may do that if you will, and then you need not be try'd.

Abel Owens. My Lord, I came in upon the King's Proclamation, and enter'd my self aboard one of the King's Ships.

Dr. Oxenden. You must answer first, and come to your Defence afterward.

Abel Owens. I hope your Honours will grant it me as well as the rest, I enter'd my self into the King's Service.

Cl. of Arr. You of the Jury, look on the Prisoners, and hearken to their Cause. They stand indicted by the Name of William Kidd, &c.

Mr. J. Turton. You may try all the Indictments together, if they are the same Persons concern'd.

Cl. of Arr. They are the same that are concern'd in the two first Indictments.

Mr. J. Turton. Then proceed upon these two together.

Cl. of Arr. They stand a second time indicted by the Name of William Kidd, late of London, Mariner. (*And so of the rest.*) Upon these two Indictments they have been arraign'd, and thereto have severally pleaded, Not guilty; and for their Trials have put themselves on God and their Country, which Country you are. Your Charge is to enquire, Whether they are guilty of the said Piracies and Robberies whereof they stand indicted, or not guilty, &c.

Mr. Knapp. May it please your Lordship, and Gentlemen of the Jury, these are two several Indictments against William Kidd, &c. and they are both for Piracy. One sets forth, That the Prisoners at the Bar, on the Twentieth of September, in the Ninth Year of his Majesty's Reign, fifteen Leagues from Carrawar, did piratically invade and take a Ship call'd *The Moorish Ketch*, and put the Mariners in fear of their Lives. The other Indictment sets forth, That on the 27th of November, in the Ninth Year of his Majesty's Reign, four Leagues from Callicut, the Prisoners at the Bar did seize and take another *Moorish Ship*; to both which Indictments they have pleaded, Not guilty. If we prove the Fact, you must find them guilty. We will call Witnesses. The Witnesses are the same. The whole Story you have heard before, and we will apply our selves now to these Facts mention'd in these two Indictments.

Mr. J. Turton. You must open your Matter first, because there is a new Jury.

Mr. Knapp. Then, my Lord, and Gentlemen of the Jury, This Capt. Kidd went out of England in a Ship call'd *The Adventure-Galley*. He first went to New-York, and there he set out Articles to procure Men, and promis'd them that would come in to him a Share in the Adventures they should get. From thence he goes to Babs-Key, and lies about three Weeks there, watching for the *Mocca Fleet*: He sent his Boat out three times to see in what condition the Ships were. He could get no Intelligence the two first times, but the third time he did; they brought him Word, they were fourteen or fifteen Ships ready to sail, and that their Colours were *English* and *Dutch*, and *Moorish*. He lay in wait for these Ships, and watch'd them; and when they came down, he fell in with them, and fired at them; but he found they were under an *English* and *Dutch* Convoy, and so away he went and left them. And then he came to cruise on the Coast of *Malabar*, and there he met with his first Prize, and that is the *Moorish Ship* mention'd in the first Indictment: They seiz'd and took this

Moorish

Moorish Ship, and entered her, and took several Goods out of her, and then let the Ship go away. We will call our Witnesses as to this Ship first. Call *Robert Bradinbam* and *Joseph Palmer*. (*Who appeared and were sworn.*) *Mr. Bradinbam*, what have you to say as to this Matter.

Mr. Bar. Hatfield. Tell it from the Beginning; from the Time you went out of *England*, to the Time of taking this Ship, because there is a new Jury.

Bradinbam. About the Beginning of *May*, 1696, we went out of *England*, and went to *New-York*, in the *Adventure-Galley*, whereof *Capt. Kidd* was Commander.

Mr. Knapp. Whither did you go?

Bradinbam. To *New-York*. We took a Ship by the Way, and carried her to *New-York*, where we condemn'd her.

Mr. Knapp. What Ship was that?

Bradinbam. A *French* Banker. At *New-York* *Capt. Kidd* put up his Articles, That if any would come aboard his Ship, they should be welcome, no Purchase no Pay, mentioning that he had the King's Commission: From thence we went to *St. Janger*, then to *Maderas*, then to *Madagascar*, then to *Bonavis*, then to *Joanna*, and then to the *Red-Sea*, and then to *Babs-Key*; there he lay three Weeks looking for the *Mocca Fleet*.

Mr. Knapp. Where?

Bradinbam. In *Babs-Key*.

Mr. Knapp. You say he lay there about a Fortnight or three Weeks: How did he behave himself there?

Bradinbam. He sent out his Boat three Times; and the two first Times they could get no Intelligence.

Mr. J. Turton. Tell whose the *Mocca Fleet* was.

Bradinbam. They belong'd to the *Moors*; they were Merchant-men belonging to the *Moors*.

Mr. Knapp. What News did they bring the third Time?

Bradinbam. The third Time they brought Word, that there were fourteen or fifteen Ships in the Harbour ready to sail.

Dr. Newton. What did he say then?

Bradinbam. That he would take as many of them as he could; and did not doubt but to make a Voyage out of them.

Mr. J. Turton. What Account did the two first Boats bring?

Bradinbam. No Account at all, my Lord.

Mr. J. Turton. What Notice did they bring the third Time?

Bradinbam. They brought Word, that there were about fourteen or fifteen Ships in the Harbour ready to sail.

Mr. J. Turton. Which Time was it that they brought that Word?

Bradinbam. The third Time. Then the Fleet came down, and *Capt. Kidd* followed them.

Mr. Knapp. Were there any on Shore to watch this Fleet?

Bradinbam. There were some sent to the high Land of the Island, to see if the Fleet came; and when they saw it, they were to give a Sign with a Half-pike and Flag, and then the Boat was to fetch them off. At last the Fleet came down, and *Capt. Kidd* went among them, and fired at them; but finding they were under a Convoy, and too strong for him, he was forced to leave them.

Mr. Knapp. Whither did you go then?

Bradinbam. From thence we went to *Carawar*, and by the Way we met with a *Moorish* Ship, of which *Capt. Parker* was Commander.

Mr. Knapp. My Lord, that is the Ship that they are indicted for. Where was it that you met with that Ship?

Bradinbam. About fifty Leagues from *Carawar*.

Mr. Knapp. Pray, what did they do with that Ship?

Bradinbam. We took *Capt. Parker's* Ship, and took him aboard, and the *Portuguese* for a Linguister; and he took out some of the Men, and bound their Hands behind them, and ordered them to be drubb'd with a naked Cutlafs; and he took out of her some Pepper and Coffee, and *Arabian* Gold, and wearing Apparel, and several other Things.

Mr. Knapp. What did he do with these Men, after he had plundered the Ship?

Bradinbam. He let the Ship go, and kept *Parker* and the *Portuguese* aboard.

Dr. Newton. How many Men were there aboard the Ship?

Bradinbam. About thirty.

Dr. Oxenden. What Countryman was this *Parker*?

Bradinbam. He was an *Englishman*.

Dr. Oxenden. How do you know that?

Bradinbam. He told me so.

Mr. Knapp. What Ship was it?

Bradinbam. A *Moorish* Ship.

Mr. Knapp. What Time was this done?

Bradinbam. In *September*, 1697.

Mr. Knapp. What did he do with the two Men he took out of this Ship?

Bradinbam. He kept them aboard this Vessel.

Mr. Knapp. What Ship was *Captain Kidd* in then?

Bradinbam. He was in the *Adventure-Galley*.

Mr. Knapp. Tell us whether any other of these Prisoners at the Bar were in that Ship when this was done?

Bradinbam. Every one of them.

Cl. of Arr. Was *Capt. Kidd* himself there?

Bradinbam. Yes.

Cl. of Arr. Was *Nicholas Churchill* there?

Bradinbam. Yes.

Cl. of Arr. Was *James Howe* there?

Bradinbam. Yes.

Cl. of Arr. Was *Robert Lamley* there?

Bradinbam. Yes.

Cl. of Arr. Was *William Jenkins* there?

Bradinbam. Yes.

Cl. of Arr. Was *Gabriel Loffe* there?

Bradinbam. Yes.

Cl. of Arr. Was *Hugh Parrot* there?

Bradinbam. Yes.

Cl. of Arr. Was *Richard Barlicorn* there?

Bradinbam. Yes.

Cl. of Arr. Was *Abel Owens* there?

Bradinbam. Yes.

Cl. of Arr. Was *Darby Mullins* there?

Bradinbam. Yes.

Cl. of Arr. You say, you are sure they were all there?

Bradinbam. Yes, I am sure they were.

Mr. J. Turton. What Goods did they take out of that Ship?

Bradinbam. Several Bales of Pepper, several Bales of Coffee, and some Myrrh, which is a Gum.

Mr. Soll.

Mr. Soll. Gen. What did they do with it?
Bradinbam. Capt. Kidd made use of the Myrrh to make Pitch of.

Mr. Soll. Gen. What was the Value of the Myrrh?

Bradinbam. About fifteen Pounds.

Mr. Soll. Gen. Where did they go after the taking of this Ship?

Bradinbam. To *Carrawar*.

Mr. Soll. Gen. What did they do there?

Bradinbam. There the Captain wooded and watered his Ship.

Dr. Oxenden. What is *Carrawar*? Tell the Court.

Bradinbam. There is an *English* Factory; they sent some Men aboard, and demanded this *Parker*, and the *Portuguese*; and the Captain denied them, and kept them in the Hold, and would not let them know he had them on board.

Dr. Oxenden. Had they any notice of *Parker's* being on board Capt. Kidd's Ship?

Bradinbam. I suppose they had Information from *Bombay*, by the Mariners that went away; for Capt. *Parker's* Vessel belonged to that Place.

Mr. Soll. Gen. How far is that *Carrawar* from *Bombay*?

Bradinbam. About forty Leagues.

Mr. Soll. Gen. Where did you go after that?

Bradinbam. They cruised on that Coast, and they went to one of the *Malabar* Islands.

Mr. Soll. Gen. What was done there?

Bradinbam. We wooded and watered our Ship.

Mr. Soll. Gen. Did they take any Ships there?

Bradinbam. Capt. Kidd went ashore there, and burnt some Houses, and plundered several Boats.

Mr. Soll. Gen. Was there any Ship taken there?

Bradinbam. Yes.

Mr. Soll. Gen. What Ship?

Bradinbam. Some time in *November*, (about the 17th of *November*) they took a *Moorish* Ship, Skipper *Mitchel* was the Commander.

Mr. B. Hatfell. You need go no further now.

Mr. Knapp. We will call the other Evidence, if you please, Mr. Solicitor.

Mr. Soll. Gen. We will give our Evidence upon both Indictments together.

Mr. Knapp. They stand charged with taking another Ship. You have heard how far we have carry'd it. Now they went and took another Ship about the 17th of *November*.

Bradingham. They took a *Moorish* Ship four Leagues from *Callicut*.

Mr. J. Turton. Now go on.

Bradingham. Capt. Kidd took this *Moorish* Ship on the Coast of *Malabar*, Skipper *Mitchel* was the Commander; she was a *Moorish* Ship: He took out of her two Horses, some Bales of Cotton, and some Quilts.

Mr. B. Hatfell. What Countryman was this Skipper *Mitchel*?

Bradinbam. A *Dutchman*.

Mr. B. Hatfell. What Ship was it?

Bradinbam. A *Moorish* Ship; she belong'd to *Suratt*.

Mr. Soll. Gen. What Burthen was she?

Bradinbam. About 150 Tun.

Mr. Soll. Gen. What was found in her?

Bradinbam. Two Horses, and about eleven or twelve Bales of Cotton.

Mr. J. Turton. Was this on the Coast of *Callicut*?

Bradinbam. It was on the Coast of *Malabar*.

Mr. Knapp. How far from *Malabar*?

Bradinbam. Seven or eight Leagues.

Mr. Soll. Gen. What did they do after this with the Ship, and Goods, and People?

Bradinbam. The People they set ashore, and kept the Ship, and carry'd her to *Madagascar*.

Mr. Soll. Gen. What was the Value of the Horses taken out of her?

Bradinbam. The Horses were worth about 40 l.

Mr. Soll. Gen. What the Cotton?

Bradinbam. About an Hundred Pounds.

Mr. B. Hatfell. How do you know this Skipper *Mitchel* was a *Dutchman*?

Bradinbam. He told me so; he came afterwards aboard Capt. Kidd, and took Arms under him.

Mr. Soll. Gen. Were all these Persons aboard this Ship when she was taken?

Bradinbam. Yes, my Lord.

Mr. B. Hatfell. You say, this Ship was about 150 Tun; What might she be worth?

Bradinbam. About 500 l.

Mr. B. Hatfell. To whom did she belong?

Bradinbam. To the *Moors*.

Mr. B. Hatfell. What *Moors*?

Bradinbam. The *Moors* that belong'd to *Suratt*, as I was inform'd by the *Moors*.

Mr. Soll. Gen. What did he do with the Ship afterwards?

Bradinbam. She was carried to *Madagascar*.

Mr. Soll. Gen. What did they do with the Ship?

Bradinbam. They sunk her.

Mr. Soll. Gen. Do you know why they sunk her?

Bradinbam. She was sunk voluntarily.

Kidd. This Man contradicts himself in an hundred Places.

Bradinbam. The Ship was sunk purposely.

Dr. Newton. What was done when you came to *Madagascar*?

Bradinbam. When we came to *Madagascar*, there came off a Canoo with white Men aboard, that belong'd to the *Mocco* Frigate: Some of these Men belong'd formerly to Capt. Kidd. She was suppos'd to be a Pirate Ship.

Mr. Soll. Gen. What was the Reason of sinking that Ship?

Bradinbam. They sunk her in the Harbour, that she might be convenient for Vessels to career by. Some Men came off in this Canoo, and they told him, they heard he was come to take them, and hang them. He said, it was no such Thing.

Dr. Newton. Who was the Captain of the *Mocco* Frigate?

Bradinbam. Captain *Culliford*.

Dr. Newton. Was he a Pirate?

Bradinbam. Yes, he was reputed so.

Mr. Soll. Gen. Well, go on.

Bradinbam. Capt. Kidd swore he would be true to them, and that he would do them no Harm.

Mr. Soll. Gen. Did you hear all this?

Bradinbam. Yes, he swore to be true to them.

Mr. Knapp. Was there any thing said about Captain Kidd's taking her?

Bradinbam. Nothing.

Dr. Newton. What passed afterwards between Captain Kidd and *Culliford*?

Bradinbam. They were very friendly together, and they made Presents to one another.

Dr. Newton. What Presents were there made?

Bradinbam.

Bradinbam. Culliford gave to Capt. Kidd some Pieces of China Silk, and Kidd bid Culliford take any thing he had.

Mr. Soll. Gen. Did Capt. Kidd give Culliford any Guns?

Bradinbam. He supply'd him with two Guns.

Dr. Newton. Was there any Division of Goods or Money?

Bradinbam. After we came to *Madagascar*, Capt. Kidd ordered the Goods to be hoisted out, and shared, and Capt. Kidd had forty Shares for himself.

Mr. Soll. Gen. What became of the Goods of those Ships?

Bradinbam. They were fold.

Mr. Soll. Gen. What was done with the Product of the Goods?

Bradinbam. Capt. Kidd kept it; and when there was something worth sharing, he shared it, and he had forty Shares for himself.

Cl. of Arr. Had *N. Churchill* any Share?

Bradinbam. He had a whole Share.

Cl. of Arr. Had *James Howe* any Share?

Bradinbam. He had a whole Share.

Cl. of Arr. Had *R. Lamley* any Share?

Bradinbam. He had half a Share.

Cl. of Arr. Had *W. Jenkins* any Share?

Bradinbam. He had half a Share.

Jenkins. How can you attest these wicked Lies? I had nothing.

Mr. Bar. Hatfell. Who shared it?

Bradinbam. The Captain.

Kidd. He tells a thousand Lies.

Cl. of Arr. Look on *Hugh Parrot*; Had he any Share?

Bradinbam. Yes, half a Share of Money, and a whole Share of Goods.

Cl. of Arr. Had *R. Barlicorn* any Share?

Bradinbam. He had half a Share?

Cl. of Arr. Had *Abel Owens* any Share?

Bradinbam. He had a whole Share?

Cl. of Arr. Had *Darby Mullins* any Share?

Bradinbam. He had half a Share.

Mr. Soll. Gen. Now if any of you will ask him any Questions you may?

Kidd. Mr. *Bradinbam*, Pray what Share had you?

Bradinbam. If my Lord ask me, I will answer him.

Kidd. Had you any Share?

Bradinbam. Yes.

Kidd. Did not you come aboard my Ship, and rob the Surgeon's Chest?

Bradinbam. No, I did not.

Kidd. Did not I come to you, when you went away, and met you on the Deck, and said, Why do you take the Chest away?

Bradinbam. No, I did not do it.

Kidd. You are a Rogue.

Mr. J. Turton. It were the same thing for him to confels it, as to deny it, if he had done it.

Kidd. He did certainly do it.

Mr. B. Hatfell. But he says he did not.

Mr. J. Turton. Would any of you ask him any Questions?

Cl. of Arr. Nich. Churchill. Will you ask him any Questions?

Churchill. I came in on the King's Proclamation, and depend wholly on it.

Kidd. Were there not any *French* Passes aboard that Ship?

Bradinbam. I heard say there were, I did never see them.

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Kidd. I did not divide the Things, but the Men did what they pleased, and you took your Share, and saw the *French* Passes.

Mr. B. Hatfell. What Ship is that you mean; that taken in *September*, or that in *November*?

Bradinbam. The *Moorish* Ship, that *Parker* was Commander of.

Mr. B. Hatfell. There were two mentioned.

Kidd. Just now he told you of two in *November*; now he says one in *November*, another in *September*.

Mr. B. Hatfell. He says, that in *September*, that *Parker* was Commander of.

Kidd. There was no such Thing in *November*; he knows no more of these Things than you do. This Fellow used to sleep 5 or 6 Months together in the Hold.

Mr. J. Turton. I assure you, he gives a very good Account of the Matter.

Mr. B. Hatfell. Why did you give him a Share then?

Kidd. Because he was Surgeon. As for the Goods, they took it amongst them, and did what they pleased, I was never near them. They I wait for me to kill me. They took away what they pleased, and went to the Island; and I, with about 40 Men, was left in the Ship, and we might go whither we pleased.

Mr. Soll. Gen. Mr. *Kidd*, Will you ask him any Questions?

Kidd. No, no, so long as he swears it, our Words or Oaths cannot be taken.

Cl. of Arr. Will you ask him any more Questions?

Kidd. No, no, it signifies nothing.

Cl. of Arr. N. Churchill. Will you ask him any Questions?

Churchill. I came in upon his Majesty's Proclamation, and rely upon that.

Cl. of Arr. J. Howe. Will you ask him any Questions?

Howe. I surrendered my self upon the King's Proclamation, and plead Guilty.

Cl. of Arr. R. Lamley. Will you ask this Witness any Questions?

Lamley. Do you say, I had half a Share of Money?

Bradinbam. Yes.

Lamley. No, I had none.

Cl. of Arr. It was your Share, and you must make it appear, if you accounted for it to your Master.

Lamley. If your Lordship please, I was an Apprentice.

Mr. B. Hatfell. To whom was you a Servant?

Lamley. I was an Apprentice to *A. Owens*.

Mr. J. Turton. Was *Lamley* an Apprentice to *Owens*?

Bradinbam. My Lord, he was a Servant to *Owens*, who was aboard them.

Mr. J. Turton. He had half a Share, but perhaps he might account for it to his Master afterward.

Cl. of Arr. W. Jenkins. Will you ask the Witness any Questions?

Jenkins. My Lord, I beg he may speak the Truth, whether I was a Servant.

Bradinbam. My Lord, he was a Servant to *George Bullen*.

Mr. J. Turton. Was this *Bullen* aboard then?

Bradinbam. Yes.

Mr. J. Turton. When both Ships were taken?

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Bradinbam. Yes.

Cl. of Arr. Will you ask the Witnesses any Questions, *G. Loffe*?

Loffe. My Lord, when I came aboard, the Captain open'd his Commission there: Did I ever disobey his Commands?

Bradinbam. Not, that I know of.

Loffe. Did you see me receive any Share?

Bradinbam. Yes, half a Share of Money, and a whole Share of Goods.

Loffe. Where?

Bradinbam. In the great Cabin.

Cl. of Arr. What Questions will you ask him, *Hugh Parrot*?

Parrot. May it please your Lordship, I will give you an exact Account from the Time of my going out of England, in the Month of October, 1695.

Cl. of Arr. You may make your Defence afterwards; in the mean time will you ask him any Questions now?

Parrot. I appeal to him, Whether he ever saw me do any such Cruelty as he mentions?

Mr. J. Turton. You hear what he says, answer him.

Bradinbam. I cannot say you were the very Man that did it, but those Men were used so; they were hoisted up, and drubb'd with a naked Cutlafs.

Parrot. And then I ask him, Whether I ever went any further than my Commander order'd me, or against the King's Commission, as I thought?

Bradinbam. I cannot say you did any thing contrary to your Commander's Orders.

Parrot. I ask him, Whether, when I might have went aboard this Pirate, I did not stick close to my Captain, and come home with him? and Whether I had any Inclination to leave him?

Mr. J. Turton. He knows not your Inclination. Where did you leave Capt. Kidd? Will you ask him that?

Parrot. I came home to Boston with Capt. Kidd. Doctor, Did I go away with them that left Capt. Kidd?

Bradinbam. You went with Capt. Kidd to Madagascar.

Parrot. I came home with Capt. Kidd, and surrender'd my self to my Lord Bellamont.

Cl. of Arr. *Abel Owens*, will you ask the Witnesses any Questions?

Owens. I ask the Witnesses, Whether I did not surrender my self?

Bradinbam. I cannot say any thing to that.

Cl. of Arr. Will you ask him any more Questions?

Owens. No, I stand to his Majesty's Proclamation, and the Mercy of the Honourable Bench.

Cl. of Arr. *Darby Mullins*, will you ask the King's Witnesses any Questions?

Mullins. No: May it please you, my Lord, I came in upon the King's gracious Proclamation, as the King's Evidence knows. Do you not know I came ashore with you about the 28th of May?

Bradinbam. I know he went ashore.

Mullins. I went ashore. I came home upon the King's Proclamation. We went ashore at Cape May. I was very sick of the Bloody-Flux, and not able to travel, and was like to die every Day.

Bradinbam. My Lord, I know this Man was very sick in the Passage.

Mullins. I was a Passenger aboard Capt. *Shelby's* Ship.

Mr. J. Turton. How came he to come aboard Capt. *Shelby*? Where did he leave Capt. Kidd?

Bradinbam. He left Capt. Kidd at Madagascar, and took his Passage with Capt. *Shelby* afterwards, after these were taken.

Mr. Soll. Gen. How came he to leave Captain Kidd at Madagascar?

Bradinbam. He went aboard Capt. *Culliford's* Ship. There was about 60 or 70 Men went aboard *Culliford*.

Mr. Knapp. Call *Joseph Palmer*.

Dr. Oxenden. He says, he came in upon the King's Proclamation to Cape May: Do you know any thing of that?

Bradinbam. Yes.

Dr. Oxenden. Where is that Cape May?

Bradinbam. Off of Maryland, where Capt. *Shelby's* Ship was at Anchor; and Capt. *Gravenport* came on board Capt. *Shelby's* Ship, and said, He heard his Majesty's Proclamation was out to receive Pirates that would come in; and the Men rejoic'd that there was such a Thing, and they went ashore, and surrender'd themselves.

Dr. Oxenden. Where?

Bradinbam. At Cape May.

Dr. Oxenden. Did he go to the Governor?

Bradinbam. I did not see him go ashore.

Cl. of Arr. *D. Mullins*, Will you ask him any more Questions?

Mullins. You was aboard when I went ashore.

Bradinbam. I did not see you go ashore.

Mr. Soll. Gen. Was he sick when he went ashore?

Bradinbam. He was sick.

Mullins. I was sick, and expected to die every Moment.

Cl. of Arr. All was done before that Time.

Mr. Soll. Gen. Did he rejoice when he heard the King's Proclamation was out.

Bradinbam. I heard him say the King's Proclamation was out, and he rejoic'd with others.

Mr. Soll. Gen. Did he surrender himself to the Governor?

Bradinbam. I cannot say that; he went ashore.

Mr. Bar. Hatsell. Now set up *Joseph Palmer*.

Mr. J. Turton. Gentlemen, I would not have you under any Mistake, that surrendering himself comes not under your Consideration; it was after all the Facts were done that the Prisoner is charg'd with.

Mr. Knapp. *Mr. Palmer*, give my Lord and the Jury an Account of what you know concerning Capt. Kidd's Voyage from England in the *Adventure Galley*, when he went out of England, and his Proceedings afterwards.

Palmer. About the last of April, or beginning of May, he went from Plymouth to New-York, and in the Way took a French Banker, and carried her to New-York, and condemn'd her there: And at New-York he set up Articles to invite Men to come aboard his Ship; That if any would come aboard, they should have a Share of such Treasure as he should take: He was to have forty Shares himself, and every Man a half or whole Share. And about the first of September following, he went from New-York to Maderas, from thence to Bonavis, from thence to St. Jauger, then to Madagascar, then to Malabar, then to Joanna, then to Mahala, then to Joanna again, then to the Red-Sea.

Mr. Knapp. Pray give an Account of what was done there.

Palmer. There he water'd, and took Guinea Corn to Victual his Ship; and then to *Babs-Key*, near the *Red-Sea*.

Mr. Knapp. Give an Account of what he did there.

Palmer. He sent out his Boat three times, to discover the Fleet, and likewise some Spies on the high Land, to look out on both Sides, to see that the Ships did not pass by.

Mr. Soll. Gen. What Ships?

Palmer. *Moorish* Ships from *Mocca*.

Mr. Soll. Gen. Whose Ships were those *Moorish* Ships?

Palmer. They were *Turks* and *Moors* together.

Mr. Knapp. What did he do then?

Palmer. He call'd the Men by Lot to look out, and he sent his Boat out twice, and they return'd without bringing any Tidings. And he sent the Boat the third time, with Orders to take a Prisoner, or to see what Ships lay there. And the third time Word was brought, that there were about 14 or 15 Ships lay in the Road ready to sail, with *Dutch*, *English*, and *Moorish* Colours: And when this News came, Capt. Kidd order'd the Men to go on the other Side, on the high Lands, to see that the Ships did not pass by in the Night; and in 4 or 5 Days the Ships came down, about the 14th of *August*. The Fleet came down in the Evening, and Capt. Kidd went after them: And some of the Men said, We will go among them To-night: No, says Capt. Kidd, we will go in the Morning, and then we will take our Choice.

Kidd. Did you hear me say so?

Palmer. I heard you say so.

Kidd. I am sure you never heard me say such a Word to such a Loggerhead as you.

Palmer. These are the Words I heard him say. And the next Morning he fell in with this Fleet, and went through them; and there was a *Dutch* and *English* Convoy; and they fired at one another.

Kidd. Hear me—

Mr. Knapp. You shall ask him what Questions you will presently.

Mr. J. Turton. Who fired first?

Palmer. The *Dutch* and *English* fired first. When we lay between the *English* and *Dutch*, a *Moorish* Ship came by, and he fired several Shot after her: And the *English* Ship flung a Shot almost home, and then he made sail, and went out of the Fleet: And from thence he went to *Carrawar*, and in the Way met with a Ship, whereof *Parker* was Commander, and there was one *Antonio*, a *Portuguese*.

Mr. Soll. Gen. Where was this done?

Palmer. About fifty Leagues from *Carrawar*.

Mr. Soll. Gen. What Time of the Year was it?

Palmer. It was about *September*.

Mr. Bar. Hatsell. The Witness is now come to speak to the Ship for which the Prisoners are indicted.

Mr. Soll. Gen. Go on; What did they do with that Ship?

Palmer. He fought the Ship, and took her, and took out of her several Bales of Coffee, and he retain'd only one Bale, and sent the rest back again: And he took a Bale of Pepper, and some Myrrh to use instead of Pitch.

Mr. Soll. Gen. What Quantity of Pepper was there?

Palmer. About sixty Pound Weight.

Mr. Soll. Gen. What Myrrh?

Palmer. About thirty Pound Weight.

Mr. Soll. Gen. What Value was it of?

Palmer. I cannot tell that.

Mr. Soll. Gen. What *Arabian* Gold?

Palmer. I did not see it: I did not see any taken out then; but a pretty while afterwards, when Capt. Kidd came to *Carrawar*, he gave every Mefs two Pieces of *Arabian* Gold.

Mr. Knapp. How long was this after the Ship was taken?

Palmer. Ten or twelve Days.

Mr. Soll. Gen. How was the Pepper dispos'd of?

Palmer. It was divided among the Messes.

Mr. Soll. Gen. Had these Prisoners their Part?

Palmer. Yes.

Mr. Knapp. How did they use the Men of this Ship?

Palmer. There were several hoisted up, and drubb'd with a naked Cutlafs.

Kidd. Where was this done?

Palmer. In your Ship.

Kidd. What Ship?

Palmer. The *Adventure* Galley.

Kidd. Did not a Parcel of Rogues go aboard their Ship, and do it?

Mr. Knapp. For what Purpose was this done?

Palmer. Because they thought they had more Money in the Ship.

Mr. Knapp. What Country-man was *Parker*?

Palmer. An *English*-man, born in the North of *England*. He said so.

Mr. J. Turton. Who else was detain'd besides *Parker*?

Palmer. One *Antonio*, a *Portuguese*. *Parker* was detain'd for a Pilot; the other for a Linguifter.

Mr. J. Turton. What do you mean by a Linguifter?

Palmer. To speak *Moorish* and *Portuguese*.

Mr. Soll. Gen. Where did they go then?

Palmer. From thence we went to *Carrawar*, and water'd and wooded the Ship; and a great many of his Men left him there: And when he saw his Men leave him, he went to Sea; he would not trust any more to go ashore. And the next Evening he met a *Portuguese* Man of War, and fought her, but did not take her.

Mr. J. Turton. Did you know any that left him?

Palmer. *Peter Lehair* and *Churchill*, and others; they went to the *English* Factory, to know whether they would entertain them, or no.

Mr. J. Turton. Who went?

Palmer. Mr. *Lehair*, *Nicholas Churchill*, and another; they went to know whether they should be entertain'd, and they told them, They were loth to entertain them, for fear Capt. Kidd should know of it, and do them an Injury.

Kidd. My Lord, a Parcel of these Men went ashore to run away with this Ship.

Mr. J. Turton. Were there any more of these Prisoners at the Bar, that would have gone off, besides *Churchill*?

Palmer. No, but he would have gone off.

Mr. J. Turton. How do you know that?

Palmer. He told me so.

Mr. Bar. Gould. Had they an Opportunity to go off?

Palmer. Some more were taken going afterwards, and had got a Boat for that Purpose, but they

they were taken, and Capt. Kidd order'd them to be brought aboard, and whipp'd at the Gun.

Kidd. Certainly you have not the Impudence to say that !

Palmer. I say, you order'd them to be whipp'd, for attempting to go ashore.

Mr. Soll. Gen. Whither did you go then ?

Palmer. That Evening we went and met with a Portuguese Man of War.

Mr. Soll. Gen. You may go on from that. Whither did you go then ?

Palmer. To the Malabar Islands.

Mr. Soll. Gen. What to do ?

Palmer. To take in Water. His Cooper went ashore, and the Natives cut his Throat: And Capt Kidd sent his Men ashore, and order'd them to divide themselves into Squadrons, and to burn all the Houses they came near, except the Houses that had white Flags upon them.

Mr. Soll. Gen. Why not them ?

Palmer. Because they help'd us to water the Ship.

Mr. Knapp. And were there any Houses burnt ?

Palmer. Yes, a great many.

Mr. Knapp. What did he more ?

Palmer. I heard what he did ; I did not see it.

Mr. Bar. Hatfell. What do you know of any other Ship ?

Palmer. About the 27th of November he took the Ship *Maiden*, near *Calicut*. We spy'd a Ship in the Night, and chased her all Night, and the next Morning he took her.

Mr. J. Turton. What Ship was that ?

Palmer. Skipper *Mitchel* was Commander ; it was a *Moorish* Ship, she belong'd to *Suratt* ; she was taken in November, and after that she was called the *November*.

Mr. Soll. Gen. How was she taken ?

Palmer. Capt. Kidd chased her under *French* Colours, and this Ship had *French* Colours ; and when he haled her, it was in *French*, and this Skipper *Mitchel* answer'd in *French*.

Mr. Soll. Gen. Had the *Moorish* Ship *French* Colours before Capt. Kidd put up *French* Colours, or after ?

Palmer. After.

Mr. Soll. Gen. What Colour had she when she was chased at first ?

Palmer. It was in the Night : In the Morning Capt. Kidd hoisted up *French* Colours, and then the *Moorish* Ship likewise hoisted up *French* Colours.

Mr. Soll. Gen. What follow'd ?

Kidd. Speak true.

Palmer. I will. He fired three or four Shot at the Ship, and commanded them aboard ; and *Mitchel* did so, and some of his Men with him ; and he order'd Monsieur *Le Roy* to be as Captain ; and he came from below Deck, and receiv'd him as Captain.

Kidd. Did you see that ?

Palmer. I did not see that ; but I know he was order'd to do so, and he receiv'd him as Captain ; I was not in the Cabin at that time. Monsieur *Le Roy* receiv'd him as Captain, and carried him aft. They haled this Ship in *French*, and bid him come aboard in *French*, and this *Frenchman* receiv'd him as Captain ; and I heard him say, That he brought a *French* Pass along with him.

Mr. Soll. Gen. Who did you hear say so ?

Palmer. I heard People on board say so.

Kidd. Palmer, Did you see that Pass ?

Palmer. Indeed, Captain, I did not.

Mr. Soll. Gen. What did you do with the Ship ?

Palmer. There were two Horses on board, and ten or twelve Bales of Cotton, and some Quilts, and Capt Kidd sold them at *Malabar*.

Mr. Soll. Gen. What Goods were there ?

Palmer. Two Horses.

Mr. Soll. Gen. What besides ?

Palmer. Ten or twelve Bales of Cotton, and some Quilts.

Mr. J. Turton. What Country man was Skipper *Mitchel* the Captain ?

Palmer. A Dutch-man.

Mr. Soll. Gen. What was the Ship worth ?

Palmer. I cannot tell the Value of her.

Mr. Soll. Gen. What Burden was she ?

Palmer. About 150 Tun.

Mr. Soll. Gen. What did they do with those Horses, and the Cotton ?

Palmer. They sold them to the *Banians*.

Mr. Soll. Gen. What did they do with the Produce of those Goods ?

Palmer. Capt. Kidd kept it till they had a pretty deal of Money together, and then they shared it.

Mr. Soll. Gen. Had the Prisoners at the *Barany* Shares of it ?

Palmer. Yes.

Cl. of Arr. Had Capt. Kidd himself any Share ?

Palmer. Yes.

Cl. of Arr. Had *Nicholas Churchill* any Share ?

Palmer. Yes, he had a whole Share.

Cl. of Arr. Had *James Howe* any Share ?

Palmer. Yes, a whole Share.

Mr. J. Turton. Where did they share it ?

Palmer. On the Coast of *Malabar*.

Cl. of the Arr. Had *Robert Lamley* any ?

Palmer. Yes, half a Share.

Cl. of Arr. Had *William Jenkins* any Share ?

Palmer. He had half a Share.

Cl. of Arr. Had *Gabriel Loffe* any ?

Palmer. He had half a Share.

Cl. of Arr. Had *Hugh Parrot* any ?

Palmer. He had a whole Share.

H. Parrot. Did you see me have any Share ? Can you speak that to my Face now ? Did you see any of us have any ?

Palmer. When Capt. Kidd shared this Money, I did not actually see him pay their Shares ; but he call'd every Man by the List, and they came with their Hats in their Hands, and he gave them their Money, and they swept it up, and went away.

Mr. Soll. Gen. Were these Men call'd by the List ?

Palmer. Yes.

Mr. Soll. Gen. And did they miss none ?

Palmer. Not, that I know of.

Cl. of Arr. What say you to *Richard Barlicorn* ? Had he any ?

Palmer. He had half a Share : Whether his Master had it or no afterwards, I know not.

Cl. of Arr. Had *Abel Owens* any Share ?

Palmer. He had a whole Share.

Cl. of Arr. What had *Darby Mullins* ?

Palmer. He had a half Share.

Mr. Knapp. I think you were speaking of *Arabian* Gold, that they had in Messes : Had these Prisoners their Share of that ?

Palmer. Yes, there was no Difference ; they had all their Shares.

Mr. Knapp. Now, if you will ask this Witness any Question, you may.

Kidd.

Kidd. What signifies it to ask him any Questions? We have no Witnesses, and what we say signifies nothing.

Cl. of Arr. N. Churchill, Will you ask him any Questions?

Churchill. No, I have acknowledged all these Crimes, and surrender'd my self, and rely on the King's Mercy.

Cl. of Arr. J. Howe, Will you ask him any Thing?

Howe. No.

Cl. of Arr. R. Lamley, Will you ask him any Thing?

Lamley. Mr. *Palmer*, How can you tell I had a half Share?

Palmer. There was a half Share directed for you.

Lamley. I had not a Farthing.

Mr. J. Turton. Was he an Apprentice?

Palmer. Yes, he was Servant to Mr. *Owens*.

Jenkins. Can you say, I had any Share?

Palmer. I know there was a half Share appointed for you; I know not whether your Master had it.

Mr. J. Turton. Was his Master aboard then?

Palmer. Yes, his Master was aboard then.

Cl. of Arr. Gabriel Loffe, have you any Questions to ask him?

Loffe. Had I any Share?

Palmer. You had a half Share; I did not see you take it, but you were in the List.

Cl. of Arr. H. Parrot, Have you any Questions to ask him?

Jury-man. Did you see them come out with the Money in their Hats?

Palmer. Yes.

Mr. Soll. Gen. Did *Gabriel Loffe* come out as contented as the rest?

Palmer. No, because he had but half a Share.

Loffe. Did you see me come out with my Money?

Palmer. I saw you come out with Money in your Hat; and I heard you say, you had half a Share.

Loffe. As I live, I had no Hat then.

Cl. of Arr. Have you any Questions to ask him, *H. Parrot*?

Parrot. Did you see me have any Share?

Palmer. I did not see you receive any Share, but you was called among the rest.

Mr. J. Turton. He says, they were all called, Man by Man, to take their Shares.

Cl. of Arr. R. Barlicorn, Have you any Thing to ask him?

Barlicorn. I desire of him, Whether he saw me have any Goods, or take any Share?

Palmer. My Lord, when the Goods were shared at *Madagascar*, I was at *Bonavis*; I was not present, but I heard of it afterwards.

Barlicorn. I hope the Jury will take notice of this.

Mr. B. Hatfell. Mr. *Bradinbam*, Did any of these Men complain, that they had not their Share.

Bradinbam. No, no, I heard nothing of that.

Mr. J. Turton. Were these Shares such as were agreed on in the Articles at *New-York*.

Palmer. Yes, Capt. *Kidd* ordered the Goods to be hoisted out?

Kidd. Did I order the Goods to be hoisted out?

Palmer. Yes, you did.

Kidd. It was the Mutinous Men that did it.

Parrot. How do you know that I had any Share? You did not see me in a Year after.

Palmer. I do not say, I saw it given you.

Kidd. My Lord, there were 95 Men that deserted my Ship, and took away what they pleased; we could not stand in Defence of any Thing.

Barlicorn. Was not I an Apprentice to Capt. *Kidd*, and waited on him continually in the Ship?

Palmer. Yes, you were.

Mr. Soll. Gen. Had he a Share allotted him?

Palmer. Yes; but I am apt to think his Master had it.

Mr. J. Turton. Who was his Master?

Palmer. Capt. *Kidd*.

Cl. of Arr. A. Owens, Have you any Thing to say for your self?

Owens. I refer my self to the King's Proclamation.

Cl. of Arr. Darby Mullins, Have you any Thing to say for your self?

Mullins. I came to *Cape May*, where I heard of the King's Proclamation. Did not you and I come ashore together?

Palmer. Yes, we did, the same Day.

Mullins. Did not we come ashore on the King's Proclamation;

Palmer. We did hear of it.

Mullins. Did not you hear, that all the Men were glad at the News, when they heard of the Proclamation?

Dr. Oxenden. What did these Men say then?

Palmer. They all rejoiced to hear of such a Thing.

Mullins. From the Time I came from *Madagascar* I was sick of the Bloody-Flux; I could not walk a Mile in a Day.

Palmer. I know you was sick.

Mullins. I have no more to say: I stand to your Lordship's Mercy, and the King's gracious Proclamation.

Mr. J. Turton. If you have any Witnesses to call for your selves, you may call them. Capt. *Kidd*, what have you to say for your self? You may make your Defence, first for that Ship taken in *September*; then, for that in *November*.

Kidd. What is it the near for me to speak? I have no Witnesses for these Things.

Mr. B. Hatfell. Yesterday you produced your Commissions; if you will, they may be read now.

Kidd. It availed nothing then. Here is all these Men saw the *French Pass*:

Palmer. Indeed, Captain, I never saw it.

Kidd. You left my Ship, with 95 Men more, and you went a roguing afterwards.

Mr. Soll. Gen. Why did you go aboard that Pirate.

Kidd. My Lord, I had a Design to take that Frigate, and then I designed to come for *England*. I would not go with such a Roguish Crew as you were. Was not I threatened to be shot in the Cabbin by such Villains as you, if I would not go along with you? This was the Reason I could not come home. Did not you, with others, set fire to the Boat, to destroy my Ship?

Palmer.

Palmer. I know nothing of that; but I am sure I saved your Life on the *Malabar* Island, when you burnt the Boat.

Kidd. My Lord, they took what they pleased out of this Ship, and I was forced to stay by my self, and pick up here a Man, and there a Man, to carry her home.

Cl. of Arr. Nicholas Churchill, What have you to say for your self?

Churchill. My Lord, I plead Guilty, and rely on the King's Proclamation.

Cl. of Arr. James Howe, have you any Thing to say for your self?

Howe. I plead Guilty, my Lord.

Kidd. Here are some Gentlemen here, I desire they may be heard as to my Reputation. Here is Col. *Hewson*.

Mr. J. Turton. What do you ask Col. *Hewson*?

Kidd. I ask him what he knows as to my Reputation in the *West-Indies*?

Col. Hewson. My Lord, he was a mighty Man there. He served under my Command. He was sent to me by the Order of Col. *Codrington*.

Mr. Soll. Gen. How long was this ago?

Col. Hewson. About nine Years ago. He was with me in two Engagements against the *French*, and fought as well as any Man I ever saw, according to the Proportion of his Men. We had six *Frenchmen* to deal with, and we had only mine and his Ship.

Kidd. Do you think I was a Pirate?

Col. Hewson. I know his Men would have gone a Pirateering, and he refused it, and his Men seized upon his Ship. And when he went this Voyage, he consulted me, and told me they had engaged him in such an Expedition; and I told him he had enough already, and might be contented with what he had: And he said, it was his own Inclination; but my Lord *Bellamont* told him, if he did not go the Voyage, that there were Great Men, and they would stop his *Brigantine* in the River, if he did not go.

Mr. J. Turton. Who told you so? Did he?

Col. Hewson. Yes, my Lord.

Mr. J. Turton. If he had kept to the honest Design of that Expedition, he had done very well. Did you apprehend that his Intention in that Undertaking was to be a Pirate?

Col. Hewson. No, my Lord. He told me his Business was to go a Cruising, and surprize Pirates.

Mr. Soll. Gen. Did he tell you he had no such Design.

Col. Hewson. Yes, he said he would be shot to Death before he would do any such Thing. I know he was very serviceable in the *West-Indies*.

Cl. of Arr. Robert Lamley, Have you any Thing more to say?

Lamley. I can say nothing, for I have none of my Friends here.

Kidd. Call *Thomas Cooper*. (*Who appeared*.)

Mr. J. Turton. What Questions do you ask him?

Kidd. Sir, pray tell my Lord what you knew of me in the *Indies*.

Thomas Cooper. I was aboard the *Lyon*, and this Capt. *Kidd* brought his Ship from a Place that belonged to the *Dutch*, and brought her into the King's Service at the Beginning of the War, about Ten Years ago; and he took Service

under the Colonel; and we fought Monsieur *Du Cass* a whole Day, and, I thank God, we got the better of it; and Capt. *Kidd* behaved himself very well in the Face of his Enemies.

Jury-man. How many Years ago was this?

Tho. Cooper. About Ten Years ago.

Cl. of Arr. Robert Lamley, Have you any Thing more to say?

Lamley. I have no Friends here, I am a 'Pren-tice, my Lord.

Cl. of Arr. William Jenkins, Have you any more to say?

Jenkins. I was an Apprentice, my Lord.

Cl. of Arr. Gabriel Loffe, Have you any Thing to say for your self?

Loffe. My Lord, I was a Servant under Capt. *Kidd*, and always obeyed his Commands, and had no Share. I came home with Capt. *Kidd*, to *Boston*, and went to my Lord *Bellamont*, and the Men came and told us he had discharged us, and I went about my Business. And some Days after, we were committed to Prison, and I was sick, and my Lord let me be in the Keeper's House, and I was trusted by him four or five Months with the Keys to look after the Prisoners. Mr. *Davis* can testify this. If I had had a mind to have done any ill Thing, I might have done it then. (*Then Mr. Davis appeared*.) Pray, Mr. *Davis*, declare what you know of me when I came to *Boston*, and how the Keeper intrusted me with the Prisoners.

Mr. Davis. I remember when we came there to the *Road-Island*, Capt. *Kidd* sent him home: And when he came to *Boston*, he was trusted with the Keys, and had liberty to go where he pleased not out of the Yard.

Mr. J. Turton. Was this after he was a Prisoner?

Mr. Davis. Yes, my Lord.

Gabriel Loffe. I hope the Jury will take notice of this.

Kidd. Mr. *Davis*, Did you not hear of any *French* Passes that I had?

Mr. Davis. I heard of them, and I saw them.

Mr. Soll. Gen. How do you know they were *French* Passes?

Mr. Davis. He told me they were *French* Passes; I did not know it, I could not read them.

Mr. J. Turton. They shewed you the Papers; Did you know what Ship they belonged to?

Mr. Davis. No, my Lord, not I.

Kidd. I desire Capt. *Hunt* may be called, to know what my Lord *Bellamont* said of me.

Mr. B. Hatsell. That will signify nothing.

Cl. of Arr. Hugh Parrot, Have you any Thing to say for your self?

Parrot. My Lord, I had no Share of the Goods.

Kidd. My Lord, I desire this Commission may be read.

Mr. B. Hatsell. Is it under the Broad-Seal?

Mr. Crawley. It is a Letter of Mart and Reprials, my Lord.

[*Then the Commission was read, dated the 11th of December, 1695.*]

William Kidd. Now, my Lord, in pursuance of this Commission, I went and took these Ships, which had *French* Passes on board, and my Lord *Bellamont* took them by force from me.

Mr. J. Turton. You took one *French* Ship, and acted in a regular manner to condemn her; but, Did you do so with the rest?

Kidd. I could not carry these Ships home, by reason my Men had left me.

Mr. J. Turton. *Mr. Bradinbam*, with what number of Men did you go out of *England*?

Bradinbam. With about seventy Men.

Mr. J. Turton. What number had you when you went from *New-York*?

Bradinbam. About 155.

Mr. J. Turton. So that your Number was encreas'd.

Bradinbam. Yes, my Lord.

Mr. J. Turton. Was there any other Ship condemn'd, besides the *French* Banker?

Bradinbam. No, my Lord.

Kidd. These Men were some of them that left me, and took the Goods; what was left I carried with me.

Cl. of Arr. Hugh Parrot, have you any more to say?

Parrot. The Evidence cannot prove that I had any Share: I came with my Commander from *Madagascar*, and he paid me an hundred Pieces of Eight, and my Lord *Bellamont* seiz'd all: And I had Opportunity enough to have gone a pirating with Capt. *Culliford*, but I told them I would not: And I came to my Lord *Bellamont*, and surrender'd my self.

Cl. of Arr. Robert Barlicorn, have you any thing to say in your own Defence?

Barlicorn. I desire Witnesses may be call'd, to know whether I was not a Servant aboard?

Mr. J. Turton. The King's Evidence say you were.

Cl. of Arr. Abel Owens, what have you to say?

Owens. I own my self Guilty; I came in upon the King's Proclamation.

Cl. of Arr. Darby Mullins, what have you to say?

Mullins. I did what I did under the King's Commission; I obey'd my Captain, and came home with him; I durst not for my Life do otherwise. Examine the Witnesses, and they will not say otherwise. *Mr. Bradinbam*, did I do any Thing against the Captain's Command?

Bradinbam. I cannot say but he did always obey the Captain's Commands.

Mr. Soll. Gen. Did he not go aboard Capt. *Culliford* afterwards?

Bradinbam. Yes, my Lord.

Mullins. I went for Want.

Cl. of Arr. Have any of you any more to say?

Parrot. My Lord, I did not go out of *England* with Capt. *Kidd*, but I shipp'd my self on board a Merchant-man bound for *Newfoundland*, and I was taken by a *French* Privateer; and afterwards coming to *Madagascar*, Capt. *Kidd* was there, and he took a Pistol to shoot me, but I avoided it: But hearing afterwards that Capt. *Kidd* had the King's Commission, I went aboard him.

Mr. J. Turton. Had he any Commission to take any Goods from the King's Subjects?

Mr. Bar. Hatsell. Capt. *Kidd* says, the Seamen forced him from the Ship, and you shared the Goods your selves.

Parrot. He does not say so of us. My Lord,

with Submission, be pleas'd to ask my Commander, whether I ever disobey'd his Commands, or was forward to attempt any ill Thing, or did any Thing of that which is alledg'd against me?

Kidd. *Mr. Bradinbam*, are not you promis'd your Life, to take away mine?

Mr. J. Turton. He is not bound to answer that Question: He is very fit to be made an Evidence for the King; perhaps there can be no other in this Case, than such who are in his Circumstances.

Parrot. With Submission, I ask the Evidence, whether I ever disobey'd the Captain's Orders?

Mr. J. Turton. The Captain's Orders will excuse you in honest Things, but not in unlawful Actions.

Parrot. As for the Ships that were taken, I had no Hand in it.

Mr. Knapp. But you receiv'd your Share, and knew of the robbing of the Ships.

Mr. J. Turton. Gentlemen of the Jury, here is *William Kidd*, *Nicholas Churchbill*, *James Howe*, *Robert Lamley*, *William Jenkins*, *Gabriel Loffe*, *Hugh Parrot*, *Richard Barlicorn*, *Abel Owens*, and *Darby Mullins*, the Prisoners at the Bar, who are all indicted for Piracy, or piratical and felonious taking a *Moorish* Ship, on the High Seas, about fifty Leagues from *Carrawar* in the *East-Indies*, and seizing the Goods that were in that Ship, to a considerable Value. And they are also indicted for the piratical and felonious taking another Ship, which was likewise a *Moorish* Ship, with the Tackle and Apparel thereof, to the Value of an Hundred and Five Pounds, four Leagues from *Callicut* in the *East-Indies*. Now to these Indictments they have pleaded, Not guilty: And whether they are guilty or no, you are to determine, on the Evidence you have heard.

I need not tell you the Heinousness of this Offence wherewith they are charg'd, and of what ill Consequence it is to all Trading Nations. Pirates are call'd *Hostes humani generis*, the Enemies to all Mankind; but they are especially so to those that depend upon Trade: And these Things that they stand charg'd with, are the most mischievous and prejudicial to Trade that can happen. But as it is not my Business to aggravate the Offence, so it is yours to consider, whether they, or any of them, are guilty or not.

Two Witnesses have been produced for the King, and both of them were concern'd in all the Transactions relating to the Prisoners; and by their Evidence it appears, That in the Year 1696, about the beginning of May, Capt. *Kidd*, who was Captain of *The Adventure-Galley*, was fitted out on a very good Design; for he was to take Pirates, and to seize the Ships and Effects of the King's Enemies: That was the End of this Expedition. He went out from *Plymouth* with about Seventy Men from *England*; they sail'd to *New-York*, and in their Passage they seiz'd a *French* Vessel, and that Vessel was condemn'd in a due Manner, and that was pursuant to their Commission.

When they came to *New-York*, there were other Things in Contemplation. Then he made a Proclamation, to give Notice, That if any would come aboard him, he propos'd Terms for their Encouragement; That they should be Share

ers in all they could acquire; he himself would have Forty Shares, because the Ship, Arms, Ammunition, and Provisions were his, and the rest should be divided proportionable to those that should be aboard him. And whereas they went out with seventy Men, there their Number was increas'd to 155, for with that Number he sail'd from *New-York*.

Gentlemen, The Witnesses tell you whither they went afterwards; I will not mention all the particular Places, but only such where any Thing remarkable was done. They say, they came to a Place call'd *Babs-Key*; and there, it seems, they had an Intention to observe a Fleet, call'd *The Mocca-Fleet*: There they stay'd about Three Weeks, and in that Time Capt. *Kidd* sent his Boat three times to *Mocca*, where this Fleet was: The two first times they brought no certain Account; but the last Boat that was sent brought Intelligence, that there were fourteen or fifteen Ships lay in the River or Harbour there, and were ready to sail; and, that they had *Dutch* Colours, *English* Colours, and *Moorish* Colours. And Capt. *Kidd* said then, He expected to make a considerable Advantage of them. And after this Advertisement, he sent some Men to the high Lands, to observe the Motion of this Fleet; who, after some Time, gave Notice that the Fleet was coming; and then he went out with his Vessel; and, as they tell you, he went into this Fleet, and discharg'd some Guns at them; but, they having a Convoy, he found he was not a Match for them, and that it would be in vain to attempt any thing further on so great a Disadvantage; and so that Design was frustrated. But it must be observ'd, That these Ships were all *English*, *Dutch*, and *Moorish*, and none of them *French*; which shews Capt. *Kidd*'s Inclination to take such Ships, for which he had no Authority by any Commission.

But they tell you, after this, when he had met with this Disappointment, then he sail'd towards the Coast of *Carrawar*, and there they met with the first *Moorish* Ship, that he is now charg'd with; and this Ship they seiz'd, and took one *Parker*, who was the Captain: They seiz'd him, and also a *Portuguese*, whom they made use of as an Interpreter; and some of the Men, whom they treated in a barbarous manner. They tell you, That there happening to be an *English* Factory near that Place; they of that Factory understanding that this *Parker* and the *Portuguese* were on board the Ship, they sent to demand them, and Capt. *Kidd* deny'd them, and said, There were no such Men on board, and yet he had hid them under the Deck. You are also told by the Witnesses what they found and seiz'd on board this Ship, viz. Pepper, Coffee, Myrrh, and some Gold. They have told you, the Gold was shar'd amongst them, and in Specie, as I remember; every Man had two Pieces, and the rest of the Goods were divided amongst them in proportion, according to their Original Agreement, or they had their Shares of the Money for which they were sold. This was the first Ship that he stands charg'd with the piratical taking of; and this Ship was a *Moorish* Ship, and did belong to the Natives of that Place.

And then it appears they went to the Coast of *Malabar*, and there they took the other Ship

that he is charg'd with by the other Indictment; the first was taken in *September*, and this in *November*. There was on board that Ship two Horses, and several Bales of Cotton, and some other Goods; and this also belong'd to the *Moors*, and one Skipper *Mitchell*, a *Dutchman*, was Captain of her. When they had taken this Ship, they went to *Madagascar*, and there, it is told you, they sunk this Vessel: And they having several other Goods that they had taken out of another Vessel, the Goods were sold, and divided between the Captain and the rest of the Men, according to their several Proportions. And it is prov'd to you, that every one of these Prisoners had some Share of the Product of those Goods. And now, to shew what Captain *Kidd* was, and that he was a Favourer of those he ought to have oppos'd, there was another Pirate there, one Capt. *Culliford*, who had a Vessel that he us'd to the same Purpose, call'd *The Great Mahomet*; and he having heard of *Kidd*'s Commission, had a Jealousie that Capt. *Kidd* had a Design to take him and his Company; but he told them, he had no such Design; he was so far from that, that he assur'd them, nay swore, he would be true to them: And there were great Appearances of Friendship between Capt. *Kidd* and Capt. *Culliford*; they made mutual Visits to each other; and Capt. *Kidd* did accommodate *Culliford* with some Guns, and gave him liberty to take any Thing he had; and Capt. *Culliford* likewise presented him with *China* Silks. Now this also is given in Evidence, to shew that Capt. *Kidd* had a Piratical Design in all this, and that he did assist those that were engag'd in the like Design with him, instead of endeavouring to suppress them.

Now, Gentlemen, the first Witness, *Robert Bradinham*, has declar'd all this to you; and likewise *Joseph Palmer* has spoken to the same Purpose, tho' something more than the other; and he tells you, how they went ashore on one of the *Malabar* Islands, and how they burnt some Houses, and did other very barbarous Things; but that concerns not this Matter for which they are now indicted. He tells you also, That when they took one of these Ships, whereof Capt. *Parker* was Commander, they took two of the Men on board that Ship, and hoisted them up, and us'd them severely; which they did, to cause them to discover what Things of Value they had on board; but it seems they had nothing of any considerable Worth on board: However, this shews, that Capt. *Kidd* had a Design to act Piratically. The Witness gives you an Account of all the Transactions in taking the two Ships, and disposing of the Goods, and dividing of the Money: Indeed he says, when the Distribution was made, he was not in the Cabin, but tells you, he heard the List call'd over, and all the other Prisoners severally went in, and brought out their Shares in their Hats, or otherwise, and did not hear any one complain that he had not his Share.

Gentlemen, there are three Persons that were Servants, that is, *Robert Lamley*, he was Servant to *Owens* the Cook; *William Jenkins*, he was Servant to the Mate; and *Richard Barlicorn*, who was Servant to Captain *Kidd*: Now, tho' these might have their Shares deliver'd them, yet it is to be presum'd that they were to be accountable to their Masters: And they being

Servants,

Servants, I suppose you will think to distinguish them from the rest.

Gentlemen, this is the Sum of the Evidence given for the King; and, indeed, this seems to be as strong an Evidence against the Prisoners at the Bar as can be: They did endeavour to take the *Mocca Fleet*, but they were too strong for them: And they could have no Suspicion that they were *French*, for they had *English, Dutch, and Moorish* Colours; so that Capt. *Kidd* could have no Pretence from his Commission to look after these Ships: There were no *French* among them, and yet there he lay three Weeks waiting for them; but they did actually take these two Ships mention'd in the Indictments, and dispos'd of the Goods, and shared the Product among themselves. Here is all the Evidence that can be given of Piracy.

Now Capt. *Kidd*, when he comes to make his Defence, tells you, He had a Commission, and it was produced (and that is no more than what is common in Time of War) whereby he is authoriz'd to take the Ships and Goods of any of the Subjects of the *French King*; but it is penn'd with great Caution; he is to take none but the Goods and Ships of the *French King*, or his Subjects; and he is to keep an exact Account of all that he takes, and to procure them to be condemn'd in the Admiralty. Now, if he had pursued this Commission, and gone no further, it had been well; he had done justly, and answered the End on which he was sent out. And it does appear, that the first Vessel that he took in his Passage to *New-York* was thus condemn'd: But afterwards I do not find that he had any Regard to his Commission, but waited for that great *Mocca Fleet* a considerable time, I think about three Weeks; and being disappointed there, he afterwards did take these two Ships mention'd in the Indictment; and it does not appear that they were *French Ships*, neither were there any *French Passes* on board. One of the Witnesses indeed says, He heard of *French Passes*; but neither he, or any other Person that has been produced, has seen one of them. Now I do not observe that his Commission does any manner of way tend to excuse the Captain in taking both, or either of these Ships: One of them was under an *English Commander*, which was *Parker*, the other under a *Dutch-man*; there were no *French men* aboard, only *Le Roy*, who was made a kind of a Mock-Captain by *Kidd*, to serve a present Turn. But what Capt. *Kidd* has said from his Commission, is so far from justifying him, that it seems rather an Aggravation of his Crime: For he that will go out with the King's Commission on a just and laudable Design, to take the Ships and Effects of the *French King* in War, and also to destroy Pirates (which were the principal Ends of his being fitted out to Sea) and instead thereof will turn Pirate himself, make use of the Force with which he was intrusted, for the promoting his Piratical Purposes, and for the felonious taking the Ships and Goods of those that were in Amity with the King of *England*, appears to be guilty of a manifest Breach and Violation of his Trust, attended with very aggravating Circumstances.

Now, for those Three that were Servants, I must leave it to you, whether they did act otherwise than they might do. A Servant is to obey

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his Master, but it must be in Things lawful and honest; if they did any Thing else, you, who have heard the Evidence, will consider of their Guilt; and whether their Cases differ from the rest: But there is some Probability, that their Shares might be accounted for to their respective Masters.

Now, as to the rest, there are some of them that do pretend they did surrender themselves; one of them to Mr. *Riches*, a Justice of Peace in *Surrey*; others, to Colonel *Bass*, who was a Commander in *East-Jersey*; and it does appear, that they did surrender themselves accordingly: But that does not come under your Consideration; you are to consider only, whether they are Guilty of the Facts they are charg'd with, or no. As to what Effect their surrendring themselves may have with his Majesty, must be left to the King's Royal Pleasure, but we are to consider the Evidence. Now they generally say, They did obey the Captain, and, that they understood he had the King's Commission. Truly, so far as he pursued the King's Commission, they were to obey him; but when he acts contrary to the King's Commission, in Acts of Piracy upon the Ships, Goods and Effects of the King's Friends, and those in Amity with the Crown of *England*, they should have been so far from obeying and assisting him, that they should have obstructed him, and seiz'd him, that he might have been brought to Justice, and that would have been a greater Vindication of their Innocencies. But, as the Matter now appears, I do not see that any thing they have said tends to their Defence, and therefore I must leave it to your Consideration.

Indeed, there are some Witnesses appear for Capt. *Kidd*. Colonel *Hewson* gives you this Account of Capt. *Kidd*, That he was under his Command in the beginning of the War, and, that he fought, and behav'd himself very well, and was serviceable in the *West-Indies*; and he says, he discours'd him about his going out on the Expedition he was sent; and, that *Kidd* said he had no Inclination to go. And Mr. *Cooper* likewise tells you, That about ten or twelve Years ago he knew him, and, that he fought the *French*, and behav'd himself very well at that Time; and, that several of his Men ran away with his Ship when he was at *Antegoa*.

Then there is *Gabriel Loffe*, he has produced a Witness for himself, one *Davis*; and *Davis* tells you, He was a Prisoner in *New-York*, by Order from my Lord *Bellamont*; and at first they were some Days there before they were taken into Custody; and there was so little Apprehension of his being a dangerous Man, that he had some Favour allow'd him, and had a great deal of Liberty. This is that he says. I find not that any of the rest have produced any Evidence, only they say they were under the Commander, and were to observe him; but if that would excuse them, then all Pirates would be excus'd. Now, as to Capt. *Kidd*, it seems he has wofully transgress'd the Business of his Commission, and acted contrary to the End and Design of his being sent out, and in the piratical taking the Ships and Goods mention'd in the Indictments, in which the other Prisoners at the Bar have join'd with him; and they were so far from

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from being the Ship and Goods of the *French* King, or his Subjects, or Pirates, that they were the Ships and Goods of Persons of other Nations in Amity with the King of *England*. Now if you believe these Witnesses, that Capt. Kidd has taken these Ships in a piratical Manner, and, that the other Persons assisted him in it, and had their Shares of the Money and Goods, which is an Evidence of their consenting to, and spontaneous acting, I believe you will think fit to find them Guilty; but I leave it to you. And as to these three Persons that were Servants, I must leave their Case to your Consideration, whether you will think fit to distinguish them from the rest, or not.

Then an Officer was sworn to keep the Jury.

And after about Half an Hour the Jury return'd, and brought in their Verdict.

Cl. of Arr. Gentlemen, answer to your Names: William Smith.

William Smith. Here, &c.

Cl. of Arr. Gentlemen, Are you all agreed of your Verdict?

Omnes. Yes.

Cl. of Arr. Who shall say for you?

Omnes. Foreman.

Cl. of Arr. William Kidd, Hold up thy Hand. (Which he did.) Look upon the Prisoner: How say you? Is he Guilty of the Piracy and Robbery whereof he stands indicted by the first Indictment, or not Guilty?

Foreman. Guilty.

Cl. of Arr. Is Nicholas Churchill Guilty, or not Guilty?

Foreman. Guilty?

Cl. of Arr. Is James Howe Guilty, or not Guilty?

Foreman. Guilty.

Cl. of Arr. Is Robert Lamley Guilty, or not Guilty?

Foreman. Not Guilty.

Cl. of Arr. Is William Jenkins Guilty, or not Guilty?

Foreman. Not Guilty.

Cl. of Arr. Is Gabriel Loffe Guilty, or not Guilty?

Foreman. Guilty.

Cl. of Arr. Is Hugh Parrot Guilty, or not Guilty?

Foreman. Guilty.

Cl. of Arr. Is Richard Barlicorn Guilty, or not Guilty?

Foreman. Not Guilty.

Cl. of Arr. Is Abel Owens Guilty, or not Guilty?

Foreman. Guilty.

Cl. of Arr. Is Darby Mullins Guilty, or not Guilty?

Foreman. Guilty.

In like manner Kidd, and Six more, were found Guilty on the other Indictment, and the Three Servants Acquitted.

The Trial of William Kidd, and the other Nine Persons, upon Two more Indictments of Piracy:

One committed on a *Moorish* Ship, four Leagues from *Callicut*; the other, on a *Portuguese* Ship, twelve Leagues from *Callicut*.

THE Prisoners being call'd to the Bar, and the Jury call'd, and Capt. Kidd challenging those that had Try'd him for the Murther, the Twelve that were sworn are as followeth; viz.

JURY.

Jos. Watson,	}	Tho. Plaisted,
Jos. Villers,		Sam. Rown,
Geo. Ashby,		Marm. Bludder,
Ed. Fenwick,		Jo. Scot,
Gilbert East,		Jo. Reynolds,
Tho. Humfrevil,		Rich. Drew.

Cl. of Arr. Cryer, count these: Jo. Watson.

Cryer. One, &c. Twelve Good Men and True, stand together, and hear your Evidence.

Mr. J. Turton. With what will you proceed on now?

Cl. of Arr. With the two other Ships.

Then the usual Proclamation for Information was made; and the Prisoners being bid to hold up their Hands, the Cl. of Arr. charg'd the Jury with them thus:

Cl. of Arr. You of the Jury, look upon the Prisoners, and hearken to their Cause. They stand Indicted by the Names of William Kidd, late of London, Mariner, &c. (As before in the Indictment.) Upon this Indictment they have been arraign'd, and thereunto have severally pleaded Not Guilty, and for their Trial have put themselves on God and their Country, which Country you are. Your Charge is, to enquire, whether they be Guilty of the Piracy and Robbery whereof they stand indicted, or not Guilty, &c.

Churchill. I plead Guilty, my Lord, I submit my self to the King's Proclamation.

Cl. of Arr. James Howe, Do you stand to your Plea?

Howe Guilty, my Lord, I submit to his Majesty's gracious Proclamation.

Cl. of Arr. Robert Lamley, what do you say? Lamley. Not Guilty.

Mr. J. Turton. You may enter their retracting their Pleas in Court.

Cl. of Arr. William Jenkins, what say you? Do you stand to your Plea?

Jenkins. Not Guilty.

Cl. of Arr. Gabriel Loffe, what say you?

Loffe. Not Guilty.

Cl. of Arr. Hugh Parrot, what say you?

Parrot. Not Guilty.

Cl. of Arr. Richard Barlicorn, what say you? Barlicorn. Not Guilty.

Cl. of Arr. Abel Owens, what say you?

Owens.

Owens. Guilty. I came upon the King's Proclamation.

Mr. Knapp. The Jury is not to be charged with them three then.

Cl. of Arr. Here is a second Indictment against them, wherein they stand indicted by the Name of *William Kidd*, late of *London*, Mariner, &c. (as in the former Charge.) What must I say now?

Mr. J. Turton. Ask them three, Whether they stand to their Plea to this Indictment, or retract it?

Cl. of Arr. *Nicholas Churchill*, Do you confess this Indictment?

Churchill. Yes, my Lord.

Cl. of Arr. *James Howe*, What say you?

Howe. Guilty of that, and all the other.

Cl. of Arr. *Abel Owens*, What do you say?

Owens. Guilty of that, and all the other.

Cl. of Arr. Set them three by. Gentlemen of the Jury, Here is one *William Kidd*, *Robert Lamley*, *William Jenkins*, *Gabriel Loffe*, *Hugh Parrot*, *Richard Barlicorn*, and *Darby Mullins*, have been indicted upon two several Indictments that have been read; and for Trial have put themselves on God and their Country, which Country you are.

Mr. Knapp. My Lord, and Gentlemen of the Jury; these are two several Indictments of Piracy, against *William Kidd*, and the Six other Prisoners at the Bar. The First sets forth, That these Prisoners, the 28th of December, in the Eighth Year of his Majesty's Reign, about four Leagues from *Callicut*, did piratically enter a certain Ship, called a *Moorish* Ship, and that they took her, with the Apparel and Tackle, and took out of her several Goods that have been read to you in this Indictment. To this Indictment they have pleaded, Not Guilty. If we prove them guilty, you must Find them so. The other Indictment sets forth, That on the 9th of January, &c. they took another Ship, a *Portuguese* Ship; and to this also they have pleaded, Not Guilty. If we prove them guilty, you must Find accordingly. Call *Robert Bradinham*, and *Joseph Palmer*. (*Who appeared, and were sworn.*)

Mr. Soll. Gen. My Lord, and Gentlemen of the Jury, I am Council for the King against the Prisoners at the Bar: They stand indicted for several Piracies committed on two Ships; and our Evidence against them will be to this Purpose: Capt. *Kidd* had two Commissions, one was to take Pirates, the other was to take *French* Ships. *William Kidd*, in his Ship, *The Adventure-Galley*, went out of *England* in the Year 1696: He afterwards went to *New-York*, and there he increased the Number of his Men: And from thence went away with a Resolution to commit the Piracies, some of which he has been convicted of already: Then he went to *Babs-Key*, and laid in wait to intercept the *Mocca Fleet*; but was disappointed of that, they being well guarded: He went afterwards to other Places, and took two Ships, which were not the Ships here mentioned. After that, he seized a Ship, called a *Moorish* Ship, ten Leagues from *Callicut*, and there seizes one of the Ships for which he is now indicted, a *Moorish* Ship, and takes out of her Sugar-Candy, and other Goods, to the Value of about Five and Twenty Pounds. In January following, he meets another Ship, and seizes her too, and takes out

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of her to the Value of Sixty Pounds. These Goods he disposes of, and divides the Proceed of it between himself and the Crew of the Ship. And this is the Piracy for which he is now indicted. The Matter you are to enquire into, is, Whether they be guilty of Piracy on these two Ships, or no. We will call our Witnesses; and, if we prove them guilty, I doubt not but you will do Right to your Country and them. Mr. *Bradinham*, these Gentlemen have not been upon the Jury before; therefore you must give an Account of the whole Matter from the Beginning, from your going out of *Plymouth*.

Bradinham. In the Year 1696, the Beginning of May, we went from *Plymouth* to *New-York*.

Mr. Soll. Gen. What Ship did you go in?

Bradinham. The *Adventure-Galley*: And by the Way he took a *French* Ship, which he condemned when he came to *New-York*. At *New-York* he put up his Articles, to get Men aboard his Ship, and they were to have a Share of what was taken. About the Sixth of September we sailed.

Mr. J. Gould. What Number of Men had you when you went from *England*?

Bradinham. About seventy Men.

Mr. J. Gould. How many had you when you went from *New-York*?

Bradinham. About an hundred and fifty. The Sixth of September we sailed from *New-York*, and went to *Maderas*, then to *Bonavis*, then to *St. Jauger*, then to *Madagascar*, then to *Joanna*, then to *Mabala*, then to *Joanna* again, then to *Meta* in the *Red-Sea*, and then to *Babs-Key*.

Mr. Soll. Gen. What did you do there?

Bradinham. He lay there about a Fortnight or three Weeks, to wait for the *Mocca Fleet*, and sent out his Boat three times to make a Discovery; the two first times they made no Discovery; but the third time they brought Information, that they were ready to sail.

Mr. B. Hatsell. What was the *Mocca Fleet*?

Bradinham. They were *Moorish* Ships.

Mr. B. Hatsell. To what End did he wait for them?

Bradinham. He said, he would make a Voyage out of them.

Mr. Soll. Gen. What happened on that?

Bradinham. He ordered some Men to look out for them on the high Lands; and when they saw them coming, they were to give Notice, and he was to fetch them off in the Boat. This Fleet came, and he fell in with them, and fired at them; but they being under Convoy, he was forced to quit them: And then going to *Carrawar*, he met with one *Parker's* Ship; he took this *Parker's* Ship, and took him for a Pilot, and the *Portuguese* for a Linguister.

Mr. Soll. Gen. How did he use the Men there?

Bradinham. Two of them were brought on board the *Adventure-Galley*, and they were hoisted up, and drubb'd with a naked Cutlafs.

Mr. Soll. Gen. Why did he do that?

Bradinham. That they might make Discovery of their Riches.

Mr. Soll. Gen. What did they take out of that Ship?

Bradinham. Some Coffee, Pepper, &c.

Mr. Soll. Gen. What did he do with the two Men?

Bradinham. He carried them with him to *Carrawar*; and when he came there, they were demanded

manded by the *English* Factory there, and he denied them, and said, He had no such Men aboard.

Mr. Soll. Gen. Where had he put them?

Bradinbam. He confined them aboard in the Hold.

Mr. Soll. Gen. Where did he go then?

Bradinbam. He put to Sea, and the next Day he met with a *Portuguese* Man of War, and fought her.

Kidd. He tells nothing but meer Lies.

Bradinbam. Then he went to the *Malabar* Islands, and watered and wooded, and caused his Men to burn several Houses, and plunder several Boats, and afterwards burnt them.

Mr. J. Turton. Did you see them burnt?

Bradinbam. I was not ashore, but I saw the Smoke.

Kidd. It is a fine Trade, that you must take away so many of the King's Subjects Lives, and know nothing at all of the Matter!

Mr. Soll. Gen. What did you do with that Ship?

Bradinbam. He took her, and disposed of the Goods, and carried her to *Madagascar*.

Mr. Soll. Gen. What did he do after that?

Bradinbam. We went to the *Malabar* Islands some time in *December*, and he took a *Moorish* Ketch.

Kidd. How came you to keep this Account, when for five or six Months together you were under Deck?

Mr. Soll. Gen. Go on, Mr. Bradinbam, and give an Account of your further Proceedings.

Kidd. I hope the King's Council will not put him in the Way. It is hard, that a couple of Rascals should take away the King's Subjects Lives: They are a Couple of Rogues and Rascals.

Bradinbam. This Ketch was taken by the Ship's Crew, about *December*, 1697. and one of the Boat's Crew was wounded at the Taking of this Ketch.

Mr. Soll. Gen. What was there in this Ship?

Bradinbam. Some Tubs of Sugar-Candy, Tobacco, &c.

Mr. Soll. Gen. What did he do with these Goods?

Bradinbam. They were carried aboard, and shared into Messes, two Tubs and a half of Sugar-Candy to a Mess.

Mr. Soll. Gen. Had the Prisoners at the Bar any Shares?

Bradinbam. Yes; and then he set the Ship on Fire.

Cl. of Arr. Had Capt. Kidd himself any Share?

Bradinbam. Yes.

Cl. of Arr. How much had he?

Bradinbam. He had forty Shares.

Mr. B. Hatsell. You should tell this Jury how many Shares the Whole was divided into.

Bradinbam. It was divided into one hundred and sixty Shares, and Capt. Kidd was to have forty Shares, let them be as many as they would, and the rest were to be divided among the Men.

Cl. of Arr. Had Robert Lamley any Share?

Bradinbam. Yes.

Cl. of Arr. Had William Jenkins a Share?

Bradinbam. Yes.

Cl. of Arr. Had Gabriel Loffe any Share?

Bradinbam. Yes.

Cl. of Arr. Had Hugh Parrot any Share?

Bradinbam. Yes.

Cl. of Arr. Had Richard Barlicorn any Share?

Bradinbam. Yes.

Cl. of Arr. Had Darby Mullins any Share?

Bradinbam. Yes.

Mr. Soll. Gen. What was done afterwards?

Bradinbam. After they had done these things, they burnt the Ketch.

Knapp. What did they do then?

Bradinbam. The *Moors* were driven ashore by the Ship's Crew.

Kidd. How did you know they were *Moors*?

Bradinbam. By Information of the Ship's Crew.

Kidd. He was not within five Leagues of the Place.

Knapp. What did you meet with afterwards?

Bradinbam. A *Portuguese* Ship. Some time in *January*, 1697, we met with a *Portuguese* Ship on the Coast of *Malabar*, and he took her; and he took out of her some Opium, some *East-India* Goods, some Powder, and sixty or seventy Bags of Rice.

Mr. Soll. Gen. My Lord, this is the other Ship for which they are indicted. What was the Value of these Goods?

Bradinbam. There were some *East-India* Goods, Opium, Powder, and Rice.

Kidd. Did you see them brought aboard?

Bradinbam. I am answering the Bench.

Mr. Soll. Gen. Were there any other Goods?

Bradinbam. Yes, there was Bees-Wax, and thirty Jarrs of Butter.

Mr. Soll. Gen. What was the Value of these Goods?

Bradinbam. About Four or Five Hundred Pounds.

Kidd. It is a fine Trade indeed, that he must be instructed what to say!

Bradinbam. After he had plunder'd this Ship, he was pursued by some *Dutch* Ships; several Ships gave him chase, and he was forced to leave this Ship.

Mr. Soll. Gen. What did they do with the Goods?

Bradinbam. He sold the Opium on the Coast, and the rest he kept for Provision.

Mr. Soll. Gen. What became of the Money?

Bradinbam. Captain Kidd shared it.

Mr. Soll. Gen. Who had their Shares? Give an Account of that.

Bradinbam. The Prisoners at the Bar.

Cl. of Arr. Had Capt. Kidd any Shares?

Bradinbam. Yes.

Cl. of Arr. Had Robert Lamley any Share?

Bradinbam. He had half a Share.

Cl. of Arr. Had William Jenkins any Share?

Bradinbam. He had half a Share.

Cl. of Arr. Had Gabriel Loffe any Share?

Bradinbam. He had half a Share.

Loffe. How do you know that? Did you see me bring it out?

Bradinbam. I did not see you take it; but you brought it out, and acknowledged it.

Kidd. Before, you swore, I paid them first, and now you say they paid me first.

Bradinbam. They had a Share as before.

Mr. Knapp. Now proceed in your Voyage. What did you do after this?

Bradinbam. After this, we went a Cruizing on that Coast, and we met with the *Quedagh* Merchant, and took her; and afterwards, about fifty Leagues from the Cape, we met with a *Moorish* Vessel; and

and Capt. Kidd sent his Men on board that Vessel, and they took out of her ten Jars of Butter, and a Main fail; and he took out two of the Men (that he carried to *Madagascar*) because he wanted Men.

Mr. Knapp. Can you tell of any Thing else?

Bradinbam. He took about a Dozen *Malabar* Boats, and plunder'd 'em, and then let 'em go.

Mr. Knapp. Go on.

Bradinbam. Then we came to *Madagascar*.

Mr. Knapp. What happen'd there?

Bradinbam. There came a Canoo off; some of the Men in this Canoo belonged to the *Mocca* Frigate; they came off to Capt. Kidd, and they told him, They heard he was come to take them, and hang 'em.

Mr. Knapp. What were those Men?

Bradinbam. They were suppos'd to be Pirates.

Mr. Knapp. Who was the Commander of that Ship?

Bradinbam. Capt. Culliford.

Kidd. How came you to know this? He says any thing.

Mr. Knapp. Go on with this Story, and give an Account what pass'd between them.

Bradinbam. This Canoo came aboard Captain Kidd, and they told him, they heard he was come to take them, and hang 'em; but he assur'd them it was no such thing: And he went aboard the Frigate, and swore to be true to them, and, that he would aid them in any thing he had: And Capt. Culliford came aboard him, and they made Presents to one another.

Mr. Knapp. What Presents did Captain Kidd make Culliford?

Bradinbam. He gave him some Shirting-stuff.

Kidd. What! Did I give him Shirting-stuff?

Bradinbam. Yes; and he gave him two Great Guns.

Kidd. Did I go aboard him, you Rascal?

Mr. Soll. Gen. Mr. Kidd, ask him what Questions you will.

Mr. J. Turton. Captain Kidd, will you ask this Witnests any Questions?

Kidd. My Lord, what signifies it? Were there not Ninety of the Men that mutinied? I said, Let us take this Ship; and, Did they not all consult and say, Where there is One that will fire against the Pirate, there are Ten that will fire against you. And so they went and took the Goods, and left me. I ask you, whether this be not true?

Bradinbam. My Lord, he never spoke any thing like it, that he would take Culliford; but he swore to be true to them.

Kidd. Did not I propose to my Men to take Capt. Culliford? Did you never hear any body say so?

Bradinbam. No.

Kidd. Did you not say Yesterday, that I was come to take them?

Bradinbam. I said, they came and told you they heard so; and you assur'd them, you intended no such thing.

Kidd. You swore I gave them four Guns Yesterday, and now you say but two.

Mr. Soll. Gen. It was *Palmer* that said Four.

Bradinbam. I said but Two, and no more.

Cl. of Arr. Captain Kidd, have you any thing more to ask him?

Kidd. It signifies nothing to ask him any thing.

Cl. of Arr. Robert Lamley, will you ask this Witnests any thing?

Lamley. I only ask him, whether I was not an Apprentice?

Mr. J. Turton. Answer that Question.

Bradinbam. My Lord, he was a Servant.

Mr. J. Turton. To whom?

Bradinbam. To Mr. Owens.

Mr. J. Turton. Was his Master aboard then?

Bradinbam. Yes, my Lord.

Cl. of Arr. William Jenkins, will you ask the Witnests any thing?

Jenkins. I desire him to say, whether I was a Servant, or not?

Bradinbam. Yes, my Lord, he was Servant to the Mate?

Mr. J. Turton. Was his Master aboard then?

Bradinbam. He was aboard then.

Cl. of Arr. Gabriel Loffe, will you ask him any Questions?

Loffe. No, Sir.

Cl. of Arr. Hugh Parrot, will you ask him any thing?

Parrot. No.

Cl. of Arr. Richard Barlicorn, will you ask this Witnests any thing?

Barlicorn. I have nothing to ask him, but desire him to speak the Truth, whether I was not the Captain's Servant?

Bradinbam. He was, my Lord.

Cl. of Arr. Darby Mullins, will you ask him any thing?

Mullins. I have nothing to say but what I said before. I submit my self to the King's gracious Proclamation.

Kidd. He has perjur'd himself in many Things.

Mr. J. Turton. In what? Give an Instance.

Kidd. In a great many Instances: About the Guns, that is one Thing: And then he says, the Ship went from *Plymouth* the Beginning of May, and before he said, it was in April, that is another Thing: And, my Lord, the Mariners came and took Anchors, and Cables, and what they would, and, he says, I gave them to them, and this is false. And now he says contrary to what he did before; for then he said, we went out in April, and now in the Beginning of May.

Mr. J. Turton. He did not confine himself to a Day; he said, about the Beginning of May.

Mr. Soll. Gen. Call *Joseph Palmer*. (Who appear'd.) Mr. Palmer, Pray, give my Lord and the Jury an Account of Capt. Kidd and his Crew, where they went, and what they did.

Palmer. We went from *Plymouth* to *New-York*, in the Year 1696, and in the Way took a French Ship, and carried her to *New-York*, and sold her; and there he put up Articles, to invite Men aboard his Ship, and what they took was to be divided into so many Shares, whereof Captain Kidd was to have Forty, the rest to be divided among the Men; and in September following we went from thence, and we had then about one hundred and sixty Men: From thence we went to *Maderas*, from thence to *Bonavis*, then to *St. Jauger*, then to *Joanna*, then to *Mahala*, then to *Joanna* again, and then to *Meta* in the Red-Sea, where he watered and wooded his Ship, and then to *Babs-Key*, a small Island in the Red-Sea; and when he came there,

there, he ordered his Men to look out on the high Lands for the *Mocca Fleet*, and expected the Fleet to come that Way; and he sent some Men in his Boat, with Orders either to take a Prisoner, or to bring word what Ships were there. He sent his Boat twice, and they made no Discovery; but the third time they went, they came within sight of the Ships, and brought word, that there were fourteen or fifteen Sail lying there with *Dutch*, and *English*, and *Moorish* Colours, and a great Ship with red Colours, ready to sail: And then Captain Kidd order'd his Men to look out on the other Side the high Lands, for fear the Ships should pass him: And at last the Ships came down.

Kidd. There is no great Occasion for this.

Palmer. There were *Moors* and *Turks* belonging to these Ships. And about the 15th of *August* the Fleet came down, and Captain Kidd fell in with them: His Quarter-master, and some of his Men, were saying, Let us go aboard 'em To-night: No, says he, we will take our Choice of them in the Morning; and in the Morning he went among them, and fired at them, but took none of 'em; he found they were too strong for him, and went away: And, after this, going to *Carrawar*, he took a Ship, call'd *The Maiden*; it was between *Carrawar* and this Place; they reckon'd they were not far from the Island of *St. John*: He took this Ship, and took out of her some Pepper, a Bale of Coffee; and some more Bales of Coffee came on board, but he retained only one Bale, and the Pepper, and said, He would not cumber his Ship with such Stuff: And *Parker* and a *Portuguese* he took out, one for a Pilot, the other for a Linguister; and two of the Men he order'd to be hoisted up, and whipp'd with a naked Cutlace.

Kidd. I ask this one Thing; Did the *Mocca Fleet* fire first at me, or I at them?

Palmer. No, they fired first.

Kidd. And just now the other said, I fired first: Is not he perjured?

Mr. J. Turton. Mr. Bradinbam, did he fire first, or no?

Bradinbam. He fired at them. I only said, you fired at them; I did not say first or last.

Palmer. After this, he went to *Carrawar*, to an *English* Factory, and wooded and water'd his Ship, and one *Harvey* came and demanded these two Men; and Capt. Kidd denied that he had any such Men on board, and kept them in the Hold.

Mr. Soll. Gen. Is that an *English* Factory?

Palmer. Yes: Several of Capt. Kidd's Men left him there, and several more would have left him, if they could have conveniently gone ashore: And the same Evening he put to Sea, he met a *Portuguese* Ship, and fought her.

Kidd. Who fired there first?

Palmer. The *Portuguese* fired first.

Kidd. You do not tell that Story right.

Palmer. After he left this *Portuguese* Ship, he went to the Island of *Malabar*, and robb'd the Natives, and set their Houses on Fire, and took one of the Natives, and bound him to a Tree, and shot him to Death.

Mr. Soll. Gen. Did you see the Houses on Fire?

Palmer. Yes; and afterwards we went to *Callicut*, and met with a *Moorish* Ship in *November*, Skipper *Mitchel* was Commander; and there were

taken out of her two Horses, and Cotton, and Quilts; and this Ship he carried to *Madagascar*. Some time in *December* following we came to the Coast of *Malabar*.

Mr. Knapp. Can you tell what Year it was?

Palmer. It was in *December*, 1697.

Mr. Knapp. Where was this?

Palmer. About twelve Leagues from *Callicut*.

Mr. Knapp. What sort of Ship was it?

Palmer. A *Moorish* Ketch.

Mr. Knapp. What Burthen was she?

Palmer. About fifty Tun.

Mr. Knapp. What did you do there?

Palmer. Capt. Kidd was lying at Anchor, and this Ketch came between him and the Shore, and he sent the Boat, and they brought the Ketch to the Ship, and took out of her thirty Bales of Sugar-Candy, Tobacco, Sugar, and Myrrh.

Mr. Knapp. What did they do with these Goods?

Palmer. When they had taken them out, they were shared between the Men in Messes, seven Men to a Mess, for their own spending.

Mr. Knapp. Had the Prisoners at the Bar any Share?

Palmer. All the Men had.

Mr. Knapp. What Share had Capt. Kidd?

Palmer. I cannot tell whether he had his forty Shares of that, or no.

Mr. Knapp. What did they do with the Ship?

Palmer. They burnt her.

Mr. Soll. Gen. Pray now go on. What did they do next?

Palmer. Some time in *January* they met with a *Portuguese* Ship.

Mr. Soll. Gen. Where?

Palmer. Off of *Anjingo*, an *English* Factory: It was a pretty way off Shore.

Mr. Soll. Gen. What Ship was it?

Palmer. A *Portuguese* Ship.

Kidd. You said, it was just by *Callicut* Yesterday.

Mr. Soll. Gen. Whereabouts was it?

Palmer. On the Coast of *Malabar*; it might be about ten or twelve Leagues from *Callicut*.

Mr. Soll. Gen. What Goods were in the Ship when she was taken?

Palmer. There were two Chests of *Indian* Goods, two Chests of *Opium*, some *Rice*, *Butter*, *Wax*, and *Iron*.

Mr. Soll. Gen. What was the Value of those Goods?

Palmer. Truly I cannot tell the Value of them.

Mr. Soll. Gen. What did they do with those Goods?

Palmer. The *Wax* and *Iron* he put on board *The November*, and some on board his own Ship.

Mr. Soll. Gen. Did he sell any of these Goods?

Palmer. No, but he sold the *Opium* on the Coast.

Mr. Soll. Gen. Did he keep the Ship?

Palmer. No, but seven or eight Days, and then he quitted her; there were some *Dutchmen* coming, and he sunk that Ship. The Produce of the Ship was shared.

Mr. Soll. Gen. Had the Prisoners at the Bar any Share?

Palmer. Yes.

Cl. of Arr. Had *William Kidd* any Share?

Palmer. Yes.

Cl. of Arr. Had *Robert Lamley* any Share?

Palmer.

Palmer. Yes.

Cl. of Arr. Had William Jenkins any Share?

Palmer. Yes.

Cl. of Arr. Had Gabriel Loffe any Share?

Palmer. Yes.

Cl. of Arr. Had Hugh Parrot any Share?

Palmer. Yes.

Cl. of Arr. Had Richard Barlicorn any Share?

Palmer. Yes.

Cl. of Arr. Had Darby Mullins any Share?

Palmer. Yes; these Goods were shared, and we bought Provision with them.

Kidd. You say, this Ship was taken off of *Anjingo*, and that it was twelve Leagues from *Callicut*, and this *Anjingo* is fifty Leagues from *Callicut*.

Palmer. It is all upon one Coast.

Mr. Soll. Gen. Give an Account of your coming to *Madagascar*, and what followed.

Palmer. They found a Ship, called *The Resolution*, Capt. Culliford was Commander; and several of the Men came off to Capt. Kidd, that were formerly acquainted with him; and they said, We hear you are come to hang us: says he, It is no such Thing: And afterwards they went aboard each other, and Capt. Kidd made Protestations to be true to them. There were four Guns in the Ship, and he presented these Guns to Culliford.

Kidd. Did I present him with my Guns? Because I would not turn Pirate, you Rogues, you would make me one.

Mr. Bar. Hatfell. What did Capt. Kidd say to Culliford, when they were drinking together?

Palmer. They made a Tub of Bomboo, as they call it, (it is made of Water, and Limes, and Sugar) and there they drank to one another; and, says Capt. Kidd, before I would do you any Damage, I had rather my Soul should broil in Hell-fire.

Mr. Soll. Gen. Was you there then?

Palmer. This was on the Quarter-deck of the *Mecca* Frigate.

Mr. Soll. Gen. What were those Men in that Ship? What did you apprehend them to be?

Palmer. They were Pirates.

Mr. Soll. Gen. Did Capt. Kidd or his Men offer to take them.

Palmer. He did never propose any such Thing.

Mr. Soll. Gen. Now you may ask him what Questions you will.

Kidd. There were twenty of them on board, and left me.

Palmer. Capt. Kidd and Culliford were as great Friends as could be.

Mr. Soll. Gen. Ask him what Questions you please.

Kidd. It signifies nothing to ask any Questions; a couple of Rogues will swear any Thing.

Mr. Soll. Gen. Will you ask him any Questions?

Kidd. No.

Cl. of Arr. Robert Lamley, Will you ask him any Questions?

Lamley. No.

Cl. of Arr. William Jenkins, Will you ask him any Questions?

Jenkins. No; I have no more to say, but what I said before.

Cl. of Arr. Gabriel Loffe, Have you any Thing to ask him?

Loffe. No.

Cl. of Arr. Hugh Parrot, Will you ask the Witnesses any Questions?

Parrot. No.

Cl. of Arr. Richard Barlicorn, Will you ask him any Thing.

Barlicorn. No.

Cl. of Arr. Darby Mullins, Will you ask him any Thing?

Mullins. No; but only I say, I came home upon his Majesty's Proclamation; I came voluntarily, expecting to have the Benefit of it with the Evidence.

Mr. J. Turton. That does not fall under the Jury's Consideration.

Cl. of Arr. You, the Prisoners at the Bar, Will you say any Thing for your selves upon these two Indictments?

Kidd. I will not trouble the Court any more, for it is a Folly.

Cl. of Arr. Robert Lamley, What have you to say for your self?

Lamley. Nothing, but that I was a Servant.

Cl. of Arr. William Jenkins, What have you to say?

Jenkins. I was a Servant, my Lord.

Cl. of Arr. Gabriel Loffe, Have you any Thing to say?

Loffe. My Lord, I ask him, Whether I ever acted any Thing in taking these Ships, but only under my Captain's Command.

Palmer. He acted as other Men did.

Cl. of Arr. Hugh Parrot, Have you any Thing to say?

Parrot. I can say no more than I have said.

Cl. of Arr. Richard Barlicorn, Have you any Thing to say?

Barlicorn. My Lord, I am a Servant.

Cl. of Arr. Darby Mullins, What have you to say?

Mullins. Did not Capt. Kidd often say, his Commission would bear him out in what he did?

Palmer. Yes; I have heard him often say that.

Mr. J. Turton. But how came you to go aboard Culliford?

Mullins. For Want, my Lord.

Mr. J. Turton. Gentlemen of the Jury, Here are several Persons, viz. William Kidd, Robert Lamley, William Jenkins, Gabriel Loffe, Hugh Parrot, Richard Barlicorn, and Darby Mullins, they all stand Indicted for Piracy: Indeed there are three more Indicted with them, viz. Nicholas Churchill, James Howe, and Abel Owens; but they have confessed themselves Guilty, and you are now eased of any Enquiry concerning them, and are only to consider of the other Seven, who are Indicted upon two several Indictments; One is, for the piratical and felonious taking away a *Moorish* Ketch, to the Value of Fifty Pounds, and the Goods therein to the Value of One hundred Pounds; this was in December, 1697. And the Other is, for piratically seizing and taking away Goods to the Value of Seventy Pounds from the *Portugal* Ship, twelve Leagues from *Callicut* in the *East-Indies*. Now to these two Indictments these Prisoners at the Bar

But have pleaded, Not Guilty; and whether they are so or no, you are to determine, upon the Evidence given you. There have been two Witnesses produced for the King, *Robert Bradinham*, and *Joseph Palmer*: I will not trouble you with the Repetition of their distinct Evidence, because they agree in all Things; and if I mention what one has said, it is, in effect, what the other said also.

Gentlemen, It appears, that Capt. *Kidd*, with seventy Persons aboard his Ship, called *The Adventure-Galley*, went from *England* in the Year 1696, having a Commission of Mart and Reprisal, to take the Vessels, Ships and Goods of the *French* King, or any of his Subjects, he then being at War with the King of *England*; and another Commission for seizing Pirates. He has not indeed produced these Commissions to you now, though he did on another Trial. But he went out on a very honest Design, and in pursuance of it he took a *French* Ship in his Passage to *New-York*, and brought her thither, and had her legally condemned. But while he was there, it appears, that he had other Thoughts possessed him, and wicked Intentions to turn Pirate, and not to take them; and that he might be well mann'd, he makes Proclamation amongst the Mariners there, that such of them as would come aboard his Ship, and assist him in his Enterprizes, should have their Shares of what Prizes or Booties could be taken; and he proposed, that he would have forty Shares for himself, and the rest should be equally distributed amongst the Mariners according to Agreement, the whole being divided into 160 Shares, as I remember: By this means his Number was increased from 70 to 150. They set sail from *New-York*, and (after many other Places mentioned by the Witnesses) they came to a Place called *Babs-Key*, which it seems is in the *Red-Sea*; and there they stay'd a considerable Time, I think about three Weeks, and this was in Expectation to meet with the *Mocca Fleet*, which he intended to make a Prize; and during his Stay at *Babs-Key*, he sent his Boat three several times to get Intelligence of this Fleet; the two first Times there was no Account of any Thing, but the third Time there was notice brought, that they were ready to sail, and that they had *English*, *Dutch*, and *Moorish* Colours: And when he had this Intelligence, to prevent their escaping him, he sends Men ashore, to go on the high Lands, to observe when they did actually sail, and when he had notice that they were under sail, he likewise sailed, and went through the Fleet, and made some Shots at some of the Ships; but it appearing that they had a Convoy, and that they were too strong for him, he quitted the Prize there, of which he had so great Expectation. But afterwards he went on, and took his Course towards *Carrawar*, and there he takes a *Moorish* Ship; and *Parker*, an *Englishman*, the Commander of her, and a *Portuguese* also were taken out of her. From thence they went to *Malabar*, and there he sent some Men ashore, and there they burnt some Houses; and after that took a *Moorish* Ship, for which they have been tried. Afterwards, in *December* 1697, (now I come to the first Indictment) upon that very Coast, some Leagues from *Callicut*, they took a *Moorish* Ketch, and this Ketch and the Goods aboard it, which were some Quantities of Sugar-

candy, Sugar, and Tobacco: It seems these Goods were shared between them aboard the Ship; the Witness is not confident what Share the Captain then had, but what the Captain had not was divided amongst them. The Witnesses say, they burnt this Ketch, because she was not useful to them, and the Men that went on board were put ashore. Now this is the Matter of the first Indictment, the piratically seizing and plundering this Ketch, and taking the Goods out of her, and dividing them amongst the Prisoners; both the Witnesses prove there was a Distribution of them

They then come to the next Month, and that is *January*; and this is the Matter of the second Indictment, for piratically taking several Goods, to the Value of Seventy Pounds, from the Mariners of the Ship called the *Portugal Ship*: And these Witnesses prove the taking of this Ship on the Coast of *Callicut*; and there were aboard this Ship several sorts of Goods, Opium, Rice, Beeswax, Butter, and other sorts of Goods, which they judge might be worth Four or Five hundred Pounds. Now after this, there were some *Dutch* Ships that gave chase to the Captain, and he was forced to leave the Ship; but he took some of the Goods into his own Ship, and the rest were sold, and the Money divided among the Men: The Captain called them one by one into his Cabin, and so they had their several Shares, according to the Proposals at *New-York*. It is not possible for them to say they saw every Man's Share paid, but they say, that they were all called by Name to receive their Shares, and they went into the Cabin for that Purpose, and they believe they had all their Shares according to Agreement, because none complained that they had it not.

Gentlemen, There is but one Thing more that I will mention to you. When they came to *Madagascar*, there was one *Culliford*, who was a Pirate; and he sent some of his Crew aboard, to know whether Capt. *Kidd* was not come with a Design to seize them, and hang them; and he declared, he had no such Design: And he and *Culliford* were extremely kind to one another, and made Visits and Presents to each other; and Capt. *Kidd* gave two Guns to *Culliford*, as one of the Witnesses says; but the other Witness says, there were four Guns that he gave to *Culliford*, who was engaged in the same Design of Piracy; and *Culliford* presented other Things to *Kidd*.

But now, Gentlemen, the Business you are to inquire into is, the piratical taking of these Ships: And the Witnesses have positively and directly proved not only the taking the Ships, but the seizing the Goods, and selling them, and sharing the Money: And if these Witnesses say true, as nothing appears to the contrary, by the Prisoners cross examining them, or otherwise, they are not at all contradicted, or their Credibility made questionable: And they are such as are most likely to know what was done, being with them in the whole Voyage, and engaged with them in these Enterprizes. And if you can give entire Credit to the Witnesses, you will probably find these Persons guilty of the Piracy they are charg'd with; which I leave to your Consideration.

Now indeed there are three of them that are Servants, and perhaps you may think their Case is different from the rest; *Robert Lamley*, who was a Servant to *Owens* the Cook; *William Jenkins*, who was Servant to the Mate; and *Richard Barlicorn*, who was Servant to Capt. *Kidd*. And though the Witnesses do prove, that they had their several Shares of the Goods and Money; yet, notwithstanding, that they being Servants, their Masters might be entitled to their Shares: So that if you believe they were Servants, and commanded to serve and assist their Masters in what they did, I must leave it to you, whether you will think fit to distinguish their Case from the rest. I do not find, that the others say any Thing material in their own Defence, they have called no Witnesses at all. The Captain lays the Blame on the Men, and the Men seem to lay the Blame on him: He went out on a good Design, to take Pirates, had he pursu'd it; but instead of that, it appears, that he turned Pirate himself, and took the Ships and Goods of Friends instead of Enemies, which was a notorious Breach of Trust, as well as a manifest Violation of Law. The Evidence seems strong against them, which I leave to you to consider of.

Then the Jury withdrew, and after a short Space brought in their Verdict.

Cl. of Arr. Gentlemen, answer to your Names: *Jo. Watson.*

Jo. Watson. Here, &c.

Cl. of Arr. Are you all agreed of your Verdict?

Omnes. Yes.

Cl. of Arr. Who shall speak for you?

Omnes. Foreman.

Cl. of Arr. *William Kidd*, Hold up thy Hand. (*Which he did.*) Look upon the Prisoner. How say you? Is *William Kidd* guilty of the Piracy and Robbery whereof he stands indicted in the first Indictment, or not Guilty?

Foreman. Guilty.

Cl. of Arr. Is *Robert Lamley* Guilty, or not Guilty?

Foreman. Not Guilty.

Cl. of Arr. Is *William Jenkins* Guilty, or not Guilty?

Foreman. Not Guilty.

Cl. of Arr. Is *Gabriel Loffe* Guilty, or not Guilty?

Foreman. Guilty.

Cl. of Arr. Is *Hugh Parrot* Guilty, or not Guilty?

Foreman. Guilty.

Cl. of Arr. Is *Richard Barlicorn* Guilty, or not Guilty?

Foreman. Not Guilty?

Cl. of Arr. Is *Darby Mullins* Guilty, or Not Guilty?

Foreman. Guilty.

The same Verdict was given to all the Prisoners upon the other Indictments.

Robert Culliford, *Nicholas Churchill*, *Darby Mullins*, and *John Eldridge*, were arraign'd for taking the Ship called the *Great Mabomet*, and seizing the Goods to a considerable Value; to which they pleaded, Not Guilty.

VOL V.

Robert Culliford, *Churchill*, *Howe* and *Mullins* were again indicted for another Ship taken piratically by them, to which they pleaded, Not Guilty.

Robert Culliford and *Robert Hickman* were again arraigned for piratically seizing another Ship, called the *Satisfaction*, to which they pleaded, Not Guilty.

Robert Culliford and *Robert Hickman* were again indicted for Piracy committed on a *Moorish Ship*; to which they pleaded, Not Guilty.

Then the Court proceeding to the Trials of the Persons forementioned; Robert Culliford retracted his Plea, and pleaded Guilty, and argued his coming in upon his Majesty's Proclamation; and his Case being particular, was argued by his Council, for the Benefit of his Majesty's Pardon: And Churchill, Howe, Mullins and Hickman, likewise pleading Guilty, John Eldridge was tried by himself, and found Guilty.

After the Trials were over, Judgment against Culliford was respited, and he set aside; the other Prisoners were called to the Bar in order to receive their Sentence, as follows:

Cl. of Arr. *William Kidd*, Hold up thy Hand. (*Which he did.*) What canst thou say for thy self? Thou hast been Indicted for several Piracies, and Robberies, and Murder, and hereupon hast been convicted: What hast thou to say for thy self, why thou should'st not die according to Law?

Kidd. I have nothing to say, but that I have been sworn against by perjured and wicked People.

Cl. of Arr. *Nicholas Churchill*, Hold up thy Hand, What hast thou to say, &c.?

Churchill. I came in upon his Majesty's Proclamation.

Cl. of Arr. *James Howe*, What hast thou to say, &c.?

Howe. I came in upon the King's gracious Proclamation, and hope I shall receive the Benefit thereof.

Cl. of Arr. *Gabriel Loffe*, What hast thou to say, &c.?

Loffe. Not Guilty.

Cl. of Arr. *Hugh Parrot*, What hast thou to say, &c.?

Parrot. I came and surrendered my self to my Lord Bellamont.

Cl. of Arr. *Abel Owens*, What hast thou to say?

Owens. I came in upon his Majesty's Proclamation, and desire the Benefit of it.

Cl. of Arr. *Darby Mullins*, What hast thou to say, &c.?

Mullins. I came home upon the King's gracious Proclamation.

Cl. of Arr. *John Eldridge*, What hast thou to say, &c.?

X x

Eldridge.

Eldridge. I have but little to say; I am accused but for one Thing, and that is all, and I have been fallſly accused; I caſt my ſelf on your Lordſhips and the Honourable Bench.

Cl. of Arr. Robert Hickman, What haſt thou to ſay, &c.?

Hickman. I came in according to the King's Proclamation; I came in within the Time limited.

Then Proclamation for Silence was made, while Sentence was pronouncing.

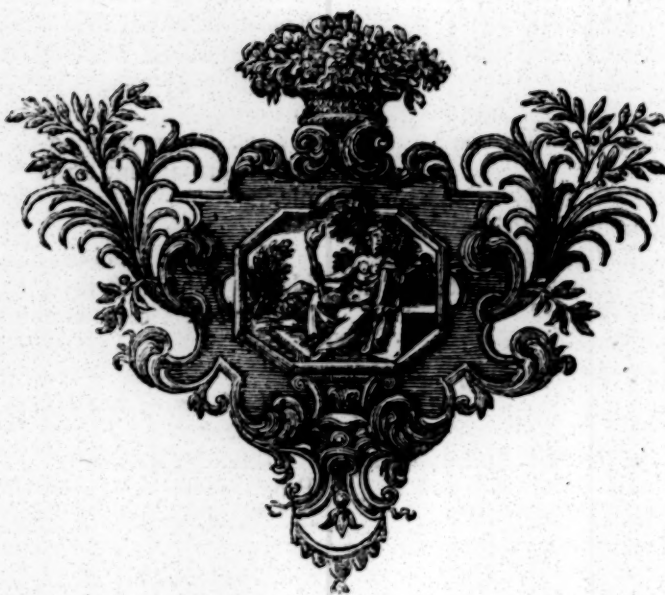
Dr. Oxenden. You the Priſoners at the Bar, *William Kidd, Nicholas Churchill, James Howe, Gabriel Loffe, Hugh Parrot, Abel Owens, Darby Mullins, Robert Hickman,* and *John Eldridge*; you have been ſeverally Indicted for ſeveral Piracies and Robberies, and you *William Kidd* for Murder. You have been tried by the Laws of

the Land, and convicted; and nothing now remains, but that Sentence be paſſed according to the Law. And the Sentence of the Law is this:

You ſhall be taken from the Place where you are, and be carried to the Place from whence you came, and from thence to the Place of Execution, and there be ſeverally hang'd by your Necks until you be dead. And the Lord have Mercy on your Souls.

Kidd. My Lord, It is a very hard Sentence. For my Part, I am the innocentest Perſon of them all, only I have been ſworn againſt by Perjured Perſons.

Capt. Kidd was afterwards Executed according to the Sentence.



CLXX. *Proceedings in Parliament against William Earl of Portland, John Lord Sommers, Edward Earl of Orford, and Charles Lord Hallifax, upon an Impeachment for High Crimes and Misdemeanors; as also against John Lord Haverham, for Words spoken at a Conference between the Lords and Commons, 1701. 13 Will. III.*^a

Die Martis, 1^o Aprilis, 1701.

Earl Portland
Impeach'd.



Message was brought from the House of Commons, by Sir *John Levifon Gower*, and others, who at the Bar of this House, in the

Name of the House of Commons, and all the Commons of *England*, Impeach'd *William Earl of Portland* of High Crimes and Misdemeanors; and acquainted this House, That the House of Commons will, in due Time, exhibit particular Articles against him, and make good the same.

A Committee appointed to inspect the Journals of this House, in relation to the Proceedings of this House in Cases of Impeachments for Misdemeanors, and to report to the House.

Die Martis, 1^o Aprilis, 1701.

Lord Sommers
Impeach'd.

A Message was brought from the House of Commons by Mr. *Harcourt* and others, who at the Bar of this House, in the Name of the House of Commons, and all the Commons of *England*, Impeach'd *John Lord Sommers* of High Crimes and Misdemeanors; and acquainted this House, That the House of Commons, will in due Time, exhibit particular Articles against the said Lord, and make out the same.

A Message was brought from the House of Commons by Colonel *Bierly*, and others, who, at the Bar of this House, in the Name of the House of Commons, and all the Commons of *England*, Impeach'd *Edward Earl of Orford* of High Crimes and Misdemeanors; and acquainted this House, That the House of Commons will, in due Time, exhibit particular Articles against the said Lord, and make good the same.

A Message was brought from the House of Commons by Mr. *Bruges*, and others, who at this Bar of this House, in the Name of the House

of Commons, and all the Commons of *England*, Impeach'd *Charles Lord Hallifax* of High Crimes and Misdemeanors; and acquainted this House, That the House of Commons will, in due Time, exhibit particular Articles against the said Lord, and make good the same.

Die Mercurii, 1^o Aprilis, 1701.

The House being mov'd, That an Address be made to his Majesty, That he will be pleas'd to pass no Censure or Punishment upon the Lords Impeach'd, during the Dependence of the Impeachment in this House.

After Debate, the Question was put, That a Committee shall be immediately appointed to draw up an Address to his Majesty, That his Majesty will be pleas'd not to pass any Censure or Punishment against the Four Noble Lords, who stand Impeach'd of High Crimes and Misdemeanors, until the Impeachments depending against them in this House shall be try'd? It was resolv'd in the Affirmative.

A Committee appointed immediately to draw up an Address to his Majesty, That his Majesty will be pleas'd not to pass any Censure or Punishment against the Four Noble Lords, who stand Impeach'd of High Crimes and Misdemeanors, until the Impeachments depending against them in this House shall be try'd.

The House was adjourn'd during Pleasure, and the Lords went to the Committee.

After some Time, the House was resumed, and the Lord Steward reported, That the Committee had drawn an Address, as order'd; which was read and agreed to, as followeth; viz.

WE Your Majesty's most Loyal and Dutiful Subjects, the Lords Spiritual and Temporal in Parliament assembled, beg Leave to represent to your Majesty, That the House of Commons have severally Impeach'd, at the Bar of our House, William Earl of Portland, John Lord Sommers, Edward Earl of Orford, and Charles Lord Hallifax, of High Crimes and Misdemeanors: And they having acquainted Us, That they will, in due Time, exhibit particular Articles against the said Lords, and make good the same, We

^a See State-Trials, Vol. viii. p. 493.

do most humbly beseech your Majesty, that your Majesty will be pleas'd not to pass any Censure upon them, until they are try'd upon the same Impeachments, and Judgment be given according to the Usage of Parliament, and the Laws of the Land.

Order'd, That the Lord Steward and the Earl of Romney do attend his Majesty with the Address.

Die Lunæ 5^o Maii, 1701.

A Committee appointed to draw a Message to be sent to the House of Commons, to put them in mind of the Impeachments brought up by them against the Earl of Portland, the Earl of Orford, the Lord Sommers, and the Lord Halifax, and report to the House.

Then the House was adjourn'd during Pleasure. After some Time, the House was resumed, and the Lord Steward reported the Message; which was read and agreed to, as followeth, viz.

A Message was sent to the House of Commons by Sir Robert Legard and Sir Richard Holford, to acquaint them, That they having, on the First Day of April last, sent up to their Lordships an Impeachment against William Earl of Portland, of High Crimes and Misdemeanors; and having also, on the Fifteenth Day of the same Month, severally impeach'd John Lord Sommers, Edward Earl of Orford, and Charles Lord Halifax, of High Crimes and Misdemeanors, their Lordships think

ARTICLES exhibited by the Knights, Citizens, and Burgeses in Parliament assembled, in the Name of themselves, and of all the Commons of England, against Edward Earl of Orford, in Maintenance of their Impeachment against him for High Crimes and Misdemeanors.

I. **T**HAT whereas for many Years past there hath been a long and expensive War, both by Sea and Land, carried on by his Majesty and his Allies against the French King for the preserving the Ballance of Europe, and for preventing the Growth of the immoderate Power of the said French King; towards the Prosecution of which War great Sums of Money have been given and levied by Authority of Parliament, and many Debts have been contracted, which remain a very heavy Burden upon the People of England; the said Earl being then of his Majesty's most honourable Privy-Council; but always preferring his private Interest to the Good of the Publick, and taking Advantage of the ready Access he had to his Majesty's Person, during the Continuance of the said War, in Violation of his Duty and Trust, hath procur'd from his Majesty one or more Grant or Grants of several Manours, Messuages, Lands, Tenements, and Hereditaments, within the Kingdoms of England or Ireland, or elsewhere within his Majesty's Dominions, of a great Yearly Value; and also of exorbitant Sums of Money to be made to him, or others in Trust for him, but to his Use, the Profits whereof he now enjoys; whereby

themselves oblig'd to put them in mind, that as yet no particular Articles have been exhibited against the said Lords; which, after Impeachments have been so long depending, is due in Justice to the Persons concern'd, and agreeable to the Methods of Parliament in such Cases.

Die Veneris, 9^o Maii, 1701.

A Message was brought from the House of Commons by Colonel Bierly, and others, with the Articles of Impeachment against Edward Earl of Orford; and to acquaint this House, That the Matter of the Charge was contain'd in the Articles; and also, That he was commanded to pray and demand, that the Earl of Orford do give sufficient Security to abide the Judgment of the House of Lords.

A Committee appointed to consider of the Manner of the Commons delivering Articles of Impeachment, and demanding Security to abide the Judgment of this House, and report to the House.

The House was adjourn'd during Pleasure, for the Committee to meet presently. After some Time the House was resumed, and the Earl of Stamford reported, That the Committee had met, and inspected the Journals: That they do not find any mention of the Commons reading the Articles at the Bar; and as for giving Security, they find none.

Then the Articles were read by the Clerk, as follows; viz.

The ANSWER of Edward Earl of Orford, to the Articles exhibited against him by the Knights, Citizens, and Burgeses in Parliament assembled, in the Name of themselves, and of all the Commons of England, in Maintenance of their Impeachment against the said Earl for High Crimes and Misdemeanors, suppos'd to be committed by him. Deliver'd in 14^o May, 1701.

THE said Earl, saving to himself all Advantages of Exception to the said Articles, and of not being prejudiced by any Words or want of Form in this his Answer; and saving to him all Privileges and Rights belonging to him as one of the Peers of this Realm; for Answer to the said Articles, humbly saith,

I. To the First Article, That he having for several Years render'd his Majesty his utmost Service and Duty, as a good and loyal Subject ought to do, his Royal Majesty was graciously pleas'd, upon several Occasions, to take notice of the same, and out of his wonted Bounty, and of his Freewill, was pleas'd to give the said Earl two Grants, one whereof was a Reversionary Grant for Years, of some Houses depending upon a then precedent Estate for about Nine and twenty Years; which being a Reversionary Interest at so great a Distance, altho' the said Earl thankfully receiv'd the same from his Majesty, as his Grace and Bounty, yet the same was of no great Value: And the other of them was a Grant of the Remainder of a gross Sum, amounting to about Two thousand Pounds a Year, for Five Years: Which are the only Grants of

whereby the Standing Revenues of the Crown of *England*, which ought to be applied to the Service of the Publick, are greatly diminish'd, and the People of *England* thereby burthen'd with Debts, and subjected to grievous Taxes.

II. That in Breach of the Trust reposed in him whilst he was Commander in Chief of the Navy Royal of *England*, in or near the Straights of *Gibraltar*, and within the Time aforesaid, he, the said Earl did receive great Sums of the Publick Money, issued out to him for the Service of the Navy, which he hath converted to his own private Use, and unlawfully and unjustly procur'd a Privy-Seal, or Privy-Seals, to discharge him from accounting to the Publick for the same; and also hath receiv'd other great Sums of Money from his Majesty's *Exchequer*, as Paymaster or Receiver-General of the Navy, without giving a due and legal Account thereof, whereby he hath occasion'd great Clamours and Discontents among the Seamen, and others belonging to his Majesty's Navy, who are thereby reduced to great Miseries and Necessities for want of their just Dues, to the great Discouragement and Discredit of the Publick Service.

paid for by him, the said Earl; and which Objections in like Cases had not been made or stood upon, nor could be reasonably expected; his Majesty was pleas'd to direct and order a Privy-Seal to dispense with the Form in that Particular; but the said Earl did make no Advantage to himself thereby; nor was his Majesty, or the Government, in the least defrauded therein; it appearing, upon a very strict Examination, that less Rates were allow'd for the said Provisions than had been allow'd before in like Cases; or, as the said Earl is inform'd, hath been since allow'd. And to the latter Part of the said Article saith, That for the Moneys by him receiv'd, as Treasurer or Receiver-General of the Navy, he hath already deliver'd in his Accounts, and is ready to perfect the same, according to the ordinary Method, some of 'em plying ready with the Auditors to be declar'd, and the rest of 'em being made up and deliver'd in to be examin'd, in order to be pass'd; and saith, After just Allowances had, he does not believe he shall appear to be indebted upon the said Accounts: And also denies, That any Persons are Sufferers for want of their Dues, in respect of the said Accounts, or that the Publick Service is, or hath been, any ways discourag'd or discredited thereby, as in the said Article is alledg'd.

III. That he the said Earl, while he was in several Ports belonging to the King of *Spain's* Dominions, did receive from the said King of *Spain* and others considerable Sums of Money, and great Quantities of Wine, Oil, and other Provisions for the Fleet, to a very great Value; for all which he ought to have accounted: But the said Earl did convert the same to his own Use, and did either embezzle those Provisions, or reckon 'em as bought with the Money allow'd for furnishing the Navy with fresh Provisions; and that for advancing his own private Interest, and securing himself from rendering any Account to the Publick, he, the said Earl, during the said War, procur'd, enjoy'd, and possess'd divers great Offices, which were inconsistent, and in their Nature improper to be executed by one and the same Person, and which ought to be, and by the Laws and Usages of this Realm, were and are appointed and design'd as Checks one upon the other, in Breach of the said Laws, to the Dishonour of his Majesty, and Prejudice of his People.

IV. That

of any Manours, Messuages, Lands, Tenements, Hereditaments, or Sums of Money whatsoever, which he, or any in Trust for him, hath had from his Majesty; and which said two Grants his Majesty was graciously pleas'd, after many Years Service, freely to bestow upon him the said Earl, without any Surprize, sinister or indirect Means of the said Earl in obtaining the same, and which Grants he humbly conceives were not unusual in like Cases, the excepting whereof he humbly hopes was not any Violation of his Duty, or of any Trust in him the said Earl repos'd.

II. To the Second Article the said Earl answereth and denieth, That he at any time converted to his own private Use any Publick Money issued to him for the Service of the Navy; or that he the said Earl ever procur'd, or had any Privy-Seal, or Privy-Seals, to discharge him from accounting for the same; but saith, That he the said Earl did make up, and upon Oath pass his Accounts for the Moneys impress'd to him for the Service in this Article mention'd; which Account was legally declar'd and pass'd, upon very strict and great Examination, by the Lords Commissioners of the Treasury; and he, the said Earl, hath his *Quietus est*, in due Course of Law upon the same. But the Commissioners of the Victualling-Office making some unusual Objections to part of the said Account, concerning some Provisions furnish'd to the Fleet by the said Earl, in the King of *Spain's* Dominions, altho' the same were truly and really had and spent by the Seamen in the Fleet, and

III. To the Third Article the said Earl answereth, and denies, That he receiv'd any Moneys whatsoever from the King of *Spain*, or any other Person, as in the Article is alledg'd; and saith, That what Wine, Oil, or other Provisions were receiv'd from the King of *Spain*, or any others, for the Fleet, were duly deliver'd and distributed amongst the Officers and Seamen thereof; and denies he did embezzle any of the Provisions, or reckon'd them, or any part of them, as bought with the Moneys allow'd for furnishing the Navy with fresh Provisions: And does also deny, That he the said Earl did enjoy any Offices inconsistent in their Nature (as he is advis'd) one with the other, or which were, or ought to be, Checks one upon the other; or, that he any ways secur'd, or pretended to secure, himself from rendering any Account to the Publick, by any Office or Offices whatsoever; or, that he is guilty of the Breach of any Laws, to his Knowledge, by executing any Office or Offices, or ever executed the same to the Dishonour of his Majesty, or to the Prejudice of his People, as in the said Article is alledg'd.

IV. To

IV. That he the said Earl, within the Time aforesaid, hath clandestinely, contrary to the Law of Nations, sold and dispos'd of several Vessels, with their Ladings and Cargo, taken under Pretence of Prize by his Majesty's Ships of War, without Condemnation or judicial Proceedings, and converted the Money to his own Use; well knowing if they had been condemn'd, as by Law they ought to have been, one Tenth (after Customs allow'd) and one Third Part of the Value thereof, the Customs and the said Tenth being deducted, are by Act of Parliament appropriated to especial Uses: By which Proceedings the Publick has been greatly endamag'd and defrauded, and the Debts of the Nation encreas'd.

V. And whereas Complaints were made to the Commissioners for executing the Office of Lord High-Admiral of *England* (where the said Earl at that Time presided) by the Company trading to the *East-Indies*, of divers Piracies committed in the South-East Seas, to the Destruction of their Trade, desiring they might have Letters of Mart granted to them, whereby to be empower'd (tho' at their own Charge) to suppress such Pirates: But the said Earl, preferring his own Interest, discourag'd and rejected their Request and Proposal; and, in some short Time after, jointly with others, did procure a Commission for one *William Kidd*; as likewise a Grant under the Great-Seal of *England*, to and for the Use of him the said Earl, and others, of the Ships and Goods of certain Persons therein nam'd, and also of all Goods found on board the said Ships. And the said Company having Intimation of a Commission granted to the said *Kidd*, being apprehensive of the ill Consequences of the same, did apply themselves to the said Board of Admiralty, desiring to know what Powers and Instructions were given: But such their reasonable Request was deny'd; and *Kidd*, who was known to be a Person of ill Fame and Reputation, order'd to pursue the intended Voyage; in which he did commit divers Piracies and Depredations on the High Seas, being thereto encourag'd thro' the Hopes of being protected by the high Station and Interest of the said Earl, in Violation of the Law of Nations, and the Interruption and Discouragement of the Trade of *England*.

VI. That the said Earl, within the Time aforesaid, when an horrid Conspiracy was discover'd against his Majesty's sacred Person, and the Kingdom was under an Apprehension of an immediate Invasion from *France*, and divers Ships of War (particularly the Ship *Dutchess*) were Arm'd out, Equipp'd and Mann'd in Defence of the Realm, to oppose the intended Invasion, did his utmost Endeavour to prejudice and weaken the Navy Royal

IV. To the Fourth Article the said Earl answereth, and saith, He believes that the Prizes taken in the late War were appropriated as by the Act of Parliament in that behalf is provided; but denies, that he did, at any Time, sell or dispose of any Vessel or Vessels, or their Ladings or Cargo taken as or under the pretence of Prize, by any of his Majesty's Ships of War, without Condemnation or judicial Proceedings, or converted the Moneys arising by Sale of any Vessel or Vessels, or their Lading or Cargo, taken as or under pretence of Prize, by any of his Majesty's Ships of War, to his own Use; but, on the contrary, did from time to time, in his Station, give Orders, that the Prizes taken should be carefully preserv'd without Embezzlement, and duly proceeded against, and the Produce answer'd as the Law directs: And therefore humbly insisteth, that the Publick hath been no ways endamag'd, or the Debts of the Nation encreas'd, by any Neglect or Default of the said Earl.

V. To the Fifth Article the said Earl saith, That the *East-India* Company, about the beginning of *March*, One thousand Six hundred Ninety and Six, did apply to the Admiralty Board, of which the said Earl was one, to empower their Ships and Officers to seize and take all Pirates infesting the Seas within the Limits of their Charter; and likewise to erect a Court of Admiralty in those Parts, to try and condemn such Pirates as they should take. Upon which Application the Board of Admiralty did take Advice, and were inform'd, They had no Authority to grant the same; and denies, he the said Earl, ever discourag'd or rejected the Company's Request therein, unless it were by telling them, That the Admiralty by Law could not grant the same: And denies, that the Company was ever deny'd Letters of Mart in common Form, to the Knowledge of the said Earl: And saith, as to the Matter of *Kidd*, in the Article mention'd, He was gone upon his Expedition about twelve Months before that Time. And as to his Commission, and the Grant in the said Article mention'd, the said Earl humbly conceives, and is advis'd, the same were not contrary to Law; but sure he is, the said Expedition was intended for the Publick Good and Service; and saith, The said *Kidd* had no Powers or Instructions from the Board of Admiralty, other than the ordinary and common Letters of Mart, the Contents whereof are common, and well known to Merchants. And the said Earl doth deny, that he knew the said *Kidd* to be of ill Fame and Reputation: But in case the said *Kidd* hath committed any Piracies, he, the said *Kidd*, is answerable, and ought to answer for the same, he never being order'd by the said Earl so to do; nor had he ever any the least Encouragement given him by the said Earl, or any other, to his Knowledge, to expect or hope for any Protection therein, or in any illegal Action done or committed by him.

VI. To the Sixth Article the said Earl saith, He believes it to be true, that there was a horrid and barbarous Plot and Conspiracy against his Majesty's sacred Person, and that there was an Apprehension of an immediate Invasion; but the said Earl hopes, no Neglect of Duty in his Station can be imputed to him to prevent the same. And as for the Ship *Dutchess*, which was, amongst many others, arm'd and equipp'd in Defence of

of *England*; for that he, the said Earl, by Colour of his Office (being then First Commissioner for executing the Office of Lord High-Admiral of *England*) without the Privy of the other Commissioners, contrary to his Oath and Duty, and preferring his Hopes of Gain to himself, to the Safety of the Publick, did order Capt. *Steward*, Commander of the Ship *Dutchess*, to deliver over, and put on board the said *Kidd*, mention'd in the foregoing Article, out of the said Ship *The Dutchess*, a great Number of able Seamen, levied and provided at the Expence of the Publick, and then discharging their Duty in Defence of their Country, and against their own Consent, to the Prejudice of the Publick Security, and to the endangering of the said Ship *The Dutchess*, if it had been attack'd by the Enemy.

VII. That the said Earl, during the said War, and at a Time of the greatest Exigency and Necessity, when Ships, Men, and Money were wanting to guard the Seas, and protect our Trade, did by Misrepresentations, and contrary to his bounden Duty, and the Trust reposed in him, procure a Grant or Order for his Majesty's Ship *The Dolphin*, then fitted out, mann'd and equipp'd for the Service of the Publick, to be employ'd in a private Voyage and Undertaking, for the Advantage of himself and others concerned with him. In pursuance whereof, and for their private Gain, the Ship was, at the Publick Expence, continued in Foreign Parts for several Months, to the Destruction and Loss of his Majesty's Subjects on board the same, to the weakening the Navy, by rendering the said Ship unserviceable, and the increasing the Debts of the Publick.

VIII. That the said Earl, during the Time of his Commanding the Navy Royal of *England*, did, through Neglect, and in Contempt of Orders, unnecessarily hazard and, expose to imminent Danger the said Navy; and, that during the Time aforesaid, having had many Opportunities of taking or destroying the Ships belonging to the *French King*, the said Earl, contrary to Advice, in Disobedience to Orders, and in Neglect of his Duty, did suffer and permit the said Ships to return safe into their own Harbours.

IX. That the said Earl, well knowing our Sovereign Lord the King to have been engaged in several Alliances with the Emperor of *Germany* and other Princes and States, particularly in a Treaty concluded with his Imperial Majesty in the Year of our Lord One Thousand Six Hundred Eighty-Nine, the End and Intention of all which Leagues and Treaties were to prevent the Growth of the Power of the *French King*, and no secure *England*, and the ancient Allies of *England*, against the same, did notwithstanding, in concert with other False and Evil Counsellors, advise our said Sovereign Lord the King in the Year One Thousand Six Hundred Ninety-Eight, to enter into one Treaty for

the Realm, the said Earl saith, that the Men in the said Article mention'd to be taken from on board her, were but some of the very Persons that were just before taken from on board Capt. *Kidd*, and returned by their own Consent on board Capt. *Kidd* again, not being above twenty in Number; and saith, all Fears of the Invasion were then over and at an end; and denies, that the same was intended to weaken, or did weaken the said Ship, or the Navy Royal; or that the said Seamen, so returning on board the said *Kidd*, were levied or provided at the Expence of the Publick, or did return or were put on board the said *Kidd* against their own Consent, or to the Prejudice of the Publick Security; or that the Ship *Dutchess* was thereby endanger'd, if she had been attack'd, as in the said Article is alledg'd.

VII. To the Seventh Article the said Earl answereth, and denies, That he did, by Misrepresentation, or otherwise, obtain or procure a Grant or Order for his Majesty's Ship *Dolphin* to be employ'd in a private Voyage or Undertaking; but what was done therein, was done upon the Peace concluded, and by his Majesty's Command, at the Instance and Request of other Persons, and not of the said Earl, but contrary to his Opinion: Nor was the said Earl any way concerned in Interest therein, till after his Majesty's Orders were given about the said Ship; and then, and not before, some of the Persons concerned in the said Adventure, desired the said Earl to take some Shares therein (the Number whereof he doth not remember) which the said Earl accordingly did; but humbly insists, that his Actings therein were not contrary to his Duty, or the Trust in him reposed, or the Debts of the Nation thereby increas'd.

VIII. To the Eighth the said Earl answereth, and denies, That at any Time while he commanded the Navy Royal, he did, through Neglect or Contempt of Orders, unnecessarily hazard or expose to Danger the said Navy; and also denies, that upon any Opportunity of taking or destroying the Ships of the *French King*, he did, contrary to Advice, or in Disobedience to Orders, neglect to do the same: And also denies, that he did suffer or permit any of the *French King's* Ships to return into their own Harbours, when he had Opportunity to prevent the same; and humbly insists, he is not guilty of any Neglect or Omission of his Duty herein, nor did expect in this Particular to be charged therewith, considering his faithful Services rendered against the *French Fleet*.

IX. To the Ninth Article the said Earl saith, He believes it to be true, that his Majesty hath been engaged in several Alliances with several Princes, and particularly with the Emperor, in the Year One Thousand Six Hundred Eighty-Nine; and that the End of those Alliances was to prevent the Growth and Power of *France*, and to secure this Kingdom and its Allies: But the said Earl does deny, that he did advise his Majesty to enter into the Treaty of Partition, charged upon the said Earl in this Article; and so far as the said Earl was any ways acquainted therewith, he objected to, and gave his Opinion against the same.

X. To dividing the Monarchy and Dominions of *Spain*; in

in pursuance whereof, in the Year One Thousand Six Hundred Ninety-Nine, one other Treaty was entered into to the like Purpose; by which Treaties great Injustice was done to the Emperor, an ancient Ally of our said Sovereign Lord the King, and a large Part of the said *Spanish* Dominions were to be added to the Crown of *France*; both which Treaties were Prejudicial to the Interest of the Protestant Religion all over *Europe*, Ruinous to the Trade of *England*, and Dishonourable to our Sovereign Lord the King, and the People of these Kingdoms.

All which Crimes and Misdemeanors were committed and done by him, the said Earl, against our Sovereign Lord the King, his Crown and Dignity, the Peace and Interest of this Kingdom, and in Breach of the several Trusts reposed in him the said Earl.

X. And he the said Earl of *Orford* was One of the Lords Justices, during his Majesty's Absence beyond the Seas, the First Commissioner for executing the Office of Lord High-Admiral of *England*, Commander in Chief of his Majesty's Navy Royal, One of his Majesty's Privy Council, and Treasurer of his Majesty's Navy, or in some or one of the said Stations during the Time that all and every the Crimes before set forth were done and committed.

That the said Commons, by Protestation, saving to themselves the Liberty of Exhibiting, at any Time hereafter, any other Accusation or Impeachment against the said Earl, and also of Replying to his Answers, or to any of them, and of offering Proofs of all the said Premises, or any of them, or any other Impeachment or Accusation that shall be exhibited by them, as the Case shall, according to the Course of Parliament, Require; Do Pray and Demand, That the said Earl may be put to Answer for all and every of the Premises; and that such Proceedings, Examinations, Trials and Judgments, may be upon every of them had and uled, as is agreeable to Law and Justice.

After Reading in the House the Articles of Impeachment brought up against *Edward* Earl of *Orford*, for High Crimes and Misdemeanors, his Lordship humbly desired to have a Copy of the said Articles, and that he would put in his Answer to them in as short a Time as the House should think fit: It is thereupon ordered by the Lords Spiritual and Temporal in Parliament assembled, That *Edward* Earl of *Orford* may have a Copy of the said Articles.

A Message was sent to the House of Commons by Sir *Richard Holford* and Mr. *Pitt*, to acquaint them, That upon Search of the Journals of this House, they do not find any Precedent of Security given to abide the Judgment of this House by any Peer, upon an Impeachment of High Crimes and Misdemeanors.

Die Mercurij 14^o Maij, 1701.

This Day *Edward* Earl of *Orford* delivered his Answer to the Articles of Impeachment of the House of Commons against him, which was read by the Clerk.

The Committee appointed to consider of the Manner in delivering Articles of Impeachments

X. To the Tenth Article the said Earl answereth, and saith, That true it is, his Majesty was pleased to employ and intrust him in the several Offices and Stations in this Article mentioned, for several Years, as his Majesty's Occasions required, although not for all the Time in the said Article mentioned; and hopes, and humbly insisteth upon it, that he the said Earl did from time to time, according to his Duty, and the Trusts in him reposed, discharge the said Offices and Employments with Loyalty, Faithfulness and Zeal to his Majesty and his People.

And thus having laid his Case before your Lordships, he the said, Earl, does humbly insist, and answer to the said Impeachment, and all and every the Articles aforesaid, exhibited against him, That he is not Guilty of all or any of them, or of all or any the Matters or Things by the said Articles charged, in Manner and Form as the same are therein, and thereby alledg'd against him; and that the Matters by him before set forth to be done and transacted, or any of them, were not done or committed by him, the said Earl, against our Sovereign Lord the King, his Crown and Dignity, or the Peace or Interest of this Kingdom, or in Breach of the Trust reposed in him, the said Earl; and humbly submits himself herein to your Lordships Judgment.

O R F O R D.

by the Commons being Revived, the House was adjourned during Pleasure; and the Lords went to the Committee. And some Time, the House was resumed, and the Earl of *Stamford* reported, That they had inspected the Journals, and find the first Step, after Answers to Impeachments are delivered, is, to send a Copy thereof to the House of Commons. Whereupon it is ordered by the Lords Spiritual and Temporal in Parliament assembled, That he Answer of *Edward* Earl of *Orford*, delivered this Day to the Articles of Impeachment depending against him, be Copied, in order to be sent to the House of Commons To morrow Morning, by two Masters of Chancery.

The Earl of *Orford* having this Day delivered in his Answer to the Articles of Impeachment against him, desired that Mr. *Dodd* and Mr. *Pooley* might be assigned Council for him upon his Trial. It is ordered by the Lords Spiritual and Temporal in Parliament assembled, That Mr. *Dodd* and Mr. *Pooley* shall, and they are hereby assigned Council for the Earl of *Orford*, as desired.

Die

Die Jovis 15^o Maii, 1701.

A Message was sent to the House of Commons by Sir *Richard Holford* and Mr. *Pitt*, to carry down a Copy of the Earl of *Orford's* Answer to the Articles of Impeachment against him.

A Message was sent to the House of Commons by Sir *Richard Holford* and Mr. *Pitt*, to acquaint them, That they having on the First Day of *April* last, sent up to their Lordships an Impeachment against *William Earl of Portland*, for High Crimes and Misdemeanors; and having also, on the Fifteenth Day of the same Month, severally impeached *John Lord Sommers* and *Charles Lord Hallifax* of High Crimes and Misdemeanors, their Lordships think themselves obliged to put them in mind, that as yet no particular Articles have been exhibited against the said Lords, which, after Impeachments have been so long depending, is due in Justice to the Persons concerned, and agreeable to the Methods of Parliament in such Cases.

ARTICLES exhibited by the Knights, Citizens, and Burgesses in Parliament assembled, in the Name of themselves, and of all the Commons of England, against *John Lord Sommers*, Baron of *Evesham*, in Maintenance of their Impeachment against him for High Crimes and Misdemeanors.

THAT a Treaty and Alliance between *Leopold*, the Emperor of *Germany*, and the *States-General* of the *United-Provinces*, was made and concluded in the Year of our Lord One thousand Six hundred Eighty-nine, upon their Consideration of the Greatness of the Common Danger, which then threaten'd all *Christendom*, from the excessive Power of *France*, and the unconstant Faith of the *French* in the Observation of Treaties; whereby it was agreed, That there should be, and remain for ever, a constant, perpetual, and inviolable Friendship and good Correspondence between his Imperial Majesty and the *States General*; that each of them should be obliged to promote the others Interest, and, as much as in them lay, prevent all Damages and Inconveniencies to each other.

That during the Continuance of the War, there should be not only a Defensive, but also an Offensive Alliance between the said Parties; by Vertue whereof, they should both of them act in an hostile Manner, with all their Forces by Sea and Land, against the *French King*, and such of his Allies as should refuse to separate themselves from him: That, after the War should be ended, and a Peace concluded, there should remain between his Imperial Majesty, his Heirs, and Successors, and the *States-General*, a perpetual Defensive Alliance against the Crown of *France*, and its Adherents.

That if the Crown of *France* should again attack either of the said Confederate Parties, at what Time soever the same should be done, they should faithfully assist each other.

VOL. V.

That

The Messengers sent to the House of Commons return Answer, viz. That the Articles against *William Earl of Portland*, *John Lord Sommers*, and *Charles Lord Hallifax*, are preparing, and in a short Time their House will send them up to the House of Lords.

Die Lune 19^o Maii, 1701.

A Message was brought from the House of Commons by Mr. *Harcourt* and others, with the Articles of Impeachment against *John Lord Sommers*; and to acquaint this House, That the Matter of the Charge was contained in the Articles; and also, That he was commanded to pray and demand, that the *Lord Sommers* do give sufficient Security to abide the Judgment of the House of Lords.

The Articles were read by the Clerk, as follows; viz.

The ANSWER of *John Lord Sommers*, Baron of *Evesham*, to the Articles exhibited by the Knights, Citizens, and Burgesses in Parliament assembled, in the Name of themselves, and of all the Commons of England, in Maintenance of their Impeachment against him for High Crimes and Misdemeanors, suppos'd to be by him committed. Deliver'd in 24 May, 1701.

THE said *Lord Sommers*, saving to himself all Advantages of Exception to the said Articles, and of not being prejudiced by any Words, or want of Form in this his Answer; and also saving to himself all Rights and Privileges belonging to him, as one of the Peers of this Realm; for Answer to the said Article humbly saith:

I. To the First Article, That he believes the now Emperor of *Germany*, and the *States-General* of the *United-Provinces*, being in the Year One thousand Six hundred and Eighty-nine, engaged in a War with *France*, a Treaty and Alliance was concluded between them, and a Separate Article then made, to the Effect in this Article mentioned; and that his Sacred Majesty did afterwards enter into, ratify and approve the same; to which Treaty, Separate Article, and Ratification (for Certainty thereof) he referreth himself: And further saith, That in the Year One thousand Six hundred and Ninety-eight, his Majesty, before he left *England*, was pleased to tell him, That some Intimation had been given to the Earl of *Portland*, when in *France*, that the *French King* inclined to come to an Agreement with his Majesty, concerning the Succession to the Crown of *Spain*. And afterwards, in *August*, One thousand Six hundred and Ninety-eight (his Majesty being then in *Holland*, and the said *Lord Sommers* at *Tunbridge-Wells*, by his Majesty's Permission, for Recovery of his Health) Mr. Secretary *Vernon* communicated to him a Letter he had then received, writ-

Y y

writ-

That his Imperial Majesty and the *States-General* should at all Times, by all Means, with all their Forces, protect and defend all the Rights of each other against the Crown of *France*, and its Adherents.

And other Provisions were thereby made for their mutual Security, as well during the Continuance of the War, as after the Conclusion of a Peace.

That certain Separate Articles were also at or about that Time made, whereby the *States-General* maturely considering that *France* had openly declared in several Courts, that (notwithstanding the most solemn Renunciation) they continued their Pretensions by Force of Arms to assert for *The Dauphin* the Succession of the *Spanish* Monarchy, in Case the King of *Spain* should die without Issue; and also considering what a Blow their State would receive, and what a Prejudice might happen thereby to the publick Affairs, and Quiet, did promise, That in Case his said Catholick Majesty should die without lawful Issue, they would with all their Forces assist his said Imperial Majesty or his Heirs, in taking the Succession of the *Spanish* Monarchy, lawfully belonging to that House, together with its Kingdoms, Provinces, Dominions and Rights, and in their obtaining and securing the quiet Possession thereof, against the *French*, and their Adherents, who should directly, or indirectly, oppose that Succession, and with Forces repel the Force that should be brought against them.

That at the Instance of the *States-General*, in pursuance of the said Treaty and Separate Articles, our most Gracious Lord and Sovereign, his most Excellent Majesty King *William III.* was invited to enter into an Alliance of the aforesaid Treaty, and into the Agreement of the said Separate Articles; and thereupon, for restoring and preserving the publick Peace and Quiet, did afterwards, in the said Year of our Lord One thousand Six hundred and Eighty-nine, enter into, and under the Great-Seal of *England*, accept, approve and ratify, and in the most solemn Manner, engage and promise religiously and inviolably to observe the same, without violating the said Treaty, or Separate Articles in any Article, or suffering the same to the utmost of his Power to be violated.

That in the Year of our Lord One thousand Six hundred and Ninety-eight, a Treaty was projected and contrived in *France*, to be set on foot between his Majesty, the *French* King, and the *States-General*, for a Partition of the *Spanish* Monarchy, whereby many large Territories thereunto belonging were to be allotted, and delivered up to *France*.

That the Tenor and Design of the said last mentioned Treaty, whilst the same was in Negotiation, was communicated to the said *John Lord Sommers*, then One of the Lords Justices of *England*, Lord Chancellor of *England*, and One of his Majesty's most Honourable Privy Council.

That the said Lord *Sommers*, well knowing the most apparent evil Consequences, as well as the Injustice of the said Partition, did not, according to the Trust and Duty of his said several Offices, dissuade or endeavour to obstruct its taking effect; but, on the contrary, having neither

written by the Earl of *Portland*, by his Majesty's Order, wherein it was mentioned, That Count *Tallard* (who was then Ambassador from the *French* King to his Majesty) had declared an Accommodation might be found out in Relation to the Succession of *Spain*, in Case of that King's Death: And that his Majesty had founded *France*, upon what Terms an Agreement might be made; and the Conditions were near of this Nature; (*viz.*) That the Electoral Prince of *Bavaria* should have the Kingdom of *Spain*, the *Indies*, the *Low-Countries*, and all that depends upon the *Spanish* Dominions (except the Kingdoms of *Naples* and *Sicily*, *Sardinia*, the Province of *Guypuscoa*, on this Side of the *Pyreneans*, *Fen-tarabia*, and *St. Sebastian*, *Final*, and the Places in *Tuscany*, of which *Spain* then stood possessed): In Consideration of which, *France* was absolutely to renounce the Right it pretended to the Succession of *Spain*, and *Milan* was to be given to the Arch-Duke, second Son to the Emperor: And that his Majesty commanded the said Mr. Secretary to speak to him, the said Lord *Sommers*, touching that Matter; and that his Lordship should discourse it with those he thought he might trust with that Secret, which to keep with the utmost Care, was by the said Letters mentioned to be of the highest Importance; and at the same Time, the said Lord *Sommers* received a Letter from his Majesty, signed by himself, intimating, that Count *Tallard* had made some Propositions, touching an Agreement with his Majesty, concerning the Succession of the Kingdom of *Spain*, the which the said Earl of *Portland* would write to Mr. Secretary *Vernon*, to the End his Majesty might have some Opinions upon that Affair, which required the greatest Secrecy, and in which no Time was to be lost, if that Negotiation were to be carried on: And for that End his Majesty thereby commanded the said Lord *Sommers* to send full Powers to him under the Great-Seal of *England*, with Blanks for the Names of Commissioners to treat with Count *Tallard*; which his Majesty, by his said Letter, was pleased to say, he believed might be done secretly: That none but the said Lord *Sommers* and Mr. Secretary *Vernon*, and those to whom the said Lord *Sommers* and Mr. Secretary should communicate it, might have Knowledge thereof; and that the Clerks who were to write the full Powers, might not know what they were, or to the like Effect; and the said Lord *Sommers* did immediately return the Earl of *Portland*'s said Letter to Mr. Secretary *Vernon*, and desired him to communicate the Contents thereof to the Earl of *Orford*, and the now Lord *Hallifax* (Two of the then Lord Justices, who, as he was assured, were then in Town, and also to such others as they and Mr. Secretary *Vernon* should think fit; who, in regard of the King's Command to have that Affair kept a Secret, thought fit to impart it to the Duke of *Sbrowsbury* only (as the said Mr. Secretary afterwards acquainted the said Lord *Sommers*): And some Time afterwards the said Lord *Hallifax* came down to the said Wells; and Mr. Secretary *Vernon* coming thither also about the same Time, they, and the said Lord *Sommers*, had Discourse together concerning the said Proposal; and the said Lord *Sommers*, by Letter dated the 28th of *August*, One thousand Six hundred and

Regard to his Majesty's Honour, engag'd by the said Treaty with the Emperor and *States-General*, as aforesaid, to the Trade and known Interest of this Kingdom, or the Peace of *Europe*, did advise his Majesty to enter into the said Treaty, and did so far encourage and promote the same, that the said Treaty was concluded and ratified under the Great-Seal of *England* (then in the Custody of the said Lord Sommers) and thereby the Kingdoms of *Naples* and *Sicily*, the Places depending on the Monarchy of *Spain*, situate on the Coast of *Tuscany*, or the adjacent Islands, comprehended under the Name of *Santo Stephano*, *Porto Hercole*, *Orbitello*, *Telamone*, *Porto Longone*, *Piombino*, the Town and Marquisate of *Final*, the Province of *Guypuscoa*, particularly the Towns of *Fontarabia* and *St. Sebastian*, situate in that Province, and especially the Port of the Passage, which is therein compriz'd, with several other Parts and Things of, or belonging to, the said Kingdom of *Spain*, were allotted to the *Dauphin* for his Share; and the Crown of *Spain*, and the other Kingdoms, Islands, States, Countries, and Places depending thereon (except such Part, as aforesaid, which was thereby allotted to the *Dauphin* for his Share, and the Dutchy of *Milan*, herein after mention'd) was given and assign'd to the Electoral Prince, eldest Son to the Elector of *Bavaria*, for his Share, to enjoy the same to him, his Heirs and Successors, for ever, never to be molested therein on any Pretence of Right or Claim on the Part of the *French* King, or the *Dauphin*, or his Issue, Heirs or Successors, nor on the Part of the Emperor, the King of the *Romans*, the Arch-Duke *Charles*, his second Son, and other Children, or his Heirs or Successors; and the Dutchy of *Milan* was thereby agreed to be given to the said Arch-Duke for his Share, and in Extinction of all Pretensions and Rights which the said Emperor, the King of the *Romans*, the said Arch-Duke *Charles*, all his other Children, Successors, and Heirs, might have to the said Succession of *Spain*. By which Treaty it was also further agreed, That if any Prince whatsoever should oppose the taking Possession of the Shares thereby agreed on, as aforesaid, his Majesty, the *French* King, and the *States-General*, should assist one another against such Opposition, and hinder the same with all their Power.

That by a Secret Article of the said Treaty, in like manner ratified under the Great-Seal of *England*, 'twas provided, That if the King of *Spain* should die without Issue, and the Electoral Prince of *Bavaria* should afterwards die without Issue, his Electoral Highness of *Bavaria*, his Father, should succeed him in all the Kingdoms, Islands, States, Countries, and Places assign'd to the Electoral Prince, as aforesaid, and enjoy the same to him and his Children, Successors, and Heirs, then born, or to be born; so as neither the Emperor, his Children, nor any other Person, should or might, under any Pretext, form the least Pretension to that Succession; his Majesty, the *French* King, and *States-General*, thereby engaging themselves to employ all their Power, by Land and by Sea, for maintaining the Order establish'd by the said Secret Article, relating to the Succession of the Monarchy of *Spain*.

That the said Treaty was ratified under the Great-Seal of *England* (then in the Custody of the said Lord Sommers) as an Agreement between his Majesty, the *French* King, and *States-General*,

Ninety and Eight, did (as his own Thoughts, and as what he apprehended to be the Result of their Consideration) humbly represent to his Majesty, First, That the entertaining of such a Proposal, as was mention'd by Count *Tallard*, seem'd to be attended with very many ill Consequences, if the *French* did not act a sincere Part; but that they were soon at Ease, as to any Apprehension of that sort, being fully assur'd his Majesty would not act but with the utmost Niceness in an Affair wherein his Glory, and the Safety of *Europe*, was so highly concerned. That the Second Thing they consider'd, was the very ill Prospect of what was like to happen upon the Death of the King of *Spain*, in case nothing was done previously towards the providing against that Accident, which seems probably to be very near; the King of *France* then having so great a Force in such a Readiness, that he was in a Condition to take Possession of *Spain* before any other Prince could be ready to make a Stand. That his Majesty was the best Judge whether that was the Case, who was so perfectly informed of the Circumstances of all Parts abroad. But, so far as related to *England*, it would be the Want of Duty not to give his Majesty this clear Account, That there was a Deadness, and want of Spirit, in the Nation universally, so as not at all to be disposed to the Thoughts of entering into a new War; and, that they seem'd to be tir'd out with Taxes, to a Degree beyond what was discerned, until it appeared upon the Occasion of the then late Elections: That that was the Truth of the Fact, upon which his Majesty would determine what Resolutions were proper to be taken. The remaining Consideration was, what would be the Condition of *Europe*, if the Proposal took place; but of that they thought themselves little capable of judging; but it seem'd, that if *Sicily* were in the *French* hands, they would be entirely Masters of the *Levant* Trade: That if they were possess'd of *Final*, and those other Sea-Ports on that side (whereby *Milan* would be entirely shut out from Relief by Sea, or any Commerce) that Dutchy would be of little Signification in the Hands of any Prince; and, that if the King of *France* had Possession of that Part of *Guypuscoa*, which is mention'd in the Proposal, besides the Ports he would have in the Ocean, it did seem he would have as easy a Way of invading *Spain* on that side, as he then had on the Side of *Catalonia*. But it was not to be hoped, that *France* should quit its Pretensions to so great a Succession, without considerable Advantages; and they were assured his Majesty would reduce the Terms as low as could be done, and make them (as far as was possible in the then present Circumstances of Things) such as might be some Foundation for the future Quiet of *Christendom*, which all his Majesty's Subjects could not but be convinced was his true Aim. And if it could be brought to pass, that *England* might be some way a Gainer by that Transaction, whether it was by the Elector of *Bavaria* (who was the Gainer by his Majesty's Interposition in that Treaty) his coming to an Agreement to let the *English* into some Trade to the *Spanish* Plantations, or in any other manner, it would wonderfully endear his Majesty to his *English* Subjects: That it did not appear, in case the Negotiation should proceed, what was to be done on his Majesty's Part, in order to make it take place; whe-

notwithstanding the said Lord *Sommers* well knew that the same had been concluded between his Majesty's Commissioners and the *French* Ambassador, or the Commissioner of the *French* King only; and, that the Purport thereof had never been communicated to the *States-General* at the Time of the Ratification thereof under the Great-Seal of *England*, notwithstanding the Negotiation thereof in *Holland*.

towards the latter End of *September* following; when he had receiv'd an Account, that a Treaty relating to the Succession of the Crown of *Spain* had been adjusted, concluded, and sign'd by the Commissioners named by his Majesty for that Purpose, and the Ambassador and Plenipotentiary of the *French* King. And the said Lord *Sommers* doth deny, That the said Treaty of Partition, or any Proposition for such Treaty, or the Transaction thereof, was communicated to him, the said Lord *Sommers*; nor was he acquainted with the same, or the Design thereof, or any other Matter relating thereto, at any other Time, or in any other Manner, before he was told of the concluding and signing thereof, as aforesaid, than as is herein before mention'd to be done by his Majesty, as aforesaid, and by his and the said Earl of *Portland's* Letter, herein before-mention'd. And the said Lord *Sommers* doth deny he did, at any Time whatsoever, advise his Majesty to enter into the said Treaty, or any way encourage or promote the same; but having made the Objections before-mention'd in his said Letter to his Majesty, against the Propositions so communicated to him, as aforesaid, and clearly laid open such Thoughts and Observations as occur'd to him upon the said Matter; he did thereby (as he conceived) fully and faithfully discharge his Trust, and the Duty incumbent on him. And the said Lord *Sommers* further saith, That afterwards Mr. Secretary *Vernon* did acquaint him, that he had receiv'd, by his Majesty's Command, a Copy of the Treaty relating to the Succession of the Crown of *Spain*, and of Two Secret Articles relating to the Matter of that Treaty; and, that he had likewise his Majesty's Command to prepare the Instruments for the Ratification of the same, and to leave Blanks therein for the Names of the Commissioners of the *States-General*. And accordingly the said Mr. Secretary did prepare the said several Instruments, and did bring the same, for prepar'd, to the said Lord *Sommers*, to pass the same under the Great-Seal; which was done accordingly, the said Lord *Sommers* having a good and lawful Warrant so to do; and the said Ratification was transmitted to his Majesty, to have the same perfected in his Presence: Which Treaty and Secret Articles were to such or the like Effect, as in this Article is set forth; but, for more Certainty, he refers himself to the said Treaty and Articles. And the said Lord *Sommers*, not being privy in any other manner than as aforesaid to the said Treaty, or the Transaction thereof, doth not know when, or in what manner, the same was communicated to the *States-General*.

II. That for the more effectual carrying on the said Treaty, one or more Commission or Commissions was or were prepar'd, amended, enlarg'd, or alter'd by the said Lord *Sommers*, without any lawful Warrant for his so doing; whereunto the said Lord *Sommers*, contrary to the Duty of his said several Offices, and in Violation of the great Trust repos'd in him, in or about the Month of *September*, 1698, without communicating the same to the rest of the then Lords Justices of *England*, or advising in Council with his Majesty's Privy Council thereupon, did presume to affix the Great-Seal of *England*.

That no certain Persons of known Honour, Fidelity, and Experience were therein nominated Commissioners, at the Time of the affixing the Great-Seal of *England* thereto, but a Blank or empty Space was left in the said Commission or Commissions at the Time of the sealing thereof, wherein the Commissioners Names were to be afterwards inserted beyond the Seas; notwithstanding which, an Unlimited Power was thereby granted to the Commissioners, whose Names were therein afterwards to be inserted, as aforesaid, or to either of them, without any written Instructions whatsoever to restrain, guide, or direct them in the Exercise thereof, in his Majesty's Name to confer and treat with the Commissioner or Deputy, or Commissioners or Deputies, of the *French* King, and also with the Commissioners or

Deputies

ther any more was requir'd, than that the *English* and *Dutch* should sit still, and *France* it self was to see it executed; and if that were so, what Security ought to be expected, that if, by their being Neuters, the *French* should be successful, they would confine themselves to the Terms of the Treaty, and not attempt to make further Advantages of their Success. And the said Lord *Sommers* saith, That after the writing of his said Letter, he had no Account whatsoever, nor heard any thing of the said Treaty, or knew or heard whether the same was proceeded upon, or not, until to-

he was acquainted by Mr. Secretary *Vernon*, That he had receiv'd an Account, that a Treaty relating to the Succession of the Crown of *Spain* had been adjusted, concluded, and sign'd by the Commissioners named by his Majesty for that Purpose, and the Ambassador and Plenipotentiary of the *French* King. And the said Lord *Sommers* doth deny, That the said Treaty of Partition, or any Proposition for such Treaty, or the Transaction thereof, was communicated to him, the said Lord *Sommers*; nor was he acquainted with the same, or the Design thereof, or any other Matter relating thereto, at any other Time, or in any other Manner, before he was told of the concluding and signing thereof, as aforesaid, than as is herein before mention'd to be done by his Majesty, as aforesaid, and by his and the said Earl of *Portland's* Letter, herein before-mention'd. And the said Lord *Sommers* doth deny he did, at any Time whatsoever, advise his Majesty to enter into the said Treaty, or any way encourage or promote the same; but having made the Objections before-mention'd in his said Letter to his Majesty, against the Propositions so communicated to him, as aforesaid, and clearly laid open such Thoughts and Observations as occur'd to him upon the said Matter; he did thereby (as he conceived) fully and faithfully discharge his Trust, and the Duty incumbent on him. And the said Lord *Sommers* further saith, That afterwards Mr. Secretary *Vernon* did acquaint him, that he had receiv'd, by his Majesty's Command, a Copy of the Treaty relating to the Succession of the Crown of *Spain*, and of Two Secret Articles relating to the Matter of that Treaty; and, that he had likewise his Majesty's Command to prepare the Instruments for the Ratification of the same, and to leave Blanks therein for the Names of the Commissioners of the *States-General*. And accordingly the said Mr. Secretary did prepare the said several Instruments, and did bring the same, for prepar'd, to the said Lord *Sommers*, to pass the same under the Great-Seal; which was done accordingly, the said Lord *Sommers* having a good and lawful Warrant so to do; and the said Ratification was transmitted to his Majesty, to have the same perfected in his Presence: Which Treaty and Secret Articles were to such or the like Effect, as in this Article is set forth; but, for more Certainty, he refers himself to the said Treaty and Articles. And the said Lord *Sommers*, not being privy in any other manner than as aforesaid to the said Treaty, or the Transaction thereof, doth not know when, or in what manner, the same was communicated to the *States-General*.

II. and III. To the Second and Third Articles the said Lord *Sommers* saith, That he having receiv'd his Majesty's express Commands, by his Letter mention'd in his Answer to his First Article, to send to his Majesty full Powers, under the Great-Seal of *England*, for negotiating the said Treaty, with Blanks for his Majesty's Commissioners Names; which he humbly conceives, and is advis'd, was a sufficient Warrant for him to pass a Commission under the Great-Seal for that Purpose; and the same being prepar'd in usual Form of Commissions of full Powers, with Blanks for Commissioners Names, according to his Majesty's Directions, he did affix the Great-Seal to the same; and the said Commission was sent to his Majesty, then in *Holland*, to be perfected in his Presence, by inserting the Names of such Persons as his Majesty should think fit to commissionate therein (as he conceives might legally be done); which Commissioners were to receive their Instructions from his Majesty, for the Execution of their said Power, together with their said Commission, in usual manner: But what Instructions, or whether any Instructions in Writing were given to the Commissioners, in relation to the executing the said Power (the same no ways concerning the said Lord *Sommers*) he knows not. And the said Lord *Sommers* saith, He did desire his Majesty, that a particular Warrant for the said Commission (which had been before sent by Mr. Secretary *Vernon* to his

Deputies of the *States-General*, for preserving the publick Peace, and touching the Succession to the Crown of *Spain*; and his Majesty did thereby engage himself to approve, ratify, and confirm whatsoever should be thereupon concluded by them, or either of them.

III. That the said Lord *Sommers*, contrary to the Duty of his said Office of Lord Chancellor, did affix the Great-Seal of *England* to the said Commission or Commissions, not having first receiv'd any lawful Warrant for that Purpose: In hopes of concealing which evil and most dangerous Practice, the said Lord *Sommers*, after he had sealed the said Commission or Commissions, used his Endeavours to procure a Warrant to be transmitted to him, for affixing the Great-Seal to the said Commission or Commissions, and that it might not be known but that he had it in due Time.

IV. That the said Lord *Sommers*, contrary to the Duty of his said several Offices, affixed the Great-Seal of *England* to the Ratification of the said Treaty, made in the Year of our Lord 1698, not having first communicated the same to the rest of the then Lords Justices of *England*, or advis'd in Council with his Majesty's Privy-Council thereupon; and at the Time of his affixing the Great-Seal thereto, one entire blank Sheet, and many other Blanks, were left in the said Ratification, with an Intent to be afterwards fill'd up by other Persons beyond the Seas, as should be thought fit.

V. That in the Year of our Lord 1699, another Treaty was enter'd into, in pursuance of the said Treaty made in the Year 1698, and concluded by and between his Majesty, the *French King*, and the *States-General*, and also ratified under the Great-Seal of *England*, then in the Custody of the said Lord *Sommers*; whereby the Kingdom of *Spain* (in case his Catholick Majesty should die without Issue) was agreed to be divided, and many large Territories thereof were allotted to the *Dauphin* for his Share: Which Treaties were evidently destructive of the Trade of this Realm, dishonourable to his Majesty, highly injurious to the Interest of the Protestant Religion, and manifestly tended to disturb the General Peace of *Europe*, by altering the Ballance of Power therein, and strengthening *France* against the good Friends and ancient Allies of our Sovereign Lord the King.

VI. That whereas by the Laws and Usages of this Realm all Commissions under the Great-Seal of *England*, for the making any Treaties or Alliances with any Foreign Princes, States, or Potentates, and all Ratifications under the Great-Seal of all such Treaties and Alliances, ought to be enrolled and enter'd on Record in the Court of *Chancery*, with or by the Prothonotary of the said Court, for a perpetual Memorial thereof; and, that the Merchants and other Subjects of *England*, having Commerce or Correspondence in Foreign Parts, may not, through Ignorance of the same, incur the Pains and Penalties by the Law due to those who shall any ways infringe, break, or act contrary to such Treaties; he the said Lord *Sommers*, not

his Majesty (as he inform'd the said Lord *Sommers*) for his signing) might be signed and returned: Not that he doubted his Majesty's said Letter to be a sufficient Warrant, but for that such Warrant might be more proper to be produced, if Occasion should require, than his Majesty's said Letter; which, by reason of other Matters therein obtain'd, ought not to be produced without his Majesty's Permission, and which is now made use of by Majesty's gracious Leave. And the said Lord *Sommers* further saith, That his Majesty having by his own, and the Earl of *Portland's* Letter before-mention'd, directed, That his Majesty's said Commands should be kept secret; he did not communicate the making of the said Commission, otherwise than to the Persons mention'd in his Answer to the said First Article.

IV. To the Fourth Article he saith, That Mr. Secretary *Vernon* having prepar'd, by his Majesty's Command, the Instruments for Ratification of the said Treaty, with Blanks therein, as is before set forth, he did affix the Great-Seal to the said Ratification with such Blanks (which he conceives, and is advis'd, he might lawfully do); and having also his Majesty's Command, that the said Treaty should be kept secret, he did not communicate the same to the rest of the then Lords Justices, or his Majesty's Privy Council; which besides he conceiv'd was unnecessary to be done, in regard his Majesty had then, by his Commissioners, perfected the said Treaty, so that the same could not be alter'd.

V. To the Fifth Article the said Lord *Sommers* saith, He believes that in the Year One thousand Six hundred Ninety and nine, another Treaty was enter'd into and concluded between his Majesty, the *States-General*, and the *French King*, to such or suchlike Effect as in this Article is mentioned; to which Treaty, for more Certainty thereof, he referreth himself: And denieth, that he had any Knowledge of such Treaty, or any Transaction in order thereunto, save only that a Draught of the said Treaty was read over in the Presence of divers of the Lords of his Majesty's Privy Council (whereof the said Lord *Sommers* was one); to which Draught the said Lord *Sommers*, as well as others then present, did make several Objections; but they were inform'd by his Majesty's Plenipotentiaries for transacting the said Treaty, who were then also present, That the said Treaty was so far perfected, that nothing could then be alter'd therein; and his Majesty afterwards, by his Warrant, requiring the ratifying of the said Treaty under the Great-Seal, he did affix the Great-Seal to such Ratification, being (as he conceives) oblig'd so to do.

VI. To the Sixth Article he saith, He conceives it was not incumbent upon him, as Lord Chancellor, to see the Commissions or Ratifications, in this Article mention'd, enroll'd, the same being prepar'd and brought to the Great-Seal by the Secretaries of State ready engross'd; and when sealed, taken away by them, and the Original Treaties remaining in their Custody: But the Care of enrolling the same, if necessary, doth (as he conceives) belong to the Prothonotary of the Court of *Chancery*.

he the said Lord *Sommers*, not minding

minding the Duty of his Office, did not in any manner enrol or enter on Record, or cause to be enrolled or enter'd on Record, any of the said Commissions or Ratifications in the foregoing Articles mention'd, as by the Duty of his Place he should and ought to have done; but so to do did totally neglect and omit, in Breach of his Duty, and in Violation of the Laws of this Realm.

VII. That the said Lord *Sommers*, when the Custody of the Great-Seal of *England* was committed to him, did swear well and truly to serve our Sovereign Lord the King, and his People, Poor and Rich, after the Laws and Usages of this Realm, and truly to counsel the King, and his Counsel to keep, and not to know nor suffer the Hurt or Disinheriting of the King, or, that the Rights of the Crown should be decreas'd, as far forth as he might lett it; and, if he could not lett it, that he would make it clearly and expressly to be known unto the King, with his true Advice and Counsel; and, that he should do and purchase the King's Profit in all he reasonably might, or to that effect; and the said Lord *Sommers* afterwards took the said Oath, as Lord-Chancellor of *England*.

That the said Lord *Sommers*, being Lord-Keeper of the Great-Seal, or Lord-Chancellor of *England*, and One of his Majesty's most Honourable Privy Council, whilst this Nation was engag'd in a tedious and most expensive War against the *French* King, for preserving the Ballance and Liberties of *Europe*, and almost exhausted with Supplies and Taxes for carrying on the same, and under such heavy Debts, as without the utmost Frugality, or laying insupportable Taxes on the Commons of *England*, were impossible to be satisfied; contrary to his said Oath, did pass many great, unreasonable, and exorbitant Grants under the Great-Seal of *England*, of divers Manors, Lordships, Lands, Tenements, Hereditaments, Revenues, and Interests belonging to the Crown of *England*, amounting to a most prodigious and excessive Value; and did advise, promote, and procure divers great, unreasonable, and exorbitant Grants to be made of several of the late forfeited Estates in *Ireland*, in Contempt of the Advice of his Majesty's most Dutiful and Loyal Subjects the Commons of *England* in Parliament assembled, and without any Regard to his Majesty's most gracious Assurance thereupon to both Houses of Parliament; and engag'd to procure, and accordingly did procure, divers Acts prepar'd for confirming the said Grants in Parliament in *Ireland*, to be approv'd in Council in *England*, and afterwards remitted the same, under the Great-Seal of *England*, to be pass'd into Laws in *Ireland*.

VIII. That the said Lord *Sommers*, during the Time of his being Lord-Keeper of the Great-Seal, and Lord-Chancellor of *England*, did not only receive and enjoy the Fees, Profits, and Perquisites of, or belonging to the Great-Seal, establish'd by Law, as a sufficient and ample Recompence and Reward for the faithful Discharge of that high Station; but also, as a further Encouragement, through his Majesty's most abundant Grace and Bounty, received an annual Pension or Allowance from the Crown of Four thousand Pounds, and many other Profits and Advantages; notwithstanding which, the said Lord *Sommers*, not being contented therewith, contrary to his said Oath, begg'd and procur'd, for his own Benefit, many great, unreasonable, and exorbitant Grants of several Manors, Lands, Tenements, Rents, Hereditaments,

VII. To the Seventh Article he saith, That when the Great-Seal was committed to his Custody, he took the Oath of Office, to the Effect in that Article set forth; and, during the Time he had the Custody thereof, he did carefully, diligently, and honestly endeavour to keep the said Oath, and hopes and believes he hath duly observ'd the same; and doth acknowledge, That, during the Time he was Lord Keeper and Lord-Chancellor, he did pass several Grants to divers Persons, of several Lands, Tenements, and Hereditaments, belonging to his Majesty in Right of his Crown of *England*; but saith, That before any of them came to the Great-Seal, the same were regularly pass'd thro' the proper Offices, and brought with sufficient Warrants for the Great-Seal; and believes more considerable Grants have pass'd in the like Number of Years, in most his Predecessors Times; and conceives, and is advis'd, That being required by his Majesty, by Warrant, to pass the same, he ought so to do; and denies, That he did ever advise, promote, or procure any Grant to be made to any Person whatsoever, of any Forfeited Estate in *Ireland*, or did procure any Act or Bill prepar'd for confirming any such Grant in the Parliament in *Ireland*, to be approv'd in the Privy Council in *England*; and saith, That what Bills of this Nature were remitted under the Great-Seal of *England*, to be pass'd into Laws in *Ireland*, the same were first approv'd and pass'd in the Privy Council in *England*, according to the usual Form in such Cases; and being so approv'd, were, by Order of Council, sent to the said Lord *Sommers*, who was by the said Order required to affix the Great-Seal thereto.

VIII. To the Eighth Article he saith, He did, during the Time he had the Custody of the Great-Seal, receive the Profits and Perquisites thereto belonging, which before his Time were become very inconsiderable; and did also receive an Annual Pension or Allowance from his Majesty, of Four thousand Pounds, being the like Pension that had been allow'd to several of his Predecessors; but denies, that he did ever beg, or use any Means to procure any Grant whatsoever from his Majesty for his own Benefit; but saith, That what his Majesty was pleas'd to give, proceeded from his Majesty's own Motion, and of his meer Bounty; and (as his Majesty was pleas'd to declare upon that Occasion) as an Evidence of his Gracious Acceptation of the said Lord *Sommers*'s zealous Endeavours for his Service; and the same was done without

reditaments, and Revenues belonging to the Crown of England.

That in, or about the Month of April, 1697, the said Lord *Sommers*, being then Lord Chancellor of England, and One of his Majesty's most Honourable Privy Council, contrary to his said Oath, did procure and pass a Grant, under the Great-Seal of England, without any real Consideration whatsoever, to *Joseph Jekyll*, Esq; and his Heirs for ever, of the Manour or Manours of *Rygate* and *Howleigh*, with all and singular their Rights, Members, and Appurtenances, situate, and being in the Parish of *Rygate*, or elsewhere, within the County of *Surry*; and of all Quit-Rents, Rents of Assize, Free-Rents, Conventiary-Rents, Copyhold and Customary-Rents, and all other Rents whatsoever, to the said Manour or Manours belonging, or appertaining, with the Site of the ruined Castle, and of all other Demefne-Lands of the said Manour or Manours, with the Rents reserved on any Leases then in being, of any Parts thereof, and of all other Lands, Meadows, Feedings, Pastures, Messuages, Houses, Edifices, Buildings, Barns, Stables, Dove-houses, Tolls of Markets, or Fairs, with the Market-house there; and also of all Warrens, Chases, Parks, Commons, Woods, Underwoods, Wood-lands, Wastegrounds, Courts-Leet, Courts-Baron, and other Court-Services, Franchises, Heriots, Fines, Issues, Amerciaments, and all other Profits and Perquisites of the said Courts, Rights, Royalties, Jurisdiccions, and of divers other Matters, Hereditaments, and Appurtenances to the said Manour or Manours. or either of them, or to the Royalties thereof belonging, or in any wise appertaining, which Premises were Parcel of the Demefnes and Revenues of the Crown, and of the Value of Twelve thousand Pounds, and upwards.

That under Pretence of purchasing divers Fee-Farm Rents, and other Rents, vested in Trustees for Sale thereof, in pursuance of several Acts of Parliament, made in the Reign of his late Majesty King *Charles* the Second, the said Lord *Sommers*, in the Year of our Lord 1697, procured a Warrant from his Majesty, under his Sign-Manual, to the Commissioners of the Treasury then in being, to contract, or give Warrant to the Trustees for Sale of Fee-Farm Rents, to contract with *Humphry Hetberington*, Esq; or such as he should nominate, for as many Fee-Farms and other Rents, then remaining unfold (except such Rents as were set apart for Payment of Pensions in the Pension-Deed as should amount unto Eight hundred Pounds *per Annum*, at the Rate of Sixteen Years Purchase; and that, upon such Contract, the said Commissioners of the Treasury should give Warrant for conveying the said Rents to the said *Humphry Hetberington*, or such as he should appoint, and his Heirs.

That under the like Pretence, and at or about the same Time, the said Lord *Sommers* procured another Warrant from his Majesty, under the Sign-Manual, to the said Commissioners of the Treasury, to contract, or give Warrant to the said Trustees to contract, with *Richard Adney*, Esq; or such as he should nominate, for as many Fee-Farm and other Rents, then remaining unfold (except as aforesaid) as should amount to Seven hundred Pounds *per Annum*, at the Rate of Sixteen Years Purchase; and that, upon the said Contract, the said Commissioners should give Warrant for conveying the said Rents unto the said *Richard Adney*, or such as he should nominate, and his Heirs.

That under the like Pretence, and at, or about the same Time, the said Lord *Sommers* procured another Warrant from his Majesty, under his Sign-Manual, to the said Commissioners of the

without any previous Solicitation by him the said Lord *Sommers*, or any other to his Knowledge or Belief. And that in the Year One thousand Six hundred Ninety-seven, his Majesty, of his own Motion, did grant, for the Benefit of the said Lord *Sommers*, the Manour, or Manours, of *Rygate* and *Howleigh*, as in the said Article is mentioned; but the same was, and is far short of the Value thereby suggested. And the said Lord *Sommers* further saith, He never pretended to purchase in his own Name, or in the Name or Names of any other Person, or Persons, in Trust for him, any of the Fee-Farm Rents, or other Rents vested in Trustees for Sale. But his Majesty taking notice, that several of the said Fee-Farm Rents and other Rents, so vested in Trustees, were unfold, and the said Trustees being, by the Acts of Parliament vested in them the said Rents, declared to hold the same for the Benefit of his Majesty, his Heirs and Successors, his Majesty did, in the Year One thousand Six hundred Ninety-seven, of his own Motion, without any Solicitation, Procurement or Means used by the said Lord *Sommers*, acquaint the then Lords Commissioners of the Treasury, or some or one of them, That it was his Majesty's Pleasure, that Two thousand One hundred Pounds *per Annum* of those Rents should be granted, to or for the Benefit of the said Lord *Sommers*, and his Heirs; and that all proper Methods should be used for vesting the same for his Benefit, as of his Majesty's Free Gift. And the said Acts of Parliament having directed, That the said Trustees for Sales, should convey the said Rents, pursuant to Contracts to be signed by the Lord Treasurer, or Lords Commissioners of the Treasury for the Time being, or any Two of them, for the Satisfaction of the said Trustees only, and according to the Method that had been used from the Time of making the said Acts, in passing Grants of any of the said Rents, even such as were meerly of the Bounty of his Majesty's Predecessors, and of his Majesty; such Warrants were made by his Majesty to the Lords Commissioners of the Treasury, to contract, or give Warrants to the Trustees to contract for the said Rents; and such Contracts were pursuant thereunto made, and such Grants of the said Rents were passed, as in the said Article is mentioned; and the Money mentioned in such Contracts was for the perfecting of his Majesty's said intended Free Gift, discharged by Tallies struck for that Purpose. And the said Lord *Sommers* saith, The said Contracts were not intended, or designed to make the Grantees of the said Rents appear to be Purchasers; but the said Lord *Sommers* always acknowledged he received the said Grants of his Majesty's Bounty; and he humbly conceives it was lawful for him so to accept the same.

the Treasury, to contract, or give Warrant to the said Trustees to contract with *Samuel Newton*, Esq; or such as he should nominate, for as many Fee-farm and other Rents, then remaining unfold, (except as aforesaid) as should amount to Six hundred Pounds *per Annum*, at the Rate of Sixteen Years Purchase; and that, upon such Contract, the said Commissioners should give Warrant for conveying the said Rents unto the said *Samuel Newton*, or such as he should nominate, and his Heirs.

That in Pursuance of Warrants of the said Commissioners of the Treasury thereupon, certain Contracts were made, or pretended to be made, with the said *Humphry Hetherington*, *Richard Adney*, and *Samuel Newton*, for the real Sale of divers Fee-farm Rents, and other Rents, of the several and respective yearly Values aforesaid; by Virtue whereof the said *Humphry Hetherington*, *Richard Adney*, and *Samuel Newton* became oblig'd to pay into the Receipt of his Majesty's *Exchequer* at *Westminster*, for the Purchase of the several and respective Rents to them respectively to be convey'd, as aforesaid, the Sums herein after mentioned; that is to say, the said *Humphry Hetherington* Twelve thousand Eight hundred Pounds, the said *Richard Adney* Eleven thousand Two hundred Pounds, and the said *Samuel Newton* Nine thousand Six hundred Pounds.

That in Pursuance of such Contracts, or pretended Contracts, thro' the Power of the said Lord *Sommers*, and by his Means and Procurement, divers Fee-farm Rents, and other Rents, were, by certain Indentures Tripartite of Bargain and Sale, bearing Date on or before the Sixth Day of *January*, 1697, in Consideration of Three thousand Two hundred Pounds, therein mention'd to have been paid by the said *Humphry Hetherington* unto his Majesty at the Receipt of his *Exchequer* at *Westminster*, or by other Assurance in the Law, granted and convey'd by the said Trustees, by the Appointment of the said *Humphry Hetherington*, to *Leonard Hancock*, of *Chebbunt* in the County of *Hertford*, Esq; and *John Warner*, of the Parish of *St. Clement Danes* in the County of *Middlesex*, Goldsmith, and their Heirs.

And by other Indentures of Bargain and Sale of the same Date, or other Assurance in the Law, divers other Fee-farm Rents, and other Rents therein mention'd, in Consideration of Nine thousand Six hundred Pounds, therein mention'd to have been paid by the said *Humphry Hetherington* to his Majesty, at the Receipt of his *Exchequer* at *Westminster* (being the Residue of the said Sum of Twelve thousand Eight hundred Pounds) were, by the said Trustees, granted and convey'd to the said *Humphry Hetherington*, and his Heirs; which Fee-farm, and other Rents, so convey'd unto or by the Appointment of the said *Humphry Hetherington*, amount to the full yearly Value of Eight hundred Pounds.

And by other Indentures of Bargain and Sale, of the same Date, or other Assurance in the Law, and in Consideration of Two thousand Four hundred Pounds, therein mention'd to have been paid by the said *Richard Adney* unto his Majesty, at the Receipt of his *Exchequer* at *Westminster*, other Fee-farm Rents, and other Rents, were, by the Appointment of the said *Richard Adney*, granted and conveyed by the said Trustees to the said *Leonard Hancock* and *John Warner*, and their Heirs.

And by other Indentures of Bargain and Sale, of the same Date, or other Assurance in the Law, in Consideration of Eight thousand Eight hundred Pounds, in the same Indentures mention'd to have been paid by the said *Richard Adney* to his Majesty, at the Receipt of his *Exchequer* at *Westminster* (being the Residue of the said Sum of Eleven thousand Two hundred Pounds) divers other Fee-farm Rents, and other Rents therein mention'd, were granted and convey'd by the said Trustees to the said *Richard Adney* and his Heirs; which Fee-farm, and other Rents so convey'd to, or by the Appointment of the said *Richard Adney*, amount to the full yearly Value of Seven hundred Pounds *per Annum*.

And by other Indentures of Bargain and Sale, bearing Date on or about the Twenty-fifth Day of *April*, 1698, or other Assurance in the Law, in Consideration of Two thousand Four hundred Pounds, therein mention'd to have been paid by the said *Samuel Newton* to his Majesty, at the Receipt of his *Exchequer* at *Westminster*, other Fee-farm Rents, and other Rents therein mention'd, were, by the Appointment of the said *Samuel Newton*, granted and convey'd by the said Trustees, to the said *Leonard Hancock* and *John Warner*, and their Heirs.

And by other Indentures of Bargain and Sale, of the same Date, or other Assurance in Law, in Consideration of Seven thousand Two hundred Pounds, therein mention'd to have been paid by the said *Samuel Newton* to his Majesty, at the Receipt of his *Exchequer*, at *Westminster* (being the Residue of the said Sum of Nine thousand Six hundred Pounds) divers other Fee-farm Rents, and other Rents therein mention'd, were granted and convey'd by the said Trustees, to the said *Samuel Newton*, and his Heirs; which said several Rents so convey'd unto, or by the Appointment of the said *Samuel Newton*, amount to the yearly Value of Six hundred Pounds.

That the said several Manours and Rents aforesaid, were granted to the said *Joseph Jekyl*, *Humphry Hetherington*, *Richard Adney*, and *Samuel Newton*, and their Heirs respectively, as aforesaid, in Trust for the said Lord *Sommers* and his Heirs.

IX. That the said Lord *Sommers*, in order to procure a Grant of the said Fee-farm Rents for his own Benefit, whilst he was Lord-Chancellor of *England*, and One of his Majesty's most Honourable Privy-Council, whilst his Majesty was engaged in the said War, and the Nation under such heavy Debts, as aforesaid, did enter into several Treaties, and had many Communications with

IX and X. To the Ninth and Tenth Articles the said Lord *Sommers* saith; That after his Majesty had given such Directions to the Lords of the Treasury, for granting Fee-farm Rents, and other Rents, to the yearly Value aforesaid, for the Benefit of the said Lord *Sommers* and his Heirs; and after Warrants were signed by the Lords of the Treasury to the said Trustees, for making

with divers Persons entrusted with the Care and Management of the said Fee-farm Rents; and particularly with *Reginald Marriott*, of the Parish of *St. Clement Daves*, in the County of *Middlesex*, Auditor of the Rates, or acting as Auditor; and with *John Digby*, of the Parish of *St. Bride's, London*, Clerk of the Trustees for Sale of the said Fee-farm Rents, and other evil-dispos'd Persons; and for encouraging the said *Marriott*, *Digby*, and others, to discover to him such particular Fee-farm and other Rents as then remain'd undispos'd of, to the Intent the said Lord *Sommers* might beg the same, he the said Lord *Sommers* contracted and agreed with the said Mr. *Marriott*, to give the said *Marriott*, for himself and his Accomplices, as a Reward for the said Discovery, one full Fourth Part of all such Rents so discover'd, whereof the said Lord *Sommers* should procure a Grant from the Crown: And accordingly the said several Grants from the said Trustees to the said *Hancock* and *Warner*, being together of the Yearly Value of Five hundred Pounds *per Annum*, and upwards, were so made by the Direction of the said Lord *Sommers*, in Trust for the said *Marriott*, *Digby*, or others.

X. That notwithstanding the said pretended Contracts and Payments, there was not any Sum of Money whatsoever really and *bona fide* paid, as the Consideration of the Conveyances of the said Rents from the said Trustees; but such Contracts and Payments of the said several Considerations (amounting in the whole to Thirty-three thousand Six hundred Pounds) were colourably and fraudulently contriv'd and made by Direction of the said Lord *Sommers*, contrary to his said Oath, in Deceit of his Majesty, and Elusion of the said Acts of Parliament.

XI. That many Quit-Rents and Copyhold-Rents standing in Charge as Parcel of, or belonging to several Manours, or reputed Manours, Rents reserv'd upon Leases or Estates, the Reversion whereof was in his said Majesty King *Charles* the Second at the making the said Acts, Rents convey'd before in Lease, or granted to other Persons; Rents appropriated by, or in pursuance of Act or Acts of Parliament, for Payment of Pensions, Stipends, Salaries, Annuities, Alms, and Allowances for the Maintenance of Grammar-Schools or Scholars; or for, or towards the Reparation of Churches, Chapels, Highways, Causeys, Bridges, Schools, Alm-houses, Castles, or other Uses; and many Quit-Rents of Manours, and other Rents by Act of Parliament united and annex'd to the Castle of *Windsor*, with Intent to support and maintain the Yearly Reparations and Charges of the said Castle, and discharge and pay the Fees and Wages of the Officers, Servants, and Attendants in the same Castle, and the Forests, Chases, and Parks to the same belonging, and for

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making Contracts for conveying Rents of the said Yearly Value, for the Benefit of the said Lord *Sommers*, it did appear, that the said intended Contracts and Grants could not be perfected, for that neither the Lords of the Treasury, nor the said Trustees, were sufficiently inform'd what Fee-farm Rents, or other Rents, remain'd undispos'd of; so that the whole Benefit of his Majesty's intended Bounty would have been lost, without Information could be gain'd of such particular Rents. And the said Lord *Sommers* being inform'd, that *Reginald Marriott* and *John Digby*, in this Article named, were the most likely, if not the only Persons capable, to give Information therein, Application was made to them for that Purpose; and the said *Marriott* and *Digby* being so apply'd to, after the said Warrants of his Majesty and the said Lords of the Treasury were executed, as aforesaid, did refuse to give any Account of such Rents, unless they might have, as a Reward for their so doing, Rents amounting to near a Fourth Part of such Rents whereof they should give such Account, convey'd in Trust for them in such manner as in the said Article is mention'd; which the said Lord *Sommers* did (as he conceives he lawfully might, it being only to his own Loss and Prejudice) comply with, not in order to any such End as is suggested in the said Article, but that he might perfect the Grant before design'd and appointed to be made to him by his Majesty, of his own Free-will, and not at the said Lord *Sommers's* Solicitation; the Discovery of any of the said Rents not being made by the said *Marriott* and *Digby*, or any other Person, till after the said Warrants of his Majesty and the Lords of the Treasury, as aforesaid. And accordingly the several Grants, in this Article mention'd, were made to *Hancock* and *Warner*, in Trust for the said *Marriott* and *Digby* (as was affirm'd to the said Lord *Sommers*); and the said Lord *Sommers* saith, There was not any Sum of Money paid as the Consideration of the Grants of the said Rents; but the Contracts were made, and the Payment of the several Considerations thereof were discharg'd, in the Manner, and for the Reasons, herein before set forth; and were not colourably or fraudulently contriv'd in Deceit of his Majesty, or Elusion of the said Act of Parliament.

XI. To the Eleventh Article the said Lord *Sommers* saith, He believeth, that several of the Rents mention'd to be granted in Trust for him, as aforesaid, had been before granted to other Persons by the said Trustees; and, that others of them were not in the Power of the said Trustees to grant, which was and is very much to his Prejudice; and believes the same were inserted by mistaken Informations given touching the same, and not out of any Design; and the like Mistakes have frequently happen'd in other Grants of other of the said Rents; and denies, that to his Knowledge or Belief, any of the said Rents so granted for his Benefit, were ever united or annexed to the Castle of *Windsor*, for any Purpose whatsoever; or, that any Oppression or Vexation hath happen'd to any of his Majesty's Subjects by reason of the granting of any of the said Rents; and, as he believes, little or no new Charge to the Crown.

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XII. To

many Years apply'd according to the Intention of the said Act; and also many Quit-Rents of or belonging to divers ancient Manours, heretofore and yet Parcel of the Demesnes or Possessions of the Crown, as if the same had been entire Fee-farm Rents issuing out of those Manours, were, by the aforesaid several Indentures of Bargain and Sale, thro' the Direction and Power of the said Lord *Sommers*, convey'd by the said Trustees for Sale of Fee-farm Rents, to the said *Humphry Hetherington*, *Richard Adney*, and *Samuel Newton*, and to the said *Hancock* and *Warner*, and their Heirs, or unto some of them, contrary to the true Intent and Meaning of the said Acts of Parliament, to the great Vexation and Oppression of many of his Majesty's good Subjects, and creating many new and unreasonable Charges on other Revenues of the Crown.

XII. That by the Direction of the said Lord *Sommers*, the said *Humphry Hetherington*, *Richard Adney*, *Samuel Newton*, *Leonard Hancock*, and *John Warner* surrender'd several of the said Rents to them, granted as aforesaid, amounting to the yearly Value of Three hundred Forty-seven Pounds Eleven Shillings and Five Pence Farthing, on Suggestion, that the same were either convey'd before in Lease set apart for Payment of Pensions, old Supers bad or illeivable, or Part thereof bad or illeivable, or wrong convey'd: And the said Lord *Sommers*, in the Year of our Lord 1699, being then Lord-Chancellor of *England*, and One of his Majesty's most Honourable Privy-Council, in Breach of his Duty, and contrary to the Laws and Statutes of this Realm, procur'd other Rents of the yearly Value of Three hundred Ninety-one Pounds Three Pence Half-penny, to be allow'd by way of Reprise, and to be convey'd to the said *Richard Adney* and his Heirs, in Trust for the said Lord *Sommers* and his Heirs, as if the said yearly Rents of Three hundred Forty-seven Pounds Eleven Shillings and Five Pence Farthing, so surrender'd, had been really and *bona fide* purchas'd in pursuance of the said Acts for Sale of Fee-farm Rents.

XIII. That in the Year of our Lord 1695, the said Lord *Sommers*, being then Lord-Keeper of the Great-Seal of *England*, and also One of his Majesty's most Honourable Privy-Council, together with *Edward Earl of Orford*, then First Commissioner for executing the Office of Lord High-Admiral of *England*, and Commander in Chief of his Majesty's Navy Royal, and One of his Majesty's most Honourable Privy-Council, *Richard Earl of Bellamont*, in the Kingdom of *Ireland*, Governor of *New-York*, *New-England*, and others then in high Stations, and in great Power and Authority, procur'd a Commission to be granted unto one *William Kidd*, a Person of evil Fame and Reputation, and since that Time convicted of Piracy, to apprehend and take into his Custody divers Persons therein named, and all such Pirates as the said *Kidd* should meet with upon the Coasts or Seas of *America*, or in any other Seas or Parts, with their Ships and Vessels, and also such Merchandizes, Goods, and Wares as should be found on board or with them. And afterwards the said Lord *Sommers*, in the Year of our Lord 1697, with the Assistance of the said *Earl of Orford*, and other Persons aforesaid, procur'd a Grant from his Majesty, and the said Lord *Sommers* pass'd the same under the Great-Seal of *England*, whereby all and whatsoever Ships, Vessels, Goods, Merchandizes,

XII. To the Twelfth Article the said Lord *Sommers* saith, That his Majesty having design'd, of his Bounty to him, the said Lord *Sommers* and his Heirs, Fee-farm and other Rents, to the annual Value of the said Grants mention'd; and the said Trustees having covenanted, as was usual for them to do, That they had not made any former or other Grant, or Conveyance, of the said Rents, or any of them; and Three hundred Forty-seven Pounds Eleven Shillings and Three Pence Farthing *per Annum* of the said Rents so granted, as aforesaid, having appear'd to be granted before, or not to be grantable by the said Trustees, or not leviable on Surrender of such Rents, the said Trustees, by Warrant of the Lords Commissioners of his Majesty's Treasury (who were thereunto sufficiently authoriz'd) in Lieu and Satisfaction of the said Rent, and Arrears thereof, and in Discharge of the Covenants of the said Trustees, did, the Twenty-first Day of *October*, 1699, grant divers other Rents, amounting to the yearly Value of Three hundred Ninety-one Pounds and Three Pence Half-penny, to *Richard Adney* and his Heirs, as in the said Article is mention'd; which were not so granted, as if the said yearly Rents of Three hundred Forty-seven Pounds Eleven Shillings and Three Pence Farthing had been *bona fide* purchased, but was in Lieu and Reprise for the same as granted of his Majesty's Bounty, for the Benefit of the said Lord *Sommers* and his Heirs, as aforesaid; which he conceives might be, and was lawfully done.

XIII. To the Thirteenth Article the said Lord *Sommers* doth admit, That in the Year 1695, he being then Lord-Keeper of the Great-Seal of *England*, his Majesty being inform'd, as the Truth was, That *Thomas Too*, *John Ireland*, *Thomas Wake*, and *William Maze*, and several other of his Majesty's Subjects in his Plantations of *America*, had associated themselves, and did frequently commit great Piracies, Robberies, and Depredations on the Seas in the Parts of *America*, and other Parts, to the Hindrance and Discouragement of Trade and Navigation; for preventing the said Mischiefs, did grant a Commission, as in this Article is mention'd, unto *William Kidd*, in this Article named (who was then Commander of the Ship call'd *The Adventure Galley*, and was not then, to the Knowledge or Belief of the said Lord *Sommers*, esteem'd a Person of ill Fame or Reputation) to apprehend, seize, and take into his Custody the said *Thomas Too*, *John Ireland*, *Thomas Wake*, and *William Maze*, and all such other Pirates as he should meet with in the Seas of *America*, or any other Seas, with their Ships and Vessels, and such Merchandizes, Moneys and Wares as should be found on board or with them, and to cause such Pirates to be brought to a legal Trial: the granting of which Commission was then apprehended to be necessary for the Preservation of Trade and Naviga-

dizes, Treasure, and other Things whatsoever, which since the Thirtieth Day of April, 1696, had been taken or seiz'd upon or with, or did belong to, or which should be taken or seiz'd upon or with, or did, or should belong to *Thomas Too, John Ireland, Thomas Wake, and William Maze* (in the said Letters Patents mention'd to have been complain'd of, and inform'd against, for committing many Robberies, Piracies, and Depredations upon the Seas in the Parts of *America*, and other Places, but never convicted or attainted for the same) or which since the said Thirtieth Day of April, 1696, had been taken or seiz'd upon, or which did, or should belong to any of the Adherents of the said *Thomas Too, John Ireland, Thomas Wake, and William Maze*, or any other Pirates, Free-booters, and Sea-rovers, by the said *William Kidd*, or other Commander of *The Adventure Galley*; or which by, or by means of, the said Ship or Galley should be taken, or forced on Shore in any of his Majesty's Plantations of *America*, were granted unto the said *Richard Earl of Bellamont*, and unto *Edmund Harrifon Merchant, Samuel Newton Gent. William Rowland Gent. George Watfon Gent. and Thomas Reynolds, of St. Martins*, their Executors, Administrators, and Assigns, to their own sole Use and Benefit, and as their own proper Goods and Chattels, without any Account thereof or therefore to be made: In which Grant the Name of the said *Samuel Newton* was used in Trust, and for the only Benefit and Advantage of the said Lord Sommers: Which said Grant under the Great-Seal of *England* manifestly tended to the Obstruction and Discouragement of Trade and Navigation, the great Loss and Prejudice of Merchants and others, being his Majesty's Subjects, or Subjects of the Friends and Allies of his Majesty, and the Dishonour of the King and Kingdom; and the said Lord Sommers was, by procuring and passing the said Grant, Guilty of a notorious Breach of his Duty.

son, Thomas Reynolds, and Samuel Newton of the other Part; They, the said Earl of *Bellamont, Edmund Harrifon, William Rowley, George Watfon, Thomas Reynolds, and Samuel Newton*, did Covenant, Promise, and Agree with his Majesty, his Heirs and Successors, well and truly to account for, and deliver upon Oath, to the Use of his Majesty, his Heirs and Successors, or the Commissioners of his or their Treasury, or his or their High-Treasurer, a clear Tenth Part (the whole in Ten equal Parts to be divided) of all and every such Ships, Vessels, Goods, Merchandizes, and other Things whatsoever, which in and by the said Grant should be given, or which should from Time to Time be taken, or seiz'd, or secur'd by them, or any of them, their, or any of their Executors or Administrators, Officers, Agents, Servants, or Assigns, by Vertue or Colour thereof. To which Grant and Indenture the said Lord Sommers, for more Certainty, referreth himself; and further saith, He conceives, and is advis'd, That the said Grant did not any way tend to the Obstruction or Discouragement of Trade or Navigation, or to the Loss or Prejudice of Merchants, or others his Majesty's Subjects, or the Subjects of his Friends or Allies, nor to the Dishonour of his Majesty or the Kingdom; nor was the passing of the same any Breach of the Duty of the said Lord Sommers; but the said Grant was form'd as a Recompence to the said Grantees, who, at their own Charge, had provided and fitted out the said Ship, to enable the said *William Kidd* to execute the Powers in the said Commission mention'd, whereby the Publick might have receiv'd great Benefit, had the said *William Kidd* faithfully discharg'd the Trust in him repos'd by his Majesty and the said Grantees: Which he failing to do, the Owners of the said Ship have lost their Expences, and have not receiv'd any Benefit of his Majesty's said Grant.

XIV. That the said *John Lord Sommers*, to the great Oppression of the Subject, and contrary to *Magna Charta*, and divers good Statutes of this Realm, and in manifest Breach and Violation of his Oath, as Lord High-Chancellor of *England*, hath, in several Causes depending before him, by many extraordinary Methods, and unwarrantable Practices for several Years, delay'd Proceedings in the

Navigation: And the said Lord Sommers doth also admit, That a Grant, dated the Twenty-seventh Day of May, 1697, did pass under the Great-Seal of *England*, as in this Article is mention'd, whereby reciting the said Commission so granted to the said *William Kidd*; and, that the said *Adventure Galley* was with his Majesty's Knowledge and Royal Encouragement bought and fitted out to Sea for the Execution of the said Commission, at the Charge of the Earl of *Bellamont, Edmund Harrifon, Samuel Newton, William Rowley, George Watfon, and Thomas Reynolds*, in this Article named; his Majesty, for encouraging and rewarding the said Undertaking, did grant unto the said Earl of *Bellamont, Edmund Harrifon, William Rowley, George Watfon, Thomas Reynolds, and Samuel Newton* (who was named by, and in Trust for, the said Lord Sommers) their Executors and Administrators, all and whatsoever Ships, Vessels, Goods, Merchandizes, Treasure, and other Things whatsoever, which since the Thirtieth Day of April, 1696, had been taken or seiz'd upon or with, or did belong to, or should happen to be taken or seiz'd upon or with, or which did, or should, belong to the said *Thomas Too, John Ireland, Thomas Wake, and William Maze*, or their Adherents, or any other Pirates, by the said *William Kidd*, or other Commanders of the said *Adventure Galley*, or which by, or by Means of, the said Ship or Galley should be taken, or forced on Shore, on any of his Majesty's Plantations in *America*, so far as the said Premisses, or any of them, did, should, or might belong to his Majesty, or could or might be granted or grantable by him, or was or were in his Power to dispose of: Which Grant was not intended to be without an Account. For the said Lord Sommers saith, That by Indenture, bearing Date the Two and twentieth Day of May, 1697, made (after the Warrant for the said Grant was sign'd, and before it was pass'd) between his Majesty of the one Part, and the said Earl of *Bellamont, Edmund Harrifon, William Rowley, George Wat-*

XIV. To the Fourteenth Article the said Lord Sommers saith, He did not delay any Proceedings in any Cause or Causes depending before him, as Chancellor of *England*, longer or otherwise than as the Circumstances and Justice of each Cause requir'd; but did, to the very manifest impairing of his Health, constantly apply himself to the Dispatch of the Causes depending before him; Z z z and

the said Causes; and, by Colour of his Office, hath made divers Arbitrary and Illegal Orders, in Subversion of the Laws and Statutes of this Realm; and hath, of his own Authority, revers'd Judgments given in the Court of *Exchequer*, and without calling before him the Barons of the *Exchequer*, to hear their Informations, and the Causes of their Judgments, as the Statute in those Cases expressly direct; assuming thereby to himself an Arbitrary and Illegal Power; and hath declar'd and affirm'd in publick Places of Judicature, That particular Subjects might have Rights and Interests without any Remedy for Recovery of the same, unless by Petition to the Person of the King only, or to that effect: Which Position was highly dangerous to the legal Constitution of this Kingdom, and absolutely destructive to the Property of the Subject.

And the said Knights, Citizens, and Burgeses, by Protestation, saving to themselves the Liberty of exhibiting, at any Time hereafter, any further Articles, or other Accusation or Impeachment against the said Lord *Sommers*; as also of replying to his Answer which he shall make unto the said Articles, or any of them; and offering Proofs to all and every the aforesaid Articles, and to all and every other Articles, Impeachment or Accusation which shall be exhibited by them, as the Cause shall, according to the Course of Parliament, require; do pray, That the said *John Lord Sommers* may be put to answer the said Crimes and Misdemeanors; and, that such Proceedings, Examinations, Trials, and Judgments may be thereupon had and given as is agreeable to Law and Justice.

After reading this Day the Articles of Impeachment brought up from the House of Commons against *John Lord Sommers*, and hearing his Lordship thereupon, who desir'd a Copy of the said Articles, and said, He would put in his Answer so soon as possible he could; It is order'd by the Lords Spiritual and Temporal in Parliament assembled, That the Lord *Sommers* may have a Copy of the said Articles against him.

Die Martis 20^o Maii, 1701.

The Earl of *Orford* desiring that a Day may be appointed for his Trial, the House thereupon order'd, That the Committee appointed to consider of the Manner in delivering Articles of Impeachments by the Commons be reviv'd, to inspect the Books, and meet immediately.

Then the House was adjourn'd during Pleasure, and the Lords went to the Committee.

After some Time, the House was resumed, and the Earl of *Stamford* reported the Precedents following; viz.

‘ 21 Decem. 1680. That Mr. *Seymour* was Impeach'd, and Articles deliver'd.

A Message was sent to the House of Commons by Sir *Robert Legard* and Mr. *Gery*, to acquaint them, “ That the House having been desir'd by the Earl of *Orford*, that a Day may be appointed for his speedy Trial, their Lordships finding no Issue join'd by Replication of the House of Commons, think fit to give them Notice thereof.

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and denies, that he did ever make, by Colour of his Office, any Arbitrary or Illegal Order, to the Subversion of any Law or Statute of this Realm, or did ever assume to himself any Arbitrary or Illegal Power, or ever reverse any Judgment given in the Court of *Exchequer*, otherwise than as is warranted and allow'd by the Law, and in the Presence of the Barons of the Court of *Exchequer*, who were always present in the Court of *Exchequer-Chamber*, when their Judgments were examin'd, as the Statute in such Cases directs; nor did ever deliver in any Court of Judicature, or other Place whatsoever, any Position whatsoever dangerous to the Legal Constitution of the Kingdom, or destructive to the Property of the Subject, as is charg'd by the said Articles.

And as to all other Matters and Things in the said Articles contain'd, and not herein before particularly answer'd unto, the said Lord *Sommers* saith, He is not Guilty of them, or any of them, in Manner and Form as the same are charg'd upon him in and by the said Articles; and humbly submitteth himself to your Lordships Judgment.

S O M M E R S.

‘ 23 Decemb. 1680. He deliver'd in his Answer.

‘ 3 Jan. That he petition'd for a Trial; whereupon the same Day a Message was sent to the Commons, That the House finding no Issue join'd by Replication from the Commons, thought fit to give them Notice thereof.

‘ Then Council were assign'd him.

‘ 8 Jan. Saturday the Fifteenth was appointed for his Trial.

‘ 27 Apr. 1695. the D. of *Leeds* was Impeach'd.

‘ 29 Apr. the Articles were brought up.

‘ 30 Apr. the Duke of *Leeds* put in his Answer, and a Copy thereof was sent to the Commons.

‘ 1 May, the Lords sent to the Commons, to know when they should be ready to make good the same.

‘ 3 May, the Commons desir'd a Conference on the Lords Message; and at the Conference acquainted the Lords, That Mr. *Robart*, a material Witness, was withdrawn. The Lords mov'd the King, that a Proclamation might be issued for his Apprehension. The same Day the Parliament was Prorogued.

A Message was brought from the House of Commons by Mr. *Bromley* and others (the 31st of May) to acquaint this House, “ That in answer to the Message of the One and twentieth Instant, the Commons have prepar'd a Replication to the Earl of *Orford*'s Answer to the Articles of Impeachment of High Crimes and Misdemeanors exhibited against him, and at present defer

“ bring-

A Message was also sent to the House of Commons by Sir Robert Legard and Mr. Grey, to acquaint them, ' That they having, on the First Day of April last, sent up to their Lordships an Impeachment against William Earl of Portland, for High Crimes and Misdemeanors; and having also, on the Fifteenth Day of the same Month, Impeach'd Charles Lord Hallifax for High Crimes and Misdemeanors; and there being as yet no particular Addresses exhibited against the said Lords, their Lordships think themselves oblig'd to put them in mind thereof; which, after Impeachments have so long depended, is a Hardship to the Persons concern'd, and not agreeable to the usual Methods and Proceedings of Parliament in such Cases.

' bringing it up to your Lordships, because in the Trials of the several Impeachments now depending, the Commons think it most proper, from the Nature of the Evidence that will be given at the said Trials, to begin with the Trial of the Impeachment of John Lord Sommers of High Crimes and Misdemeanors. And as to your Lordships other Message, the Commons take it to be without Precedent, and Unparliamentary; they, as Prosecutors, having a Liberty to exhibit their Articles of Impeachment in due Time; of which they who are to prepare them are the proper Judges: And therefore, for your Lordships to assert, That having not yet exhibited particular Articles against William Earl of Portland and Charles Lord Hallifax, is a Hardship to them, and not agreeable to the usual Methods and Proceedings in Parliament in such Cases; does, as they conceive, tend to the Breach of that good Correspondence betwixt the two Houses, which ought mutually to be preserv'd.

Die Mercurii 21^o Maii, 1701.

The Messengers sent Yesterday to the House of Commons return Answer, That the Commons will send an Answer to the said Messages relating to the said Impeachments, by Messengers of their own.

Die Sabbati 24^o Maii, 1701.

The Lord Sommers deliver'd his Answer to the Articles of Impeachment of the House of Commons against him, which was read by the Clerk. See Page 355.

It is order'd by the Lords Spiritual and Temporal in Parliament assembled, That a Copy of the Answer of John Lord Sommers (deliver'd this Day) to the Articles of Impeachment depending against him, be sent to the House of Commons; and accordingly a Message was sent to the House of Commons by Sir Robert Legard and Sir John Hoskins, to carry down a Copy of the Lord Sommers's Answer to the Articles of Impeachment against him.

Die Veneris 30^o Maii, 1701.

It is order'd by the Lords Spiritual and Temporal in Parliament assembled, That Monday the Ninth Day of June next shall be, and is hereby appointed for the Trial of Edward Earl of Orford, in Westminster-Hall, upon the Articles brought up against him by the House of Commons, whereby he stands charg'd with several High Crimes and Misdemeanors.

A Message was sent to the House of Commons by Sir Robert Legard and Sir John Hoskins, to let them know, ' That this House hath appointed Monday the Ninth Day of June next, for the Trial of Edward Earl of Orford, in Westminster-Hall, upon the Articles sent up against him, and that the Commons may reply, if they think fit.

A Message was sent to the House of Commons by Sir Robert Legard and Sir John Hoskins, to acquaint them, ' That they having on the First Day of April last, sent up to their Lordships an Impeachment against William Earl of Portland, for High Crimes and Misdemeanors; and having also, on the Fifteenth Day of the same Month, Impeach'd Charles Lord Hallifax for High Crimes and Misdemeanors; and there being as yet no particular Articles exhibited against the said Lords, their Lordships think themselves oblig'd to put them in mind thereof; which, after Impeachments have so long depended, is a Hardship to the Persons concern'd, and not agreeable to the usual Methods and Proceedings of Parliament in such Cases.

It

A Message was brought from the House of Commons by Mr. Harcourt and others (the Fifth of June) to acquaint this House, ' That the Commons, on Consideration of your Lordships Message to them of the One and thirtieth of May, concerning the Earl of Orford, think it their Undoubted Right, when several Persons stand Impeach'd before your Lordships, to bring to Trial such of them, in the first place, as the Commons apprehend, from the Nature of the Evidence, ought first to be proceeded against; to the intent all such Offenders may, in due time, be brought to Justice: And, That no Day ought to be appointed by your Lordships for the Trial of any Impeachment by the Commons, without some previous Signification to your Lordships from the Commons, of their being ready to proceed thereon.

' The Commons could not receive this Message from your Lordships without the greatest Surprise; your Lordships Proceedings in this Case being neither warranted by Precedents, nor (as the Commons conceive) consistent with the Methods of Justice, or with Reason: Where-

‘ Wherefore the Commons cannot agree to the Day appointed by your Lordships for the Trial of the Earl of Orford.

‘ As to your Lordships Message, at the same time, relating to the Earl of *Portland*, and *Charles Lord Hallifax*, the Commons take the same to be without Precedent, and Unparliamentary; and conceive your Lordships frequent Repetition thereof, in so short a Time, after the Commons had transmitted to your Lordships their Articles against Two of the Impeached Lords, and were daily preparing their Articles against the others, manifestly tends to the Delay of Justice, in obstructing the Trials of the Impeached Lords, by introducing Disputes, in Breach of that good Correspondence between the Two Houses, which ought inviolably to be preserved.’

It is order’d by the Lords Spiritual and Temporal in Parliament assembled, That the Lord Great-Chamberlain do attend his Majesty, humbly to acquaint his Majesty, That this House hath appointed *Monday* the Ninth Day of *June* next, for the Trial of *Edward Earl of Orford*, in *Westminster-Hall*; and humbly to move his Majesty, that he will be pleased to give Order for a Place to be prepar’d in *Westminster-Hall* against the said Time, for this House to proceed upon the said Trial.

Die Sabbati 31^o Maii, 1701.

A Message was brought from the House of Commons by Mr. *Bromley*, and others. See Page 356.

The Messengers sent Yesterday to the House of Commons return Answer, That the Commons will send an Answer by Messengers of their own.

Die Lunæ 2^o Junii, 1701.

Order’d, That the Committee appointed to consider of the Manner in delivering Articles of Impeachments by the Commons, be revived, to meet on *Monday* next, to draw an Answer to be sent to the House of Commons to their Message receiv’d the 31st Instant.

The House was adjourn’d during Pleasure. After some Time, the House was resum’d, and the Earl of *Stamford* reported from the Lords Committees, appointed to consider of the Manner in delivering Articles of Impeachments by the Commons, the Precedents following; viz.

‘ 7 Feb. 25 H. 8. The Bishop of *London* Impeached by the Commons, for imprisoning *Tho. Phillips* on Suspicion of Heresy.

‘ 9 Feb. The Articles were read.

‘ 20 March, 1620. The Commons, at a Conference, accused the Lord-Chancellor *St. Alban* and the Bishop of *Landaff* of Bribery and Corruption.

‘ 16 April, 1624. The Commons, at a Conference, accuse the Earl of *Middlesex*, Lord-Treasurer, of Bribery.

‘ 19 May, 1624. The Commons accuse the Bishop of *Norwich* of several Matters by them then particularly mentioned at a Conference.

‘ 29 Decemb. 1640. The Commons accuse Sir *George Radcliffe* of High-Treason.

‘ 31 Decemb. They delivered the Articles at a Conference.

‘ 22 Decemb. 1640. The Lord-Keeper *Finch* was Impeached.

‘ 29 Jan. 1640. Report of what he was accused of at a Conference.

‘ 18 Decemb. 1641. *Daniel O-Neal* Impeached.

‘ 30 August, 1641. The Earl of *Bridgewater* Impeached, and Articles read, but not entered.

‘ 6 Decemb. 1660. *William Drake* Impeached, and Articles brought up.

‘ 24 April, 1668. Sir *William Pen* was Impeached, and the Articles delivered at a Conference the same Day.

‘ 29 Decemb. 1666. The Commons, at a Conference, Impeached the Lord Viscount *Mordaunt*.

‘ 3 Jan. The Conference was reported, and the Articles read.

‘ 23 Decemb. 1678. *Post Meridiem*, the Earl of *Danby* was Impeached, and Articles brought up against him at the same Time.

‘ 5 Decemb. 1678. The Earl of *Powis*, Lord *A. Wardour*, Lord *Bellafaye*, Lord *Petre*, and Lord Viscount *Stafford*, were Impeached.

‘ 30 Decemb. The Parliament was prorogued to the 4th of *February*, and was dissolved the 24th of *January*.

‘ 6 March. A new Parliament met.

‘ 7 April, 1679. Articles were brought up against them.

‘ 21 Decemb. 1680. Mr. *Edward Seymour* was Impeached, and Articles brought up at the same Time.

‘ 7 Jan. 1680. Sir *William Scroggs* was Impeached, and Articles brought up at the same Time.

‘ 7 Jan. 1680. The Earl of *Tyrone* was Impeached, but no Articles brought up.

‘ 10 Jan. The Parliament was prorogued to the 20th. Dissolved the 18th.

‘ 26 March, 1681. Mr. *Fitz-Harris* was Impeached: No Articles brought up.

‘ 28 March. The Parliament was dissolved.

‘ 26 June, 1689. *Blair*, *Vaughan*, *Noel*, *Elliot*, and *Grey*, were Impeached, and Articles brought up.

‘ 26 Octob. The Earl of *Salisbury* and Earl of *Peterborough* were Impeached. Special Matter assigned the same Day.

‘ 27 April, 1695. The Duke of *Leeds* was Impeached.

‘ 29 April. Articles were brought up.

‘ 10 May, 1698. *Goudet* and others were Impeached.

‘ 17 May. Articles brought up.

‘ 28 May, 1698. *John Auriol* and *John Du-maisire* were Impeached.

‘ 8 June. Articles were brought up against them.’

The Lord Great-Chamberlain acquainted the House, That he had attended his Majesty with their Address for a Place to be prepared in *Westminster-Hall*, for the Trial of the Earl of *Orford*; and his Majesty was pleased to say, *He would give Order for the Place to be prepar’d, as desir’d.*

Order’d, That the Committee, appointed on Saturday last, do meet presently, to draw an Answer to be sent to the House of Commons, to the

their Message received the One and Thirtieth of May last.

Then the House was adjourned during Pleasure.

After some Time the House was resumed, and

“ The Lords do think fit, upon Occasion of the
“ Message of the Commons of the 31st of May,
“ to acquaint that House, That having been desir’d
“ by the Lord Sommers, that a Day may be ap-
“ pointed for his speedy Trial, and their Lordships
“ finding no Issue joined by Replication of the
“ House of Commons, judge it proper to give
“ them notice thereof, that the Commons may Re-
“ ply, if they think fit, and at the same time their
“ Lordships let the Commons know, that they will
“ proceed to the Trial of any of the Impeached
“ Lords, whom the Commons shall be first ready
“ to begin with, so as there may be no Occasion
“ taken from thence for any unreasonable Delay in
“ the Prosecution of any of them: And further to
“ acquaint them, That having searched their own
“ Journals, they do not find, that after a general
“ Impeachment there has ever been so long a
“ Delay of bringing up the particular Articles
“ of Impeachment, sitting the Parliament: And
“ therefore the Lords do think they had Reason
“ to assert, That it was a Hardship to the two
“ Lords concerned (especially after this House
“ had put the House of Commons in mind of ex-
“ hibiting such Articles) and not agreeable to
“ the usual Proceedings in Parliament. And as
“ the Lords do not controvert what Right the
“ Commons may have of Impeaching in general Terms, if they please; so the Lords, in whom the
“ Judicature does intirely reside, think themselves obliged to assert, That the Right of limiting
“ a convenient Time for bringing the particular Charge before them, for avoiding of Delay in
“ Justice, is lodged in them.

“ The Lords hope the Commons, on their Part, will be as careful not to do any Thing that
“ may tend to the Interruption of the good Correspondence between the Houses, as the Lords
“ shall ever be on their Part: And the best Way to preserve that, is for neither of the two
“ Houses to exceed those Limits which the Law and Custom of Parliament hath already esta-
“ blished.

The House went into Consideration of this Report; and after Debate, it was order’d, That the further Consideration thereof, and Debate thereupon, be adjourn’d till To-morrow Twelve a-Clock.

Die Martis 3^o Junii, 1701.

The House resumed the Adjourned Debate Yesterday, in relation to the Report of the Answer drawn by the Committee to be sent to the House of Commons, to their Message received the One and Thirtieth of May last.

The Report was read by Paragraphs, and agreed to, and sent to the House of Commons by Sir Richard Holford and Mr. Pitt.

Die Jovis 5^o Junii, 1701.

A Message was brought from the House of Commons by Mr. Harcourt, and others. See Page 357.

Upon receiving a Message from the House of Commons, in Answer to a Message sent to them by this House the One and Thirtieth of May last, it is ordered, That the Lords Committees appointed to consider of the Manner of Proceedings on Impeachments, do meet To-morrow at

the Earl of Stamford reported the Answer drawn by the Committee, to be sent to the House of Commons, to their Message received the One and Thirtieth of May last, which was read as follows, viz.

Mr. Harcourt, at a Conference (the Sixth of June) delivered himself in the following manner.

“ The Commons have desired this Conference
“ upon your Lordship’s Message of the Fourth of
“ June, in order to preserve a good Correspondence
“ with your Lordships; which will always be the
“ Endeavour of the Commons, and is at this Time
“ particularly necessary, in order to bring the Im-
“ peached Lords to a speedy Trial. And because
“ the Messages which your Lordships have
“ thought fit to send to the Commons, and the
“ Answers thereunto, seem not to tend towards
“ expediting the Trials, which the Commons so
“ much desire, but may rather furnish Matter of
“ Dispute between the two Houses; the Com-
“ mons therefore chuse to follow the Methods
“ formerly used with good Success upon the like
“ Occasions: And for the more speedy and easy
“ adjusting and preventing any Differences which
“ have already happened, or may arise, previous
“ to, or upon these Trials, the Commons do pro-
“ pose to your Lordships, That a Committee of
“ both Houses be nominated, to consider of the
“ most proper Ways and Methods of Proceeding
“ on Impeachment, according to the Usage of
“ Parliament.

Nine of the Clock in the Forenoon, to consider the said Message, inspect the Journals, and report to the House what they shall think proper in this Case.

Die Veneris 6^o Junii, 1701:

A Message was brought from the House of Commons by Mr. St. John and others, to desire a Conference with this House upon the Subject Matter of the Message of this House of the Fourth Instant.

It being proposed to return Answer, That this House will send an Answer by Messengers of their own, and Debate thereupon:

The House agreed to a present Conference.

Then the Commons being called in, were told, That the Lords agreed to a Conference as desired, and appoint it presently in the Painted-Chamber.

Lords were named Managers of the Conference.

The Commons being come to the Conference, the House was adjourned during Pleasure, and the Lords went to the Conference; which being ended, the House was resumed, and the Lord-Steward reported, That the Lords had attended the Conference, and that Mr. Harcourt managed the Conference, and said, *As above.*

Or-

Ordered, That the Lords Committees appointed to consider of the Manner of the Proceedings on Impeachments, do meet To-morrow upon the Report of this Conference, and inspect the Journals, and Report to the House.

Die Sabbati, 7^o Junii, 1701.

The Earl of *Stamford* reported from the Lords Committees appointed to consider of the Manner of Proceedings on Impeachments, That they have inspected the Journals, and ordered him to report the Precedents following; viz.

‘ 16 April, 1624. Report is made of the Commons Complaint and Charge at a Conference against the Earl of *Middlesex*, Lord-Treasurer.

‘ 24 April, 1624. Ordered, That the Lord-Treasurer shall appear on *Tuesday* next at Nine a-Clock, to answer his Charge at the Bar; and that if he hath any Witnesses to be examined, they may in the mean time be Sworn and Examined.

‘ 27 April. The Lord-Treasurer petitioned, That his Witnesses might not be examined, till he hath answered; but the House did not think fit to alter the Day.

‘ 28 April. The Lord-Treasurer desires the Interrogatories to his Witnesses may be respited till he hath answered; and that he may have Copies of the Depositions taken on both Sides.

‘ His Lordship was answered, That his Desire is so unfit, as the Lords think him ill advised to make such a Request; and according to the former Order, expect his Appearance To-morrow, and to hear such Answer as he shall make.

‘ 29 April. The Lord-Treasurer petitions, That in regard of his being indisposed, he may have a further Day for presenting his Answer. The House, in respect of his Indisposition, is pleased to respite his Appearance this Day, but enjoin, that *Saturday* next he brings in his Answer, according to former Orders; and the Lords do peremptorily assign *Friday*, the Seventh of *May*, for his Appearance in Person, and for the final Hearing and Determining of the Cause.

‘ 7 May. The Lord-Treasurer was accordingly brought to the Bar, and the Trial proceeded.

30 Aug. 1641. The Earl of *Bridgwater* was Impeached by the Commons.

‘ 6 Sept. 1641. Ordered, To answer the second *Tuesday* in *November*.

‘ 17 Octob. 1641. Ordered, To be heard on the Ninth of *December*.

‘ 2 November, 1641. Ordered, That the Earl of *Bridgwater* may answer on the Ninth of *November*.

‘ 31 March 1642. At a Conference desired by the Commons, they desired Articles of Impeachment against *George Benyon*. *Benyon* was ordered to answer in four Days, and to have Liberty, with his Keeper, to go any where, and Council assigned.

‘ 4 April, 1642. *Benyon* put in his Answer: Then it was ordered, That this Cause against *George Benyon*, upon the Impeachment of the House of Commons, shall be proceeded in on *Wednesday* next at this Bar.

‘ 5 April, 1642. A Message was sent to the House of Commons, to acquaint them, That the Lords have appointed to proceed in the Cause against *Benyon* To-morrow.

‘ The House of Commons return Answer, That they will send a Committee of their House, to manage their Evidence against *Benyon*, To-morrow.

‘ 6 April, 1642. The Committee of the House of Commons being come to manage the Evidence against him, had the Articles read, &c. and the Trial proceeded.

‘ 5 July, 1642. Sir *Robert Gurney*, Lord-Mayor, was Impeached at a Conference, and brought to the Bar, and heard the Articles read, had Council allowed him, and was ordered to Answer on *Friday* next.

‘ 8 July, He deliver’d in his Answer, which was read, and the Cause was ordered to be heard on *Monday* next, and the Commons were acquainted therewith by Message.

‘ 11 July, The Commons at a Conference deliver in a further Impeachment against him, and the Articles were read to him at the Bar, and he desired Council, which was allowed, and he had Time given him to answer till To-morrow Seven-night.

‘ 19 July, Sir *Richard Gurney* put in his Answer; and the same Day it was order’d, That this House will proceed against him on *Friday* next, on both the Impeachments; and the House of Commons are then to produce all their Proofs to prove the said Impeachments: And a Message was sent to the Commons to acquaint them with the said Order.

‘ 22 July, The Committee of Commons being come to manage the Evidence, the Trial was proceeded in.

‘ 17 July, 1645. The Earl of *Stamford* desiring Time to put in his Answer to the Impeachment of the House of Commons against him, it was Ordered, he put in his Answer on *Monday* next.

‘ 21 July, The Earl of *Stamford* delivered in his Answer; which was read, and ordered to be heard at the Bar on *Friday* next; and the Commons were acquainted therewith by Message.

‘ 25 July, A Message from the Commons to desire another Day for hearing of the Cause of the Earl of *Stamford*’s Impeachment, because they cannot be ready this Day.

‘ *Eodem Die*, A Message to the Commons, That they have appointed *Monday* next; and in regard it concerns his Lordship so much, their Lordships have appointed so short a Day.

‘ 26 July, 1645. A Message from the Commons, to desire a further Day, in regard their Witnesses cannot be ready.

‘ 28 July, 1645. Ordered, That the Earl of *Stamford*’s Business shall be heard the first *Tuesday* after *Michaelmas*.

‘ 30 Septemb. The Clause of the Earl of *Stamford*, upon the Impeachment of the House of Commons, was heard, a Committee of the Commons managing the Evidence against him.

‘ 21 Decemb. 1680. *Edward Seymour*, Esq; was impeached of High Crimes, &c. the Articles were brought up against him; he had the Articles read to him, and ordered to answer.

‘ 23 Decemb. He delivered in his Answer.

3. January, Mr. Seymour petitions for a speedy Trial: Whereupon a Message was sent to the House of Commons, That the House finding no Issue join'd by Replication from the House of Commons, thought fit to give them Notice thereof.

8. January, Order'd, That Saturday the Fifteenth is appointed for the Trial of Mr. Seymour.

Upon Consideration of the Precedents above-mentioned, it is Order'd by the Lords Spiritual and Temporal in Parliament assembled, That the Lords Committees appointed to consider of the Manner of Proceedings on Impeachments, do

A Message was sent to the House of Commons by Sir Richard Holford and Mr. Gery, to acquaint them, That in Answer to the Message of the House of Commons, of the Fourth Instant, the Lords say, by their Message sent on the Third, wherein they declare themselves ready to proceed to the Trial of any of the Impeach'd Lords, whom the Commons should be first ready to begin with, They have given a full Proof of their Willingness to comply with the Commons in any thing which may appear reasonable, in order to the speedy determining of the Impeachments now depending: And therefore, as the Lords conceive the Commons had no Occasion to begin any Dispute on that Head, so their Lordships are careful to decline entering into a Controversy which seems to them to be of no Use at present.

The Lords think themselves obliged to assert their undoubted Right to appoint a Day for the Trial of any Impeachment depending before them, if they see good Cause for it, without any previous Signification from the Commons of their being ready to proceed; which Right is warranted by many Precedents, as well as consonant to Justice and Reason; and their Lordships, according to the Example of their Ancestors, will always use that Right with a Regard to the equal and impartial Administration of Justice, and with a due Care to prevent unreasonable Delays.

This being the Case, the Lords cannot but wonder, that the Commons, without any Foundation for it, should make use of Expressions which, as their Lordships conceive, have never been used before by one House of Parliament to another, and which, if the like were return'd, must necessarily destroy all good Correspondence between the two Houses.

The last Part of the Commons Message being in effect a Repetition only of their former, of the Thirty-first of May, to which the Lords have already returned a full Answer, their Lordships think it not requisite to say more, than That they cannot apprehend with what Colour their calling upon the House of Commons to

send up Articles against Two Lords, whom the Commons have so long since impeach'd in general Terms, can be said to tend to the Delay of Justice: And therefore, as the Lords think the Commons ought to have forbore that Reflection, so their Lordships, in saying no more upon the occasion of this Message of the Commons, think they have given a convincing Proof of their Moderation, and of their sincere Desire of preserving a good Correspondence between the two Houses, which is so necessary for the Publick Security, as well as doing Right upon the Impeachments.

meet on Monday next, at Ten a-Clock in the Forenoon, to draw an Answer to be sent to the House of Commons, to their Message receiv'd the Fifth Instant.

Die Luna 9^o Junii, 1701.

The Earl of Stamford reported from the Lord Committees (appointed to consider of the Manner of Proceedings on Impeachments) what was drawn by them, to be sent to the Commons, in Answer to their Message of the Fifth Instant; which was read, amended, and agreed to, as follows; viz.

A Message was brought from the House of Commons by Mr. Harcourt, and others, (on the Tenth of June) to acquaint this House, That the Commons, in hopes of avoiding all Interruptions and Delays in proceeding against the Impeach'd Lords, and the many Inconveniences which might arise thereby, having proposed to your Lordships, at a Conference, that a Committee of both Houses might be nominated, to consider of the most proper Ways and Methods of Proceedings on Impeachments, think they might have justly expected your Lordships Compliance with their said Proposition, instead of your Lordships Answer to their Message of the Fourth Instant, which they Yesterday receiv'd: In which Answer of your Lordships, tho' many Matters of great Exception are contain'd, a suitable Reply whereunto would inevitably destroy all good Correspondence between the two Houses; yet the Commons, from an earnest Desire inviolably to preserve the same, as well as give the most convincing Proof of their Moderation, and to shew their Readiness to bring the Impeach'd Lords to speedy Justice, at present insist only on their Proposition, for a Committee of both Houses to settle and adjust the necessary Preliminaries to the Trials; particularly, Whether the Impeach'd Lords shall appear on their Trials at your Lordships Bar, as Criminals? Whether, being under Accusations of the same Crimes, they are to sit as Judges on each other's Trial for those Crimes, or can vote in their own Cases, as we find, from your Lordships Journals since their being impeach'd, they have been admitted so to do? Which Matters, and some others, being necessary to be adjusted, the Commons cannot but insist on a Committee of both Houses to be appointed for that Purpose; their departing from which would be giving up the Rights of the Commons of England, known by unquestionable Precedents, and the Usages of Parliaments, and making all Impeachments, the greatest Bulwark of the Laws and Liberties of England, impracticable for the future.

The Earl of *Stamford* also reported from the Lords Committees appointed to consider of the Manner of Proceedings on Impeachments, what Precedents they have found in pursuance of the Order of the Seventh Instant; which are as follow; viz.

‘ 21. May, 1614, A Message from the Commons, to desire a Conference upon the Point of Impositions.

‘ 24. May, the Question being proposed, Whether this House shall meet with the Lower House, and give them Hearing, touching the Point of Impositions: The greater Number of the Lords answered, *Not Content*.

‘ 26. May, a Message to the Commons, That the Lords are, and always will be, ready and willing to hold loving and mutual Correspondence with them; but their Lordships having entered into a grave and serious Consideration, as well of the Matter it self, as of divers incident and necessary Circumstances, do not think it convenient to enter into any Conference of this Cause, concerning the Point of Impositions, at this Time.

‘ 1. February, 1666, a Message from the Commons, to desire a Conference touching the Manner of Proceedings upon the Impeachment against the Lord Viscount *Mordaunt*.

‘ The Lords answer, That they will send Answer by Messengers of their own.

‘ Then a Committee was appointed to consider, whether ever the Commons desired any Conferences concerning the Manner of Proceedings upon Judicature before their Lordships.

‘ 4. February, 1666, after Report of the Conference so had, the Lords resolved to let the Commons know at a Conference, That they are resolved, that their former Answer given them the Eight and twentieth of *January*, and confirmed the One and thirtieth of the same Month, shall stand.

‘ 31. *January*, Which Answer was, That they judge it a Right inherent in every Court, to order and direct such Circumstances and Matters of Form, that can have no Influence to the Prejudice of Justice, in such Way as they shall judge fit, where the same are not settled otherwise by any positive Rule.

‘ 4. February, *post Meridiem*, A Conference was accordingly had at the Desire of the Lords.

‘ 5. February, A Message from the Commons to desire a Free Conference upon the Subject-matter of the last Conference.

‘ The Answer returned was, That the Lords have already stated the Manner of Proceedings in the Impeachment of the Lord *Mordaunt*, and have declared it in their last Conference; and in that Conference gave the House of Commons Notice, That they were ready to proceed this Morning in that Business.

‘ They adhere to their former Resolution, and are ready to proceed in the Trial.

‘ 6. February, A Message from the Commons, to desire a Conference upon the last-mentioned Answer.

‘ 7. February, The Lords gave the Conference desired; whereat the Commons acquainted their Lordships, That Conferences and Free Conferences, when desired, are essential to the Proceedings of Parliament, the only Means to preserve the good Correspondence between the Two

‘ Houses; and the Denial thereof, destructive to the Proceedings of Parliament, and unprecedented.

‘ *Eodem Die*, a Free Conference was had at the Desire of the Lords, concerning the Subject-matter of the last Conference; whereat the Managers were to let the Commons know, That their Lordships desire not this Conference in reference to the Free Conference lately desired by them, but in relation to the Assertion of the Commons in their last Conference, which their Lordships can no way allow; and therefore commanded the Lords that are to manage this Free Conference, as to justify the Proceedings of their Lordships, so to make it appear to the Commons, that what they have done is neither destructive to the Proceedings of Parliament, nor unprecedented.

‘ 27. May, 1694, The Lords did not agree to a Conference desired by the Commons on the One and twentieth, because it was desired upon the Answer sent by the Lords of the Seventeenth Instant, wherein the whole Matter concerns the Judicature of the Lords, on which they can admit no Debate, nor grant any Conference: But the Lords agree to a Conference desired concerning the Privileges of the Commons, always provided nothing be offered thereat that may concern their Lordships Judicature.

‘ 6. May, 1679, A Message to the Commons, to acquaint them, That the Lords have appointed to try the Five Lords on the Thirteenth Instant.

‘ 8. May, *post Meridiem*, A Message from the Commons, to desire a Conference concerning the Matter of their Lordships Message concerning the Trial of the Lords in the *Tower*; and a Conference was had thereupon.

‘ At the Conference the Commons proposed to have a Committee of both Houses nominated, to consider the proper Ways of Proceedings upon Impeachment; and, upon the Question, it was carried, Not to agree with the Commons in this Proposal.

‘ 9. May, A Message to the Commons for a Free Conference of the Subject-matter of the last Conference, which was had; and at the Conference the Lords told the Commons, That they did not agree to the nominating a Committee of both Houses, because they do not think it conformable to the Rules and Orders of Proceedings of this Court, which is, and must be, tender in Matters relating to Judicature.

‘ 10. May, A Message from the Commons for a Conference, &c. which was had; and the Commons told the Lords, That Things standing thus, they cannot proceed to the Trials of the Lords, before the Method of Proceedings be adjusted between the Two Houses.

‘ 11. May, A Message to the Commons for a Conference, &c. which was had; and the Lords also asked the Commons, What were the Methods of Proceedings they would confer about? The Commons answer, They had no Directions from their House concerning the same.

‘ A Message from the Commons for a Free Conference, which was had; and upon the Report of it, the Lords appointed a Committee to meet with a Committee of the House of Commons, to consider of Propositions and Circumstances, in reference to the Trials of the

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Five Lords in the *Tower*; and a Message sent to the Commons to let them know it.

12 May, A Report from the Committee of both Houses, That (*inter alia*) the Commons propose a longer Day for the Trial of the Lords; whereupon the Lords order'd their Trials to be put off till further Order.

16 May, The Lords appointed a Day for the Trial of the Five Lords.

19 May, The Commons tell the Lords, That when the Methods of Proceedings are adjusted, their House will be ready to proceed upon the Trial of the Earl of *Danby*, against whom they already demanded Judgment, and afterwards to the Trial of the Five Lords; and proposed several Difficulties, in respect of the Bishops being present at the Trial of the Earl of *Danby*. They say further, that the Lords seem to lay the Stop at the Commons Door, by naming a Day; which they conceive ought not to have been appointed before the Methods be considered; that the Lords may as well make the Judges Part of their Court, as the Bishops, in this Point. The Commons will give no Disturbance to the ancient Judicature, and they conceive they have a Right to know before what Court they shall appear.

20 May, Upon Debate of the Report from the Committee of both Houses, the Lords appoint a Day for the Trial of the Five Lords.

22 May, The Lords sent a Message to the House of Commons to acquaint them, That

the Lords have appointed a Day for the Trial of the Five Lords.

Then it being moved to have a Conference with the Commons, to let them know, That the Lords do not agree to a Committee of both Houses, in relation to the Trials of the Impeached Lords, and Debate thereupon. The Question was put, Whether a Committee of this House shall be appointed to meet with a Committee of the House of Commons, in relation to the Proceedings upon the Impeachments?

It was resolved in the Negative.

It is ordered by the Lords Spiritual and Temporal in Parliament assembled, that the Lords Committees appointed to consider of the Manner of Proceedings on Impeachments, do meet To-morrow at ten of the Clock in the Forenoon, and draw Reasons to be given at a Conference with the House of Commons, Why their Lordships cannot agree, that a Committee of both Houses be nominated to consider of the Methods of Proceedings on Impeachments.

It is ordered by the Lords Spiritual and Temporal in Parliament assembled, that *Friday* the Thirteenth Day of this Instant *June*, is hereby appointed for the Trial of *John Lord Sommers* in *Westminster-Hall*, upon the Articles brought up against him by the House of Commons, whereby he stands charged with several High Crimes and Misdemeanors.

A Message was sent to the House of Commons by Sir *Richard Holford* and Mr. *Gery*, to let the Commons know, That the Lords have appointed *Friday* next for the Trial of *John Lord Sommers*, upon the Impeachment against him.

on *Friday* next, upon their Impeachment against him: In which they observe, your Lordships have not nominated any Place for his Trial, tho' your Lordships thought fit to make that Matter, on the last Impeachment for Misdemeanors, the Subject of a long Debate.

And they cannot but take Notice, That your Lordships have taken as long a Time to give your Answer to the common Desire of a Committee of both Houses delivered at a Conference on *Friday* last, as you are pleased to allow the Commons to have of a Day appointed by your Lordships for the said Trial.

Your Lordships appointing so short a Day, especially whilst the Proposition made to your Lordships for a Committee of both Houses was undetermin'd, the Commons take to be such a Hardship to them, and such an Indulgence to the Person accused, as is not to be parallel'd in any Parliamentary Proceeding.

The Commons must likewise acquaint your Lordships, that their Experience of the Interruption of a former Trial on an Impeachment for Misdemeanor, for want of settling the Preliminaries between the Two Houses, obliges them to insist on a Committee of both Houses, for preventing the like Interruption.

And they conceive, 'twould be very preposterous for them to enter upon the Trials of any of those Lords, till your Lordships discover some Inclination to make the Proceeding thereupon practicable; and therefore they think they have Reason to insist upon another Day to be appointed for the Trial of the Lord *Sommers*. And the Commons doubt not but to satisfy your Lordships, at a Free Conference, of the Necessity of having a Committee of both Houses, before they can proceed upon the said Trial.

A Message was brought from the House of Commons, by Mr. *Harcourt* and others (the 11th of *June*) to acquaint this House, That the Commons on *Monday* last received a Message from your Lordships, that your Lordships had appointed the Trial of *John Lord Sommers* up-

Die Martis 10^o Junij, 1701.

The Earl of *Stamford* reported from the Lords Committees (appointed to consider of the Manner of Proceedings on Impeachments) the Reasons drawn by them, to be given to the House of Commons, at a Conference upon the Subject-

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Matter of the last Conference: Which Report was read, and agreed to, as follows; *viz.*

The Lords have desired this Conference, upon occasion of the last Conference, in order to preserve a good Correspondence with the House of Commons, which they shall always endeavour. As to the late Messages between the

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the Two Houses, their Lordships are well assured, that on their Part, nothing has passed, but what was agreeable to the Methods of Parliament, and proper to preserve that good Understanding between both Houses, which is necessary for the carrying on of the Publick Business.

As to the Proposal of the Commons, That a Committee of both Houses should be appointed, to consider of the Ways and Methods of Proceeding on Impeachments, their Lordships cannot agree to it:

I. Because they do not find that ever such a Committee was appointed, on occasion of Impeachments for Misdemeanors; and their Lordships think themselves obliged to be extremely cautious in admitting any thing new, in Matters relating to Judicature.

II. That although a Committee of this Nature was agreed to, upon the Impeachments of the Earl of *Danby*, and the five Popish Lords, for High-Treason, yet it was upon occasion of several considerable Questions and Difficulties which did then arise; and their Lordships do not find, that the Success in that Instance was such as should encourage the pursuing the same Methods again, though in the like Case; the Lords observing, that after much Time spent at that Committee, the Disputes were so far from being there adjusted, that they occasioned the abrupt Conclusion of a Session of Parliament.

III. Their Lordships are of Opinion, That the Methods of Proceedings on Impeachments for Misdemeanors, are so well settled by the Usage of Parliament, that they do not foresee any Difficulties likely to happen, at least none have been yet stated to them; and all the Preliminaries in the Case of *Stephen Goudet*, and others (which was the last Instance of Impeachments for Misdemeanors) were easily settled and agreed to, without any such Committee.

IV. The Lords cannot but observe, that this Proposal of the Commons comes so very late, that their Lordships can expect no other Fruit of such a Committee, but the preventing of the Trials during this Session.

The Lords assure the Commons, that in case any Difficulties shall arise in the Progress of these Trials (which their Lordships do not foresee) they will be ready to comply with the Commons in removing them, as far as Justice and the Usage of Parliament will admit.

A Message was sent to the House of Commons by Sir *Richard Holford* and Mr. *Gery*, to desire a present Conference in the *Painted Chamber*, upon the Subject-Matter of the last Conference.

A Message was brought from the House of Commons by Mr. *Harcourt*, and others. See Page 361.

Ordered, That the Message received this Day from the House of Commons, shall be considered To-morrow at twelve a-Clock.

The Messengers sent to the House of Commons return Answer, That the Commons will give a Conference as desired.

Then the Commons being come to the Conference, the Managers Names of the last Conference were read, and the House adjourn'd during Pleasure, and the Lords went to the Conference; which being ended, the House was resumed, and

the Lord Steward reported, that the Lords had been at the Conference, and delivered their Reasons as ordered.

Die Mercurii 11^o Junii.

The Message received Yesterday from the House of Commons was read; and after Debate of the several Particulars contained in it, this Question was proposed;

That no Lord of Parliament, Impeached of High Crimes and Misdemeanors, and coming to his Trial, shall, upon his Trial, be without the Bar?

Then the previous Question was put, Whether this Question shall be now put?

It was resolved in the Affirmative.

Then the main Question was put,

That no Lord of Parliament, Impeached of High Crimes and Misdemeanors, and coming to his Trial, shall, upon his Trial, be without the Bar?

It was resolved in the Affirmative, *Nemine Contradicente.*

Resolved, By the Lords Spiritual and Temporal in Parliament assembled, *Nemine Contradicente*, That no Lord of Parliament, Impeached of High Crimes and Misdemeanors, and coming to his Trial, shall, upon his Trial, be without the Bar.

Then after further Debate, this Question was proposed,

That no Lord of Parliament, Impeached of High Crimes and Misdemeanors, can be precluded from Voting, on any Occasion, except in his own Trial?

Then the previous Question was put, Whether this Question shall be now put?

It was resolved in the Affirmative.

Then the main Question was put,

That no Lord of Parliament, Impeached of High Crimes and Misdemeanors, can be precluded from Voting, on any Occasion, except in his own Trial?

It was resolved in the Affirmative.

Resolved by the Lords Spiritual and Temporal in Parliament assembled, That no Lord of Parliament, Impeached of High Crimes and Misdemeanors, can be precluded from Voting, on any Occasion, except in his own Trial.

It is ordered by the Lords Spiritual and Temporal in Parliament assembled, that the Committee appointed to consider of the Method of Proceedings on Impeachments, do meet To-morrow at Ten of the Clock in the Forenoon, and do draw an Answer to the Message received Yesterday from the House of Commons upon the Resolutions of the House this Day; and that the Committee do assert in their Answer, That by the Journals of this House, it doth not appear the Lords Impeached have Voted, as is inserted in the Commons Message.

A Message was brought from the House of Commons by Mr. *Harcourt*, and others. See Page 361.

It is ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Debate which hath arose upon the Common Message received this Day, be adjourned to To-morrow Eleven a-Clock, and no other Business to intervene, and all the Lords summoned to attend.

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Die Jovis 12^o Junii, 1701.

The Earl of *Stamford* reported from the Lords Committees appointed to consider of the Man-

ner of Proceedings on Impeachments, what was drawn by them in Answer to a Message from the House of Commons of the Tenth Instant; which was read and agreed unto, as follows :

A Message was sent to the House of Commons by Dr. *Newton* and Mr. *Gery*, to acquaint them, That in Answer to the Message from the House of Commons of the Tenth Instant, the Lords say, That although they take it to be Unparliamentary in many Particulars, yet to shew their real Desire of avoiding Disputes, and removing all Pretence of delaying the Trials of the Impeached Lords, they will only take notice of that Part of their Message, wherein the Commons propose some Things as Difficulties, in respect of the Trials; which Matters relating wholly to their Judicature, and to their Rights and Privileges as Peers, they think fit to acquaint the Commons with the following Resolutions of the House of Lords :

I. That no Lord of Parliament, Impeached of High Crimes and Misdemeanors, and coming to his Trial, shall, upon his Trial, be without the Bar.

II. That no Lord of Parliament, Impeached of High Crimes and Misdemeanors, can be precluded from Voting on any Occasion, except in his own Trial.

Their Lordships further take notice of a Mistake in point of Fact alledged in the Message of the Commons; it no way appearing upon their Journals, that the Lords Impeached have Voted in their Case.

The Lords being well assured, that all the Steps that have been taken by them, in relation to these Impeachments, are warranted by the Practice of their Ancestors, and the Usage of Parliament, have Reason to expect the Trials should proceed without Delay.

That there is a Mistake in Point of Fact, alledged by the Commons, this House may take Notice of the Caution used by your Lordships, in wording that Part of your Message; for they know your Lordships are too well acquainted with the Truth of the Fact, to affirm, that the Impeached Lords did not vote in their own Cases: And though the appearing or not appearing upon your Lordships Journal, does not make it more or less agreeable to the Rules of Justice, yet the Commons cannot but add this further Observation from your Lordships Journal, That the Impeached Lords Presence is not only recorded when those Votes passed, but they also find some of them appointed of Committees for preparing and drawing up the Messages and Answers to the House of Commons; which they do not think has been the best Expedient for preserving a good Correspondence between the Two Houses, or adjusting what will be necessary upon these Trials. And therefore the Commons cannot think it agreeable to the Rules of Parliament, for them to appear at a Trial, till all necessary Preliminaries are first settled with your Lordships.

A Message was brought from the House of Commons by Mr. *Granvill* and others, to desire a Free Conference with this House, upon the Subject-Matter of the last Conference.

The Commons were called in, and told, That the Lords will return an Answer by Messengers of their own.

It is ordered by the Lords Spiritual and Temporal in Parliament assembled, That *John Lord Sommers* shall be tried in *Westminster-Hall*, upon the Articles of Impeachment against him, on Tuesday the 17th Day of this Instant June, at Ten of the Clock in the Forenoon.

A Message was brought from the House of Commons by Mr. *St. John*, and others (the 13th of June) to acquaint this House, That the House of Commons find greater Reasons to insist upon their Proposal of a Committee of both Houses, from the two Messages received Yesterday from your Lordships; for their Ambiguity and Uncertainty do shew the Methods of former Parliaments to be the most proper Way for Dispatch of Business.

The Commons have been obliged to employ that Time in considering and answering your Lordships Messages, which otherwise would have been spent in preparing for the Lord *Sommers's* Trial; so that the Delay must be charged where the Occasion ariseth. And the Commons having desired a Committee of both Houses, to adjust the Preliminaries of the Trials, cannot but think it strange your Lordships should come to Resolutions upon two of those Points, while the Proposal of the House of Commons is under Debate at Conferences between the Two Houses; the Commons having other Difficulties to propose, which concern them as Prosecutors, and all future Impeachments.

And though the Commons leave the Subject of your Lordships Resolutions, with other things, to be debated at a Committee of both Houses; yet they cannot but observe, that your Lordships Second Resolution is no direct Answer to the Commons Proposal, which was, Whether Peers Impeached of the same Crimes, shall Vote for each other upon their Trial for the same Crimes: And the Commons cannot believe that any such Rule can be laid down in plain Words, where there is a due Regard to Justice.

And as to what your Lordships observe, Ordered, That the Committee appointed to consider of the Manner of Proceeding upon Impeachments, do meet presently, and draw an Answer to the Message received Yesterday from the House of Commons.

The Earl of *Stamford* reported from the Lords Committees, appointed to consider of the Manner of Proceedings on Impeachments, what is drawn by them to be sent to the House of Commons, in Answer to their Message of the Eleventh Instant; which was read and agreed to, as follows:

A Message was sent to the House of Commons by Dr. *Newton* and Mr. *Gery*, to acquaint them, ' That in Answer to the Message of the House of Commons Yesterday, the Lords say, That they cannot give a greater Evidence of their sincere and hearty Desires of avoiding all Differences with the House of Commons, and proceeding on the Trials of the Impeachments, than by not taking Notice of the several just Exceptions to which that Message is liable, both as to the Matter and Expressions.

' The Lords have nothing further from their Thoughts, than the going about to do any thing which might have the least Appearance of Hardship in relation to the Commons.

' But the Answer of the Lord *Sommers* to the Articles exhibited against him, having been sent down to the Commons on the Four and twentieth of May last; and they having by their Message of the One and thirtieth of May, signify'd to their Lordships their Intention of beginning with the Trial of his Impeachment in the first place:

' The Lords considering how far the Session is advanced, thought it reasonable to appoint the Thirteenth Instant for the said Trials, their Lordships finding several Precedents of appointing Trials on Impeachments within a shorter Time.

' The Lords also think it incumbent upon them to endeavour to dispatch the Trials of all the Impeached Lords before the Rising of the Parliament. This is what Justice requires, and cannot be look'd upon as a Matter of Indulgence. Nevertheless, that the Commons may see how desirous their Lordships are to comply with them in any thing which may be consistent with Justice, they have appointed the Trial of Impeachment against *John Lord Sommers*, on Tuesday the Seventeenth Day of this Instant June, at Ten of the Clock in the Forenoon, in the House of Lords, which will be then sitting in *Westminster-Hall*.

A Message was sent to the House of Commons by Dr. *Newton* and Mr. *Gery*, to acquaint them, That the Lords agree to a Free Conference, as desired, and appoint the same to be To-morrow at One a Clock in the *Painted Chamber*.

Die Veneris 13^o Junij, 1701.

A Message was brought from the House of Commons by Mr. *St. John* and others. See Page 365.

The Messengers were called in, and told, That the Lords will send an Answer to the Commons Message, by Messengers of their own.

The Commons being come to the Free Conference, the Managers Names were read; then the House was adjourned during Pleasure, and the Lords went to the Free Conference: Which being ended, the House was resumed, and the Lord Steward reported, That the Lords had attended the Free Conference, as commanded; and that Mr. *Harcourt* opened the Free Conference, and argued against the Reasons given by this House why they could not agree to a Committee of both Houses; and that the Lord *Haversham*, in Answer to some Part of the Arguments of Mr. *Harcourt* and Sir *Bartholomew Shower*, used some Expressions, at which the Commons ta-

king Exceptions, abruptly broke up the Conference.

After Debate thereupon, a Message was sent to the House of Commons by Dr. *Newton* and Mr. *Gery*, to acquaint them, that the Lords having been informed by their Managers, that some Interruption happened at the Free Conference, which their Lordships are concerned at, because they wish that nothing should interrupt the publick Affairs, do desire the Commons would come again presently to the said Free Conference, which they do not doubt will prove the best Expedient to prevent the Inconvenience of a Misunderstanding upon what has pass'd.

The Messengers sent to the House of Commons return Answer, that they have delivered their Message to the Commons, as ordered; and that the Commons say, they will return Answer by Messengers of their own.

A Message was brought from the House of Commons by Sir *Christopher Musgrave* and others, to acquaint this House, *That the Commons desiring to keep up a good Correspondence with your Lordships, do think it necessary to acquaint your Lordships with what has happened at the Free Conference.*

' One Thing there is, tho' I can't speak to it, because I am bound up by the Orders of the House; yet it must have some Answer: That is, as to the Lords voting in their own Case, it requires an Answer, tho' I can't go into the Debate of it. The Commons themselves have made this Precedent; for in these Impeachments they have allowed Men guilty of the same Crimes to Vote in their own House; and therefore we have not made any Distinction in our House, that some should Vote, and some not. The Lords have so high an Opinion of the Justice of the House of Commons, that they hope Justice shall never be made use of as a Mask for any Design: And therefore give me Leave to say, (tho' I am not to argue it) 'tis a plain Demonstration, that the Commons think these Lords innocent: And I think the Proposition is undeniable, for there are several Lords in the same Crimes, in the same Facts, there is no Distinction, and the Commons leave some of these Men at the Head of Affairs, near the King's Person, to do any Mischief, if their Persons were inclined to it, and Impeach others, when they are both alike guilty, and concerned in the same Facts. This was a Thing I was in hopes I should never have heard asserted, when the Beginning of it was from the House of Commons.

These were the Words spoken by John Lord Haversham; and the Commons have ordered me to communicate this Resolution to your Lordships.

Resolved, *That John Lord Haversham be charged before the Lords, for the Words spoken by the said Lord this Day at the Free Conference; and that the Lords be desired to proceed in Justice against the said Lord Haversham, and to inflict such Punishment upon the said Lord, as so high an Offence against the House of Commons doth deserve.*

Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Lords, who were at the Free Conference, do meet presently at a Committee, and draw up what was offered at the Free Conference, and report to the House To-morrow at Eleven a-Clock.

Die

Die Sabbati 14^o Junii, 1701.

A Message was brought from the House of Commons by Mr. *Bruges* and others, with the Articles of Impeachment against *Charles Lord Hallifax*, and to acquaint this House, That the Matter of the Charge was contain'd in the Articles; and

also, that he was commanded to pray and demand, That *Charles Lord Hallifax* do give sufficient Security to abide the Judgment of the House of Lords.

The Articles were read by the Clerk, as follows; *viz.*

ARTICLES exhibited by the Knights, Citizens, and Burgeses in Parliament assembled, in Maintenance of their Impeachment against *Charles Lord Hallifax*, of High Crimes and Misdemeanors.

The ANSWER of *Charles Lord Hallifax* to the Articles exhibited against him by the Knights, Citizens, and Burgeses in Parliament assembled, in Maintenance of their Impeachment against the said Lord Hallifax, for High Crimes and Misdemeanors, suppos'd to be committed by him.

WHEREAS several Persons, contrary to their Duty and Allegiance to his Majesty and his late Royal Consort, of ever blessed Memory, traitorously adhering to their Majesties Enemies, did levy and maintain, within their Majesties Realm of *Ireland*, a desperate and bloody War and Rebellion against their Majesties; and were, by his Majesty's Conduct and Courage, at the great Expence of his *English* Subjects, reduced to their due Obedience to the Crown of *England*.

And whereas upon the Fourth Day of *April*, in the Year of our Lord One thousand Six hundred and Ninety, 'twas resolv'd by the Commons of *England* in Parliament assembled, That a Bill shou'd be brought in, to attain all Persons guilty of Rebellion in *Ireland* or elsewhere, against their Majesties King *William* and Queen *Mary*, and to enact and declare their Estates to be Forfeited, and to be Sold for the reducing of that Kingdom.

And whereas his Majesty, in his gracious Speech to both Houses of Parliament, did, upon the Fifth Day of *January* One thousand Six hundred and Ninety, assure them, That he would not make any Grants of the Forfeited Lands in *Ireland*, till there should be another Opportunity of settling that Matter in Parliament, in such Manner as should be thought most expedient.

And whereas the Commons of *England* in Parliament assembled, by their humble Address to his Majesty, upon the Fourth Day of *March*, One thousand Six hundred Ninety-two, did humbly beseech his Majesty, That (according to the Assurance his Majesty had been pleas'd to give them) no Grant might be made of the Forfeited Estates in *Ireland*, till there should be an Opportunity of settling that Matter in Parliament, in such Manner as should be thought most expedient: To which his Majesty was pleas'd to give a most gracious Answer. Whereby, and by many other Endeavours of the Commons in the following Sessions of Parliament, it appears, That what has since been declar'd by Act of Parliament, was the continued Sense of the Commons of *England*; That it was highly reasonable, that the Forfeited Estates of Rebels and Traitors in *Ireland*, should be apply'd in Ease of his Majesty's faithful Subjects of the Kingdom of *England*.

And whereas 'twas the apparent Duty of every Officer or Minister of State, to have had so much Regard to the Resolutions and Address of the House of Commons, to the Publick Good, and

THE said Lord Hallifax, saving to himself all Advantages of Exceptions to the said Articles, and of not being prejudiced by any Words, or want of Form; and saving to himself all Privileges and Rights belonging to him, as One of the Peers of this Realm; for Answer to the said Articles, humbly saith,

I. To the First Article he saith, True it is, that several Persons did levy and maintain a desperate and bloody War and Rebellion in *Ireland* against their Majesties, and were by his Majesty's Courage and Conduct, at the great Expence of his *English* Subjects, suppress'd and reduced to their Obedience, as in this Article is alledg'd. And he further answereth and saith, He believes it to be true, that on the Fourth of *April*, 1690, such Vote or Resolve was made by the then House of Commons for that Purpose, and such Assurance was given by his Majesty, and such Addresses were made by the House of Commons in the Year 1690 and 1692, That no Grant should be made of the Forfeited Lands in *Ireland* till there should be another Opportunity of settling that Matter in Parliament, in such Manner as should be thought most expedient; and such Answers were given thereunto as in this Article is and are set forth, as by the said several Votes, Resolves, Speeches, Addresses and Answers, to which the said Lord craves Leave, for more Certainty, to refer himself, may appear.

That in the Years 1693, 1694, 1695, the Parliament of *England* did meet, and no Act was pass'd touching the Forfeited Estates, tho' by other Ways great Sums were rais'd for the carrying on and defraying the Charges of the War in those Years; and his Majesty did after, as Rewards to several Persons who had serv'd him in *Ireland* and elsewhere, grant to them some of the Forfeited Estates in *Ireland*, and the Grantees did enjoy the same.

And the said Lord Hallifax further saith, That his Majesty did never grant to him, or any in Trust for him, or to his Use, any of the said Forfeited Lands; but of his Grace and Favour, and as a Reward for his Faithful Services (which his Majesty was pleas'd to accept) did, by Letters Patents under the Great Seal of *England*, bearing Date on or about the Eleventh Day of *May*, 1697, grant to *Thomas Railton*, Esq; in Trust for the said Lord Hallifax, (who was then One of the Commissioners of the Treasury, Chancellor of the *Exchequer*, and One of the Members of the House of Commons,

his Majesty's Honour, as to have dissuaded and prevented (as much as in them lay) the procuring or passing any Grant or Grants of the said Forfeited Estates in Ireland; yet *Charles* (now) Lord *Hallifax*, then the Honourable *Charles Montagu*, Esq; being a Member of the Honourable House of Commons, One of the Lords of the Treasury, Chancellor of the *Exchequer*, and One of his Majesty's most Honourable Privy-Council, hath, since the aforesaid Fourth Day of *March*, One thousand Six hundred Ninety-two, presumed to advise, pass, or direct the passing a Grant to *Thomas Railton*, Esq; in Trust for himself, of several Debts, Interests, Sum and Sums of Money, amounting in the whole to the Sum of Thirteen thousand Pounds, or thereabout, due, owing, and which ought to have accrued to his Majesty, by reason of Attainders, Outlawries, or other Forfeitures of the respective Persons for whom the same were enter'd on Record; whereby he hath much contributed to the contracting great Debts upon the Nation, the laying heavy Taxes upon the People, hath highly reflected on his Majesty's Honour, and fail'd in the Performance of his Trust and Duty.

II. Whereas by an Act of Parliament, made in the Eleventh and Twelfth Years of his Majesty's Reign, entituled, *An Act for granting an Aid to his Majesty by Sale of the Forfeited and other Estates and Interests in Ireland, and by a Land-Tax in England, for the several Purposes therein mention'd*, 'tis amongst other Things enacted, That all and every Person or Persons whatsoever, who had by Vertue of any Grant or Disposition from his Majesty, or from his Majesty and the late Queen, receiv'd for his or their own Use or Benefit, any Debt or Debts, or Sum or Sums whatsoever, due from any Debt or Debts of any Forfeiting Person, mention'd or describ'd in the said Act, or from any Person or Persons, subject or liable to the Payment of any Sum or Sums of Money whatsoever, to any of the said Forfeiting Persons, should be, and they are thereby declared to be respectively liable, and are required to repay every such Debt or Debts, Sum or Sums of Money whatsoever, so by him, her or them respectively received, into the Receipt of his Majesty's *Exchequer* in Ireland, on or before the Four and twentieth Day of *August*, One thousand Seven hundred.

And whereas the said *Charles* Lord *Hallifax* had, before the making of the aforesaid Act, procured for *Thomas Railton*, Esq; in Trust for himself, a Grant of several Debts by Judgments and otherwise, to several of the said Forfeiting Persons, amounting to the Sum of Thirteen thousand Pounds, or thereabouts, forfeited to his Majesty by the Attainder, Outlawries, or other Forfeitures of the respective Persons to whom such Debts were originally due; and, by Vertue of the said Grant, the said Lord *Hallifax* actually received to his own Use the Sum of One thousand Pounds, part of the before-mentioned Sum of Thirteen thousand Pounds; which said Sum of One thousand Pounds he the said *Charles* Lord *Hallifax* ought to have repaid before the said Four and twentieth Day of *August*, One thousand Seven hundred, into the Receipt of his Majesty's *Exchequer* in Ireland, as by

as in this Article is set forth) several Debts, Interests, Sum or Sums of Money, amounting in the whole to the Sum of 11546 Pounds, 17 Shillings and 8 Pence, or thereabouts: Which Grant he conceives, and is advis'd, his Majesty might then lawfully make, and was lawful for him to accept, without Breach of his Duty, or the Trust reposed in him; and denies, That he did ask for, or procure the said Grant; but confesseth, He accepted the same as a Mark of his Majesty's Grace and Favour; and saith, The said Grant hath since been taken away by Act of Parliament; and saith, That the said Grant, made to *Thomas Railton*, is the same which was mention'd, or intended, by the said Article of Impeachment; and although the Debts, therein mention'd to be granted, amount to 11546 Pounds, 17 Shillings and 8 Pence, and no more, yet the said Grant it self, at the Time of making thereof, or at any Time afterwards, would not be valued at near the said Sums, because a great part of the said Debts were not recoverable; and he hath not made clear thereof, as yet, above 400*l.* and humbly hopes the said Grant hath very little, if at all, contributed to the contracting any Debts upon the Nation, or laying heavy Taxes upon the People, or any ways reflected upon his Majesty's Honour, or, that he hath failed in the Performance of his Trust or Duty, as in the Article is suggested.

II. To the Second Article the said Lord *Hallifax* saith, That he believes it to be true, that such Act was made, and such Clause therein as in this Article is mentioned; and also in the said Act there is a further Clause, That the Grantees from the King of any of the Forfeited Estates thereby refused, should not be accountable for the Rents, Issues, and Profits of the same, by them receiv'd before the Second Day of *November*, 1699, but might retain the same to their own Uses.

And the said Lord *Hallifax* doth acknowledge, That after the making the said Grant before-mentioned to the said *Thomas Railton*, the Agents of the said Lord *Hallifax* did receive some Monies, not exceeding One thousand Pounds (as he is informed) out of the Rents and Profits of the Forfeited Estate of the Earl of *Clancarty*, of which no more than the abovesaid Sum did come clear to him the said Lord *Hallifax*; and no more, to his Knowledge or Belief, hath been received or recovered upon the aforesaid Grant. That the said Lord *Hallifax* gave Direction, after the said Act pass'd, to his Agents in Ireland, to do, in relation to the Money received, as should be advis'd by Council there; by whom his Agents were advis'd (as they informed the said Lord, and which he believes to be true) that the said Monies, being received out of the Mean Profits which were remitted by that Act, were not within the first-mentioned Clause in the said Act: And therefore the said Lord does believe, and admit, the same were not paid into the Receipt of his Majesty's *Exchequer* in Ireland, nor ought to have been paid into the *Exchequer*, as he humbly insists, and is advis'd: And he doth deny, That the Non-payment of the said Money into the said Receipt is any Wrong to his Majesty or the Publick, or any Misapplication; and in case the said Money ought to have been paid into the said Receipt, there are proper Methods and Remedies in the said Act prescribed, to compel the Payment of the same.

by the said Act he was requir'd to have done; yet the said *Charles Lord Hallifax* did not repay the said Sum of One thousand Pounds, as by the said Act he was requir'd to do; but has hitherto, in contempt of the Act, refus'd or neglected to repay the same: Which Neglect or Refusal of him the said *Charles, Lord Hallifax*, to repay the said Sum of One thousand Pounds, is a manifest Wrong to his Majesty and the Publick, and a Misapplication of that Sum, to other Uses and Purposes than by the Act 'tis appropriated, and ought to have been apply'd.

III. That the said *Charles, Lord Hallifax*, being a Member of the Honourable House of Commons, One of the Commissioners for executing the Office of Lord-Treasurer of *England*, Chancellor of the *Exchequer*, and One of his Majesty's most Honourable Privy-Council, not contented with the many Employments and Places of Honour bestow'd upon him by his Majesty, nor with the large and excessive Gains by him made, by the Incomes and Profits arising from such Offices and Preferments, did (in opposition to what he well knew to be the true Interest of *England*, and contrary to his Oath as a Privy-Counsellor, and his Duty as a Publick Minister, at a Time when the Nation was engag'd in a tedious and expensive War against *France*, for preserving the Ballance and Liberties of *Europe*, and under such heavy Debts as, without laying unsupportable Taxes on the People, were impossible to be satisfied) Advise, Procure, and Assent, not only to the passing of divers Grants to others in *England* and *Ireland*, but did obtain and accept of several beneficial ones to, or in Trust for himself: Which said Practices of him, the said *Lord Hallifax*, were a most notorious Abuse of his Majesty's Goodness, a great Breach of his Trust, and a very high Vexation and Oppression of his Majesty's other Subjects.

IV. Whereas by the Common-Law, and by many Statutes and Ordinances of this Realm, it appears to have been the great Care of our Ancestors, that the King's Forests should be preserv'd, and in particular the Timber therein growing, for the building and repairing of the Navy Royal, which has ever been accounted (as it undoubtedly is) the great Security of this Realm: And whereas *Charles Lord Hallifax* was, in the Year of our Lord One thousand Six hundred Ninety-seven, One of the Commissioners of the Treasury, Chancellor of the *Exchequer*, and of his Majesty's Privy-Council, and oblig'd, as well by repeated Oaths, as by the Duty he ow'd to his Majesty and his Country, to have advis'd, consult'd, and promoted such Matters and Things as should, or at least were most likely to, redound to his Majesty's Honour and the Nation's Safety; yet the said *Charles Lord Hallifax*, not regarding the Laws and Ordinances of this Realm, nor his said Duty to his Majesty and the Publick, but pursuing his private Interest, did, by Letters of Privy-Seal, bearing Date on or about the Sixth Day of May, which was in the Year of our Lord

III. To the Third Article he saith, He was a Member of the House of Commons, One of the Commissioners of his Majesty's Treasury, Chancellor of the *Exchequer*, and Privy-Counsellor, as in the Article is set forth; and serv'd his Majesty faithfully, as he hopes and believes, in those Stations, and was contented with the Employments and Places of Honour bestow'd upon him, and with the Incomes and Gains by him made by the just and lawful Fees and Profits of the same, and his Majesty graciously accepted of such his Services; and, as a Mark of his Royal Favour to him, did make, for his Benefit, the Grant in the Answer to the precedent Article, and the Grant in the Answer to the subsequent Article mention'd; which were all the profitable Grants he, or any in Trust for him, ever had from his Majesty: And the said *Lord Hallifax* says, He conceives, and is advis'd, that his accepting such Grants were not any Abuse of his Majesty's Goodness, nor Breach of the Trust reposed in him, nor were any of his Majesty's Subjects thereby oppress'd: And denies, that he ever did, in opposition to what he knew to be the true Interest of *England*, or contrary to his Oath or Duty, at any time Advise, Procure, or Assent to the passing of any Grant or Grants to himself, or to any Person in Trust for him, or to any other Person or Persons whatsoever; but saith, He, as One of the Commissioners of the Treasury, in conjunction with the other Commissioners, did sign several Warrants and Dockets for such Grants as his Majesty was pleas'd to direct to be pass'd by them; and which, he humbly conceives and is advis'd, he was, by the Duty of his Place, oblig'd to do.

IV. To the Fourth Article he saith, He believes it to be true, That our Ancestors did take great care to preserve the King's Forests, and the Timber therein growing, for the building and repairing the Navy Royal, which the said Lord doth own hath ever been accounted (and as he believes very rightly,) the great Security of the Realm: And saith, True it is, he was in the Year 1697 One of the Commissioners of the Treasury, Chancellor of the *Exchequer*, and One of his Majesty's Privy-Council, and did from time to time advise and promote such Matters and Things as were most likely to redound to his Majesty's Honour, and the Nation's Safety; and denies, that he, at any time, prefer'd his Private Interest to that of the Publick: But doth confes and admit, that his Majesty, by his Letters of Privy-Seal, dated the Sixth of May, 1697, did, out of his Grace and Favour design'd to the said *Lord Hallifax*, grant unto *Henry Segar*, in the Article mention'd, and which was in Trust for the said Lord, the Sum of 2000 *l. per Annum*, to be rais'd by the Fall of scrubb'd Beech, Birch, Holly, Hazle, Thorns, and Orle, in the Forest of *Dean*, in the County of *Gloucester*.

One thousand Six hundred Ninety-seven, (the Kingdom being then engag'd in an expensive War, and the Debts of the Nation requiring the best and most frugal Management) procure from his Majesty a Grant to *Henry Segar*, Gent. in Trust for himself, of the Sum of Fourteen thousand Pounds, of so much scrubb'd Beech, Birch, Holly, Hazle, Thorns, and Orle, as should by Sale raise the said Sum of Fourteen thousand Pounds, to be fallen in his Majesty's Forest of *Dean*, in the County of *Gloucester*, within the space of Seven Years time, from the Five and twentieth Day of *December*, One thousand Six hundred Ninety-seven: Under colour of which Grant, Beech of a much greater Value, a great Number of Sapling-Oaks, which might and would have been serviceable to the Realm, and also many Tons of the well-grown Timber, fit for the present Use of the Navy, have been cut and fallen, and sold and disposed of for the Benefit of the said Lord *Hallifax*.

V. Whereas there is not any thing that so much conduceth to his Majesty's and the Nation's Honour and Safety, as the due Ordering and Managing of the King's Treasure, and the Publick Revenues; for the Receiving and Issuing forth of which, the Wisdom and Policy of this Nation has provided and appointed several and distinct Officers, with beneficial Salaries, in order that they may be a Check to each other, and that no Loss may accrue to his Majesty or the Publick, by the Corruption, Unskilfulness, or Negligence of any particular Officer: Yet he, the said *Charles Lord Hallifax*, being one of the Lords of the Treasury when by the Death of the Honourable Sir *Robert Howard* the Office of the Auditor of the Receipts, and Writer of the Tallies, became vacant, not regarding the ancient Constitution and approv'd Methods in ordering his Majesty's Treasury, and the publick Revenues, did grant, or procure to be granted, to *Christopher Montagu*, Esq; the Brother of him, the said *Charles Lord Hallifax*, and then One of the Commissioners of the Excise, the said Place and Office of Auditor of the Receipts, and Writer of the Tallies; which said Grant was so made and procur'd by the said Lord *Hallifax* in Trust, as to the Profits thereof, for himself: So that from and after the passing of the said Grant, he, the said Lord *Hallifax*, was in effect at the same Time one of the Commissioners of the Treasury, Chancellor of the *Exchequer*, and Auditor of the Receipts, and Writer of the Tallies, and enjoy'd the Profits of the said several Offices; which, by the Constitution of the Treasury, are manifestly inconsistent, and never were, or ought to be, trusted in the same Person: The making and procuring of which said Grant by him, the said *Charles Lord Hallifax*, as aforesaid, was a manifest Violation of the establish'd Course and Constitution of the *Exchequer*, a Breach of his Trust, of evil Example, and tending very much to the great Loss and Prejudice of his Majesty and the Publick, by opening a Way to all manner of corrupt Practices in the future Management of the Revenues.

for the space of Seven Years, from the 25th of *December*, 1697, as by the said Letters of Privy-Seal, to which the said Lord, for more Certainty, referreth himself, may appear; which Grant was not, nor could be, prejudicial to any Timber growing in the said Forest; and believes no Sapling-Oaks, or Timber, or Trees likely to be Timber, were cut down by colour of the said Grant; and if any Abuse were in cutting the Wood, he conceives he is not answerable for the same, such cutting not having been by his Direction, nor he any ways concerning himself therein, the Setting-out and Cutting whereof did belong to his Majesty's Surveyor-General, and other his Majesty's Officers, who (as the said Lord hath been inform'd and believes) faithfully discharg'd their Trust in the Execution thereof, and took particular Care to preserve the Timber there.

V. To the Fifth Article the said Lord *Hallifax* answereth and saith, He believes it to be true, that the Ordering and Management of the King's Treasure and publick Revenues conduceth very much to the Honour and Safety of his Majesty and the Nation; and, that there are several distinct Officers with Salaries, for the better receiving and issuing forth of the same, and that are Checks upon each other, to prevent any Loss to his Majesty or the Publick: And the said Lord saith, True it is, he was One of the Commissioners of the Treasury, when, by the Death of Sir *Robert Howard*, his Office of Writer of the Tallies and Counter-Tallies, commonly call'd Auditor of the Receipt of *Exchequer*, became vacant; and thereupon the then Commissioners of the Treasury did grant the said Office to *Christopher Montagu*, then One of the Commissioners of Excise, and Brother to the said Lord; which the said Lord does own and admit was done at his Desire and Request; but humbly insisteth, the same was not granted contrary to the ancient Constitution, or approv'd Methods, in ordering his Majesty's Treasury, or Publick Revenue: And saith, He the said Lord did procure the said Office to be granted to his Brother, intending in a short time after, by his Majesty's Permission, when his Majesty's Affairs would permit thereof, to leave his, the said Lord's, Employments and Places in the Treasury, and to obtain a Surrender from his said Brother of the said Office, and procure a Grant thereof to himself; which he hopes, and humbly insists, was lawful for him to do: And saith, His said Brother duly executed the said Office till after the said Lord had left, or laid down by his Majesty's Leave, his Places in the Treasury; and then, and not before, his said Brother surrender'd the said Office, and he, the said Lord, obtain'd a Grant of the same, as he conceives was lawful for him to do. In all which Proceedings nothing was done by him, the said Lord, as he is advis'd, in violation of the establish'd Course and Constitution of the *Exchequer*, or to the Loss or Prejudice of his Majesty, or the Publick: And saith, He does not know, or believe, that the said several Offices, as they were executed, were in their Nature inconsistent with one another; and is very sure his Majesty, or the Publick, were no ways prejudic'd by the Execution of the same.

VI. Whereas a Treaty and Alliance between *Leopold* the Emperor of *Germany*, and the *States-General* of the *United-Provinces*, was made and concluded in the Year of our Lord One thousand Six hundred Eighty-nine, upon the Consideration of the Greatness of the Common Danger, which then threaten'd all *Christendom*, from the Excessive Power of *France*, and the unconstant Faith of the *French* in the Observance of Treaties; whereby it was agreed, That there should be, and remain for ever, a Constant, Perpetual, and Inviolable Friendship and good Correspondence between his Imperial Majesty and the *States-General*, that each of them should be oblig'd to promote the other's Interest, and, as much as in them lay, prevent all Damages and Inconveniences to each other.

And whereas certain Separate Articles were also at or about that Time made and annex'd to the aforesaid Treaty, whereby the *States-General*, maturely considering that *France* had openly declar'd in several Courts, that (notwithstanding the most solemn Renunciation) they continued their Pretension by Force of Arms to assert for the *Dauphin* the Succession of the *Spanish* Monarchy, in case the King of *Spain* should die without Issue; and also considering what a Blow their State would receive, and what Prejudice might happen thereby to the Publick Affairs and Quiet, did promise, That in case his said Catholick Majesty should die without Issue, they would, with all their Force, assist his said Imperial Majesty, or his Heirs, in taking the Succession of the *Spanish* Monarchy, lawfully belonging to that House, together with its Kingdoms, Dominions, and Rights, and in their obtaining and securing the quiet Possession thereof, against the *French* and their Adherents, who should directly or indirectly oppose that Succession, and with Force repel that Force which should be brought against them.

That at the Instance of the *States-General*, in pursuance of the said Treaty and Separate Articles, our most Gracious Lord and Sovereign, his most Excellent Majesty King *William* the Third, was invited to enter into the Alliance of the aforesaid Treaty, and into the Agreement of the said Separate Articles; and thereupon, for restoring and preserving the Publick Peace and Quiet, did afterwards, in the Year of our Lord One thousand Six hundred Eighty-nine, enter into, and under the Great Seal of *England* accept, approve, and ratify, and in the most solemn manner engage and promise, Religiously and Inviolably to observe the same, without Violating the said Treaty or Separate Articles in any Article, or suffering the same, to the utmost of his Power, to be Violated.

That in the Year of our Lord One thousand Six hundred Ninety-eight, a Treaty was projected and contriv'd in *France*, to be set on foot between his Majesty, the *French* King, and the *States-General*, for a Partition of the *Spanish* Monarchy, whereby many large Territories thereunto belonging, in case of the Decease of the King of *Spain* without Issue, were to be allotted and deliver'd up to *France*.

The Tenor and Design of which last-mentioned Treaty, whilst the same was in Negotiation, was communicated to the said *Charles* Lord *Hallifax*, then One of the Commissioners for executing the Office of Lord High-Treasurer, Chancellor of the Exchequer, and One of his Majesty's most Honourable Privy-Council: That the said *Charles* Lord *Hallifax*, well knowing the most apparent evil Consequences, as well as the Injustice of the said Partition, did not, according to the Trust and Duty of his said several Offices, dissuade, or endeavour to obstruct its taking Effect; but, on the contrary, having neither Regard to his Majesty's Honour, engaged by the above-mentioned

VI. To the Sixth Article the said Lord *Hallifax* saith, That he believes, that in the Year 1689, such Treaty, and Alliance, and Separate Article were made between the Emperor of *Germany* and the *States-General* of the *United-Provinces*, (into which his Majesty and the late Queen entered) and such Ratifications thereof were made as in this Article is mention'd; and also saith, He hath heard, and believes, that in the Year of our Lord 1698 a Treaty was made to such Effect as in this Article is mention'd; and saith, He never saw the said Treaty, or heard the same read, or does as yet know the Articles or Agreement it contains; and denies, that he ever advis'd his Majesty to enter into or make the said Treaty, or was ever consulted upon any Clause or Article thereof, or ever encourag'd or promoted the same. And the said Lord saith, That, as he remembers, Mr. Secretary *Vernon* did at one time send for him, and discourse with him and others upon an Intimation that was given by a Letter from the Earl of *Portland*, as he remembers, that the *French* King was dispos'd to commence a Negotiation upon some general Terms, that were then mention'd, to prevent a War in case of the King of *Spain's* Death, who was then reported to be very ill; and afterwards the said Matter was discours'd between the Secretary, the then Lord-Chancellor, and the said Lord *Hallifax*, at *Tunbridge-Wells*, when and where the said Lord *Hallifax* made several Objections to the same; and denies, that he gave any Opinion to encourage or promote the said Treaty, or ever afterwards was inform'd of any one Particular relating to it, or was ever Consulted or Advised upon any Clause or Article of it, or was ever after told or inform'd, that the said Negotiation or Treaty did go on or proceed; and saith, That not being advis'd with, or any ways knowing of the said Treaty or Negotiation (except as aforesaid) he could not dissuade or obstruct its taking Effect; and saith, As he cannot tell what the Effects of the Treaty might have been, if the said Treaty had been observ'd, so he conceives and insisteth, that he is not, nor ought to be answerable for the same.

And having thus laid his Case before your Lordships, he humbly saith, and insisteth upon it, That he is Not Guilty of all or any the Matters by the said Articles charg'd, or in them specified, in Manner and Form, as the same are therein and thereby charg'd against him.

HALLIFAX.

Treaty with the Emperor, and the States-General, to the Trade and known Interest of these Kingdoms, or the Peace of *Europe*, did advise his Majesty to enter into the said Treaty; and did so far encourage and promote the same, that the said Treaty was concluded and ratified under the Great-Seal of *England*: Which said Treaty was evidently destructive of the Trade of this Realm, a Breach of the former Treaty made with the Emperor in One thousand Six hundred and Eighty-nine, dishonourable to his Majesty, highly injurious to the Interest of the *Protestant* Religion, and manifestly tended to disturb the general Peace of *Europe*, by altering the Ballance of Power therein, and strengthening *France* against the good Friends and ancient Allies of our Sovereign Lord the King.

And the said Knights, Citizens and Burgesses, by Protestation, saving to themselves the Liberty of exhibiting at any Time hereafter, any further Articles, or other Accusation or Impeachment against the said Lord *Hallifax*; and also of replying to his Answers which he shall make unto the said Articles, or any of them, and of offering Proofs to all and every the aforesaid Articles, and to all and every other Articles, Impeachment or Accusation, which shall be exhibited by them, as the Case shall, according to the Course of Parliament, require, do pray, That the said *Charles* Lord *Hallifax* may be put to answer the said Crimes and Misdemeanors, and that such Proceedings, Examinations, Trials and Judgments, may be thereupon had and given, as is agreeable to Law and Justice.

After reading this Day the Articles of Impeachment brought up from the House of Commons against *Charles* Lord *Hallifax*, and hearing his Lordship thereupon, who desired a Copy of the said Articles, and said he would put in his Answer so soon as possible he could: It is ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Lord *Hallifax* may have a Copy of the Articles against him.

Ordered, That the Lords Committees (appointed to draw what was offered at the Free Conference) do inspect the Journals, as to what hath happened upon any Occasion, in relation to what pass'd at a Free Conference Yesterday, and what hath been done thereupon, and Report to the House.

A Message was sent to the House of Commons by Sir *John Hoskins* and Dr. *Newton*, to acquaint them, "That upon the Occasion of their last Message Yesterday, in order to continue a good Correspondence between the Two Houses, their Lordships did immediately appoint a Committee to state the Matters of the Free Conference, and also to inspect Precedents of what has happened of the like Nature: And that the publick Business may receive no Interruption, the Time desired by their Lordships for renewing the Free Conference being elapsed, their Lordships desire a present Free Conference in the *Painted-Chamber*, upon the Subject-Matter of the last Free Conference.

The Lord-Steward reported from the Committee appointed to draw up what was offered at the Free Conference; viz.

That Mr. *Harcourt* opened the Conference, and argued first against the Reasons given by this House, why they could not agree to a Committee of both Houses; but afterwards entered into a Debate against the Two Resolutions of this House, relating to Impeachments depending; viz.

Resolved by the Lords Spiritual and Temporal in Parliament assembled, *Nemine Contradicente*, That no Lord of Parliament, Impeached of High Crimes and Misdemeanors, and coming to his Trial, shall, upon his Trial, be without the Bar.

Resolved by the Lords Spiritual and Temporal in Parliament assembled, That no Lord of Parliament, Impeached of High Crimes and Misdemeanors, can be precluded from Voting on any Occasion, except in his own Trial.

And in his Arguments he used this Expression, That he wished their Lordships had sent their Reasons, as well as their Resolutions.

Sir *Bartholomew Shower* spoke next, in Pursuance of the Argument begun by Mr. *Harcourt*,

A Message was brought from the House of Commons by my Lord *Cbeney* and others (*Eodem Die*) to acquaint this House, viz. "That the Commons are extremely desirous to preserve a good Correspondence between the Two Houses, and to expedite the Trials of the Impeached Lords; but conceive it is not consistent with the Honour of the House of Commons to renew the Free Conference, until they have received Reparation by your Lordships doing Justice upon *John* Lord *Haversham*, for the Indignity he Yesterday offered to the House of Commons.

against the aforesaid Resolutions; and in giving Reasons against the latter of the said Resolutions, amongst other Things did affirm, That such a Proceeding would be abhorrent from Justice.

In Answer to those Gentlemen, the Lord *Haversham* used some Arguments and Expressions, which the Managers for the House of Commons took Exceptions at; but what those were the Committee cannot so charge their Memories, as to give the House a particular Account of them: And the Lord *Haversham* being desired by the Committee to recollect what he had said, did inform their Lordships, That observing in the Free Conference several Things said by Mr. *Harcourt* and Sir *Bartholomew Shower*, that reflected on the Honour and Justice of this House, as he apprehended, and that he took to be foreign to the Subject-Matter of the Free Conference, he thought it his Duty to take notice thereof; but in what Expressions, he hoped their Lordships would excuse him from giving a particular Account; but denies, that he said several Things contained in the Paper sent up by the House of Commons: but says, That he desired to be heard

heard out, and that the Words he had spoken might be writ down; but the Managers for the Commons broke up abruptly.

The Lord *Haversham* this Day moved, That he may have a Copy of the Commons Charge against him, and Time to answer. It is ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Lord *Haversham* shall have a Copy of the Charge against him; and do Answer thereunto; and that he shall have Council allowed him, in order to Answer the Charge against him.

The Messengers sent to the House of Commons, return Answer, That the Commons will send an Answer by Messengers of their own.

A Message was brought from the House of Commons by the Lord *Cheney*, and others, to acquaint this House — See Page 372.

The House being moved, To insist not to have a Committee of both Houses, touching the Trial of the Impeached Lords; and Debate thereupon:

The Question was put, Whether this House shall insist upon their Resolutions, of not allowing a Committee of both Houses?

It was resolved in the Affirmative.

A Message was sent by the House of Commons by Sir *Robert Legard* and Dr. *Newton*, to acquaint them, “ That the Lord *Sommers* having informed “ this House, That Sir *Stephen Fox*, *John Smith*, “ Esq; *William Lowndes*, Esq; *Stephen Harvey*, “ Esq; and *William Gulton*, Esq; Members of “ their House, may be material Witnesses for “ him at his Trial on Tuesday next in *Westminster-Hall*, this House desires, That they may have “ Leave to attend, and give their Testimonies “ at the said Trial; and that a Letter which “ his Majesty was pleased to write to him in “ One thousand Six hundred Ninety-eight, being now in their House, will be necessary for “ his Defence at his Trial; this House desires “ that the said Letter may be produced at the “ said Trial.

It is ordered by the Lords Spiritual and Temporal in Parliament assembled, That an humble Address be made to his Majesty from this House, That he will be pleased to give Order, that the Original Treaties of Partition, of One thousand Six hundred Ninety-eight, and One thousand Six hundred Ninety-nine, and the Earl of *Portland's* and Mr. Secretary *Vernin's* Letters relating thereunto, or Authentick Copies of them, may be laid before this House on Monday next, at Eleven of the Clock; and that the Lords with White Staves attend his Majesty with this Address.

Die Lunæ 16^o Junii, 1701.

The Messengers sent on Saturday last to the House of Commons, to desire some of their Members may give Evidence for the Lord *Sommers* at his Trial in *Westminster-Hall*, return Answer, That they will send an Answer by Messengers of their own.

It is ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Lords with White Staves do humbly attend his Majesty from this House, to desire, That the Lord *Haversham* may have Liberty to Inspect the Treasury-Books, in relation to several Commissions

from time to time renewed, and Grants of the Forfeited Estates in *Ireland*, which are necessary for him towards his Defence.

The Earl-Marshall reported from the Lords Committees appointed to consider of the Methods and Preliminaries, in order to the Trials of the Lords Impeached; viz.

That the Serjeant at Arms be continued in the House, to make Proclamations; which are to be made in the King's Name.

That the whole Body of the House of Peers shall meet in the House.

That being so met, they shall go to Prayers as a House, and after Prayers they shall adjourn into *Westminster-Hall*.

That from this House the Lords shall go in this Manner.

First the Clerks, then the Masters of the Chancery, then the Judges, the Gentleman Usher of the Black Rod, then the Lords two and two, the youngest Barons to go first, and so in Order according to their Precedency, Garter King at Arms calling them in their due Places by a Lift; and when they come into *Westminster-Hall*, the Lords are to place themselves according to their Precedency in the House there, till all the Peers are placed.

That the Serjeant at Arms do go before the Lord-Keeper.

That in *Westminster-Hall* (the House sitting there) the other Ceremonies to be observed by Officers necessary to manage the said Trial, be left to be performed according to the usual Methods of such Trials.

That the Lord-Keeper ask Leave of the House for the Judges to be covered.

That Proclamation be made for keeping Silence.

That at the Trial of the Impeached Lord, the lower Barons Bench shall be removed, and a Stool set near the Bar, where the said Lord is to sit Uncovered, as a Peer, but not in the Capacity of a Judge; and that he shall be admitted Council for his Defence.

That the Lord Great-Chamberlain be ordered to take care that the Places behind the Lords be kept for Peers' families and their Daughters; and that his Majesty's Surveyor be required to view the Court and Scaffold in *Westminster-Hall*, and see that they be strong and firm.

A Message was sent to the House of Commons by Sir *John Franklyn* and Sir *Richard Holford*, to acquaint them, “ That the Lords taking into “ their Care the Ordering of the Trial of *John Lord Sommers* on Tuesday the Seventeenth of “ June Instant, at Ten of the Clock in the Forenoon, in *Westminster-Hall*, have prepared some “ Notes and Rules to be observed at the said “ Trial, which the Lords have thought fit to “ communicate to them, as follows; viz.

That the whole Impeachment is to be read, and then the Answer; which being done, the Lord-Keeper is to tell the Commons, That now they may go on with their Evidence.

Then the Lord-Keeper is to declare, That now the Court is proceeding to hear the Evidence, and desire the Peers to give Attention.

If any of the Peers, or the Members of the House of Commons, that manage the Evidence, or the Lord Impeached, do desire to have any Question asked, they must desire the Lord-Keeper to ask the same.

If

If any Doubt doth arise at the Trial, no Debate is to be in the Court, but the Question suspended to be debated in this House.

The Members of the House of Commons to be there before the Peers come.

None to be covered at the Trial but the Peers.

That such Peers, at the Trial of the Impeached Lords, who at the Instance of the said Lord or of the Commons, shall be admitted Witnesses, are to be sworn at the Clerks Table, and the Lord-Keeper to administer the Oath, and to deliver their Evidence in their own Places.

Those Witnesses that are Commoners are to be sworn at the Bar by the Clerk, and are to deliver in their Evidence there.

The Oath to be: The Evidence which you shall give upon the Impeachment of shall be the Truth, the whole Truth, and nothing but the Truth: So help you God and the Contents of this Book.

The Impeach'd Lords may cross-examine Witnesses viva voce.

It is Order'd by the Lords Spiritual and Temporal in Parliament assembled, That the Lords with White Staves do humbly move his Majesty, from this House, That he will be pleas'd to give Order, that such Guards do attend at the Trial of the Lord Sommers To-morrow in *Westminster-Hall*, as has been usual in such Cases.

Sir *Christopher Wren* being come, he was call'd in — says, The Court is made like this House, and a Place for the Commons. He was told, he must take away the lowest Form, and a Stool must be set within the Bar, for the Lord to be try'd.

Order'd by the Lords Spiritual and Temporal in Parliament assembled, That all the Lords be summon'd to attend this House in their Robes, To-morrow at Nine of the Clock, otherwise to incur the utmost Displeasure of this House.

It is Order'd by the Lords Spiritual and Temporal in Parliament assembled, That the Lord Great-Chamberlain be desired to take Care, and give Order, That the Place for the House of Commons in *Westminster-Hall* be kept clear for the Commons only; and also, That a Place be made for the Managers of the Commons.

It is Order'd by the Lords Spiritual and Temporal in Parliament assembled, That Mr. Serjeant *Pratt* shall be, and he is hereby assign'd Council for the Lord Sommers, at his Trial upon the Articles of Impeachment against him.

A Message was brought from the House of Commons by the Earl of *Dyset* and others, (the 17th of June) to acquaint this House, " That the Commons, in this whole Proceeding against the Impeached Lords, have acted with all imaginable Zeal to bring them to a speedy Trial; and they doubt not but 'twill appear, by comparing their Proceedings with all others upon the like Occasion, that the House of Commons have nothing to blame themselves for, but that they have not expressed the Resentment *THEIR ANCESTORS* have justly shewed upon much less Attempts, which have

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That Sir *John Talbot*, Sir *Edmund Harrison*, *Robert Yard*, *John Ellis*, *John Tucker*, *Leonard Hancock*, Esqrs; *John Tench*, and *William Popple jun. Gent.* do, and they are hereby required to attend this House To-morrow at Ten of the Clock in the Forenoon, as Witnesses on the behalf of *John Lord Sommers*.

The Messengers sent to the House of Commons, return Answer, That they have delivered their Message.

A Message was sent to the House of Commons by Sir *John Francklyn* and Sir *Richard Holford*, to acquaint them, That the Lords, in order to keep a good Correspondence between the Two Houses, and to put the Charge against *John Lord Haversham* in a Course of Justice, have ordered (at his Lordship's Motion) his Lordship a Copy of the Charge against him, and that he do put in his Answer thereunto, in order to bring that Matter to a speedy Judgment.

The Lord *Hallifax* delivered in his Answer to the Articles of Impeachment of the House of Commons against him, which was read by the Clerk. See Page 367.

A Message was sent to the House of Commons by Sir *John Francklyn* and Sir *Richard Holford*, to carry down a Copy of the said Answer, and to acquaint them, That they having, on the First Day of April last, sent up to their Lordships an Impeachment against *William Earl of Portland*, for High Crimes and Misdemeanors; and there being as yet no particular Articles exhibited against him, their Lordships think themselves obliged to put them in mind thereof.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That *Henry Baldwin*, *Samuel Baldwin*, *Thomas Engeham*, *George Liddel*, *Charles Saunderson*, *Edward Hayman*, *John Mum*, *Benjamin Baldwin*, *Reginald Marriot*, and *John Digby*, do, and they are hereby required to attend this House To-morrow at Ten of the Clock, as Witnesses on the behalf of *John Lord Sommers*.

Die Martis 17^o Junii, 1701.

The Lord *Wharton* reported his Majesty's Answer to the Address, in relation to the Original Treaties; viz.

That his Majesty would do what he could towards it; and that He had not the Original Papers.

As to the Address for Guards, his Majesty hath complied with it, and given Order for them accordingly.

A Message was sent to the House of Commons by Sir *John Francklyn* and Sir *Lacon-William Child*, on the 20th Instant, to acquaint them, " That the Lords, in Answer to the Message of the Commons of the Seventeenth Instant, say, The only true Way of determining which of the Two Houses has acted with the greatest Sincerity, in order to bring the Impeached Lords to their Trials, is to look back upon the respective Proceedings.

" The Lords do not well understand what the Commons mean by that Resentment which they speak of in their Message. Their Lordships

have been made their Power of Impeachments.

The Commons, on the 31st of May, acquainted your Lordships, That they thought it proper, from the Nature of the Evidence, to proceed in the first place upon the Trial of the Lord *Sommers*. Upon the first Intimation from your Lordships, some Days afterwards, That you would proceed to the Trial of any of the Impeached Lords whom the Commons should be first ready to begin with, notwithstanding your Lordships had before thought fit to appoint which Impeachment should be first tried, and affix a Day for such a Trial, without consulting the Commons, who are the Prosecutors.

The Commons determining to expedite the Trials to the utmost of their Power, in hopes of attaining that End, and for the more speedy and easy adjusting and preventing any Differences which had happened, or might arise, previous to or upon these Trials, proposed to your Lordships, at a Conference, the most Parliamentary and Effectual Method for that Purpose, and that which in no manner intrenched upon your Lordships Judicature; That a Conference of both Houses should be nominated, to consider of the most proper Ways and Methods of Proceedings upon Impeachments, according to the Usage of Parliament.

In the next Message to the Commons, upon Monday the 9th of June, your Lordships thought fit, without taking the least Notice of this Proposition, to appoint the Friday then following for the Trial of the said Lord *Sommers*; whereunto, as well as to many other Messages and Proceedings of your Lordships upon this Occasion, the House of Commons might have justly taken very great Exceptions; yet, as an Evidence of their Moderation, and to shew their Readiness to bring the Impeached Lords to speedy Justice, the Commons insisted only on their Proposition for a Committee of both Houses, to Settle and Adjust the necessary Preliminaries to the Trial; particularly, Whether the Impeached Lords should appear on their Trial at your Lordships Bar as Criminals: Whether being under Accusations of the same Crimes, they should sit as Judges on each other's Trial for those Crimes, or should Vote in their own Cases, as 'tis notorious they have been permitted by your Lordships to do in many Instances which might be given: To which Particulars your Lordships have not yet given a direct Answer, though put in mind thereof by the Commons.

Your Lordships, at a Conference, having offered some Reasons why you could not agree to a Committee of both Houses, to adjust the necessary Preliminaries, the Commons thereupon desired a Free Conference, and your Lordships agreed thereunto; at which 'tis well known to many of your Lordships, who were then present, what most scandalous Reproaches

and false Expressions, highly reflecting upon the Honour and Justice of the House of Commons, were uttered by *John Lord Haversham*; whereby the Commons were under a Necessity of withdrawing from the said Free Conference: For which Offence the Commons have, with all due regard to your Lordships, prayed your Lordships Justice against the Lord *Haversham*, but have as yet received no manner of Satisfaction.

ships own, that the House of Commons have a Right of Impeaching: And the Lords have the undoubted Power of doing Justice upon those Impeachments, by bringing them to Trial, and condemning or acquitting the Parties in a reasonable Time. This Power is derived to them from their Ancestors; which they will not suffer to be wrested from them by any Pretences whatsoever.

Their Lordships cannot but wonder, that the Commons should not have proposed a Committee of both Houses much sooner, if they thought it so necessary for the beginning on the Trials; no mention being made of such a Committee from the First of April to the Sixth of June, although, during that Interval, their Delays were frequently complained of by the House of Lords.

The Manner in which the Commons demand this Committee, the Lords look upon as a direct invading of their Judicature; and therefore, as there never was a Committee of both Houses yielded to by the Lords, in case of any Impeachment for High Crimes and Misdemeanors; so their Lordships do insist, that they will make no new Precedent upon this Occasion. Many Impeachments for Misdemeanors have in all Times been determined without such a Committee: And if now the Commons think fit, by an unprecedented Demand, to form an Excuse for not prosecuting their Impeachments, it is demonstrable where the Obstruction lies.

As to the Preliminaries, which the Commons mention in particular, as proper to be settled at such a Committee, they have received the Resolutions of the House of Lords therein by their Message of the Twelfth Instant; from which (being Matters relating entirely to their Judicature) their Lordships cannot depart.

As to the last Pretence the Commons would make to shelter the delaying the Trials, from some Expressions which fell from the Lord *Haversham* at the Free Conference, at which Offence was taken; their Lordships will only observe,

First, That they have omitted nothing which might give the Commons all reasonable Satisfaction, of their Purpose to do them Justice in that Matter, so far as is consistent with doing Justice to that Lord; and also to preserve all good Correspondence with them, as appears by the several Steps they have taken.

Secondly, That this Business has no relation to the Trials of the Impeached Lords: And therefore their Lordships cannot imagine why the Commons should make Satisfaction and Reparation against the Lord *Haversham* a necessary Condition for the going on with the Trials, and at the same time find no Difficulty in proceeding on other Business.

* The Commons restrain themselves from enumerating your Lordships very many irregular and * unparliamentary Proceedings upon this Occasion, but think 'tis what they owe to Publick Justice * and all the Commons of *England*, whom they represent, to declare some few of those Reasons, * why they peremptorily refuse to proceed to the Trial of the Lord *Sommers* on the Seventeenth of * *June*.

* *First*, Because your Lordships have not yet agreed, That a Committee of both Houses should be * appointed for settling the necessary Preliminaries; a Method never, until this Time, deny'd by the * House of Lords, whensoever the Commons have thought it necessary to desire the same.

* *Secondly*, Should the Commons (which they never will do) be contented to give up those Rights * which have been transmitted to them from THEIR ANCESTORS, and are of absolute ne- * cessity to their Proceedings on Impeachments; yet, whilst they have any regard to Publick Justice, * they never can appear as Prosecutors before your Lordships, till your Lordships have first given * them Satisfaction, that Lords impeach'd of the same Crimes shall not sit as Judges on each other's * Trials for those Crimes.

* *Thirdly*, Because the Commons have, as yet, receiv'd no Reparation for the great Indignity * offer'd to them at the Free Conference by the Lord *Haverham*. The Commons are far from any * Inclination, and cannot be suppos'd to be under any Necessity of delaying the Trial of the Lord * *Sommers*: There is not any Article exhibited by them in maintenance of their Impeachment against * the Lord *Sommers*; for the Proof whereof they have got full and undeniable Evidence, which they * will be ready to produce as soon as your Lordships shall have done Justice upon the Lord *Haverham*, * and the necessary Preliminaries, in order to the said Trial, shall be settled by a Committee of both * Houses.

* The Commons think it unnecessary to observe to your Lordships, That most of the Articles * whereof the Lord *Sommers* stands impeach'd, will appear to your Lordships to be undoubtedly true, * from Matters of Record, as well as by the Confession of the said Lord *Sommers*, in his Answer to * the said Articles, to which the Commons doubt not but your Lordships will have a due regard, * when his Trial shall regularly proceed.

The House being mov'd to go into *Westminster-Hall*, in order to the Trial of the Lord *Sommers*:

After Debate, this Question was put, Whether this House shall go this Day into the Court in *Westminster-Hall*, in order to proceed upon the Trial of the Lord *Sommers*, according to the Order of the Day?

It was Resolv'd in the Affirmative.

A Message was sent to the House of Commons by Mr. Baron *Tracey* and Mr. Baron *Berry*, to acquaint them, That the Lords intend presently to proceed to the Trial of *John Lord Sommers* in *Westminster-Hall*.

The Messengers being return'd, acquainted the House, That the Commons were adjourn'd.

Then this Question was propos'd, Whether the Earl of *Orford*, and Lord *Hallifax*, may withdraw at the Trial of the Lord *Sommers*?

Then this previous Question was put, Whether this Question shall be now put?

It was Resolv'd in the Affirmative.

Then the main Question was put, Whether the Earl of *Orford*, and Lord *Hallifax*, shall have Leave to withdraw at the Trial of the Lord *Sommers*?

It was Resolv'd in the Affirmative.

Then the Lord-Keeper desir'd, That some further Directions be given to him, in order to the Trial in the Hall; and thereupon it was propos'd, that this Proclamation be made in the Hall, *viz.*

Whereas a Charge of High Crimes and Misdemeanors has been exhibited by the House of Commons, in the Name of Themselves and all the Commons of England, against John Lord Sommers, all Persons concern'd are to take Notice, that he now stands upon his Trial, and they may now come forth, in order to make good the said Charge.

After Debate, the Question was put, Whether this Proclamation shall be made?

It was Resolv'd in the Affirmative.

Order'd, That the said Proclamation be made in the Hall before the reading the Articles of Impeachment, and the Lord *Sommers*'s Answer, and also after they are read.

Order'd, That the Court in *Westminster-Hall* be clear'd for the Lords.

Then the House adjourn'd to *Westminster-Hall*, and the Lords were call'd by the Herald, and went as order'd; and, being seated in the Hall, the House was resumed.

Then Proclamation was made for Silence, as follows:

Our Sovereign Lord the King strictly Charges and Commands all manner of Persons to keep Silence, upon pain of Imprisonment.

Then the Lord-Keeper ask'd Leave for the Judges to be cover'd: Which was agreed to.

Then Proclamation, as order'd, was made.

After which, the Articles against *John Lord Sommers* were read, and also his Lordship's Answer to them.

After which the same Proclamation was again made.

Then the Lord-Keeper declar'd, the House was ready to hear the Evidence against *John Lord Sommers*, and therefore desir'd the Lords to give Attention.

The Lord *Sommers* mov'd to have his Council heard.

Whereupon the House adjourn'd to the House above, and went back in the same Manner as they came down; and being there, the House was resumed.

The House being mov'd to acquit the Lord *Sommers*; and after long Debate, and hearing the Judges to several Questions ask'd them by the Lords, this Question was propos'd:

That *John Lord Sommers* be acquitted of the Articles of Impeachment against him exhibited by the House of Commons, and all Things therein contain'd; and, that the said Impeachment be dismiss'd.

Then

Then this Question was put, Whether the Question now stated shall be put in the Court below?

It was Resolv'd in the Affirmative.

Then it was agreed and order'd, That in *Westminster-Hall* the Lord-Keeper shall read the Question, and then call the junior Baron present first, and ask every Lord, Whether *Content*? or *Not Content*? and, That every Lord stand up when call'd to, and give his Vote *Content*, or *Not Content*; and that the Lord-Keeper, having taken their Votes, declare the Majority; and if the Majority be for Acquitting the Lord *Sommers*, the Lord-Keeper is to declare it so, and particularly to the Lord *Sommers*.

Then the House adjourn'd again to *Westminster-Hall*, and the Lords went in the same Manner as before: And being come there, the House was resumed, and Proclamation was made for Silence.

The Lord-Keeper put the Question as follows:

That *John Lord Sommers* be Acquitted of the Articles of Impeachment against him, exhibited by the House of Commons, and all Things therein contain'd, and that the said Impeachment be dismiss'd.

Then the Lord-Keeper ask'd every Lord, Whether *Content*, or *Not*?

Lord <i>Haversham</i>	Content
Lord <i>Herbert</i>	Content
Lord <i>Jeffreys</i>	Not cont.
Lord <i>Godolphin</i>	Not cont.
Lord <i>Guilford</i>	Not cont.
Lord <i>Dartmouth</i>	Not cont.
Lord <i>Ossulton</i>	Content
Lord <i>Osborne</i>	Content
Lord <i>Cornwallis</i>	Content
Lord <i>Granville</i>	Content
Lord <i>Berkely</i>	Content
Lord <i>Lexington</i>	Not cont.
Lord <i>Rockingham</i>	Content
Lord <i>Lucas</i>	Content
Lord <i>Colepeper</i>	Content
Lord <i>Byron</i>	Content
Lord <i>Fermyn</i>	Not cont.
Lord <i>Mobun</i>	Content
Lord <i>Howard Escrick</i>	Not cont.
Lord <i>Lovelace</i>	Content
Lord <i>Hunsdon</i>	Not cont.
Lord <i>North</i>	Content
Lord <i>Wharton</i>	Content
Lord <i>Eure</i>	Content
Lord <i>Fitzwalter</i>	Content
Lord <i>Lawarr</i>	Not cont.
Lord <i>Bergavenny</i>	Content
Lord Bishop of <i>Chichester</i>	Content
Lord Bishop of <i>Lincoln</i>	Content
Lord Bishop of <i>St. Asaph</i>	Content
Lord Bishop of <i>Bristol</i>	Content
Lord Bishop of <i>Gloucester</i>	Content
Lord Bishop of <i>Peterborough</i>	Content
Lord Bishop of <i>Norwich</i>	Content
Lord Bishop of <i>Coventry and Lichfield</i>	Content
Lord Bishop of <i>Ely</i>	Content
Lord Bishop of <i>Bangor</i>	Content
Lord Bishop of <i>Sarum</i>	Content
Lord Bishop of <i>Exeter</i>	Not cont.
Lord Bishop of <i>Rocheſter</i>	Not cont.
Lord Bishop of <i>London</i>	Not cont.

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Lord Viscount <i>Weymouth</i>	Not cont.
Lord Viscount <i>Say and Seale</i>	Content
Earl of <i>Rocheſter</i>	Content
Earl of <i>Romney</i>	Content
Earl of <i>Warrington</i>	Not cont.
Earl of <i>Scarborough</i>	Content
Earl of <i>Marlborough</i>	Not cont.
Earl of <i>Montagu</i>	Content
Earl of <i>Portland</i>	Content
Earl of <i>Plymouth</i>	Not cont.
Earl of <i>Abingdon</i>	Not cont.
Earl of <i>Rocheſter</i>	Not cont.
Earl of <i>Nottingham</i>	Not cont.
Earl of <i>Berkeley</i>	Content
Earl of <i>Radnor</i>	Content
Earl of <i>Macclesfield</i>	Content
Earl of <i>Feverſham</i>	Not cont.
Earl of <i>Shaſtbury</i>	Content
Earl of <i>Burlington</i>	Content
Earl of <i>Bath</i>	Content
Earl of <i>Effex</i>	Content
Earl of <i>Scarſdale</i>	Not cont.
Earl of <i>Thanet</i>	Not cont.
Earl of <i>Carnarvon</i>	Not cont.
Earl of <i>Kingſton</i>	Content
Earl of <i>Stamford</i>	Content
Earl of <i>Peterborough</i>	Not cont.
Earl <i>Rivers</i>	Content
Earl of <i>Denbigh</i>	Not cont.
Earl of <i>Dorſet</i>	Content
Earl of <i>Suffolk</i>	Content
Earl of <i>Huntingdon</i>	Content
Earl of <i>Derby</i>	Not cont.
Earl of <i>Oxford</i>	Not cont.
Lord Chamberlain	Not cont.
Earl-Marſhal	Content
Lord Great-Chamberlain	Not cont.
Marquis of <i>Normanby</i>	Not cont.
Duke of <i>Newcaſtle</i>	Content
Duke of <i>Schomberg</i>	Content
Duke of <i>Bolton</i>	Content
Duke of <i>St. Albans</i>	Content
Duke of <i>Northumberland</i>	Not cont.
Duke of <i>Somerſet</i>	Not cont.
Lord Steward	Content
Lord Privy-Seal	Content
Lord Archbiſhop of <i>Canterbury</i>	Content

The Lord-Keeper declar'd, the Majority was for Acquitting; and then declar'd,

That *John Lord Sommers* was Acquitted of the Articles of Impeachment against him exhibited by the House of Commons, and all Things therein contain'd; and, That the said Impeachment was dismiss'd.

And also declar'd to the Lord *Sommers*, That he was Acquitted.

Then the House adjourn'd to the House above; and being come thither, the House was resumed, and the following Order made.

It is Consider'd, Order'd, and Adjudg'd by the Lords Spiritual and Temporal in Parliament assembled, That *John Lord Sommers* shall be, and he is hereby Acquitted of the Articles of Impeachment against him exhibited by the House of Commons, and all Things therein contain'd; and, That the said Impeachment shall be, and is hereby dismiss'd.

It is Order'd by the Lords Spiritual and Temporal in Parliament assembled, That the Proceedings in this House upon the Impeachments be

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printed;

printed; and, That the Lords Committees appointed to consider of the Manner of Proceeding on Impeachments, do meet To-morrow at Ten a-Clock, and inspect the Journals, and draw up the Matter relating thereunto, in order to be printed, and report to the House.

A Message was sent to the House of Commons by Sir John Francklyn and Dr. Edisbury, to acquaint them, *That this House hath appointed Monday, the Three and twentieth Day of this Instant June, for the Trial of Edward Earl of Orford, in Westminster-Hall, at Ten a-Clock.*

Die Mercurii 18^o Junii, 1701.

It is order'd by the Lords Spiritual and Temporal in Parliament assembled, That this House will proceed to the Trial of *Edward Earl of Orford* on Monday the Three and twentieth Day of this Instant June, at Ten of the Clock in the Forenoon, in *Westminster-Hall*.

A Message from the House of Commons by the Lord Mordaunt and others (on June the 20th) to acquaint this House, *That in Answer to the Message of the Lords, appointing Monday next for the Trial of the Earl of Orford; That the Lords have been acquainted, that the Commons would proceed, in the first place, against the Lord Sommers; and they are ready to go to that Lord's Trial, as soon as ever the Commons have receiv'd Satisfaction for the Affront offer'd to the House of Commons by the Lord Haversham at the Free Conference, and that the necessary Preliminaries are adjust'd by a Committee of both Houses.*

Die Jovis 19^o Junii, 1701.

The House being mov'd, That an Answer be drawn to the Message receiv'd from the House of Commons the Seventeenth Instant, it is order'd by the Lords Spiritual and Temporal in Parliament assembled, That the Committee appointed to consider of the Manner of Proceeding on Impeachments, do withdraw presently, to draw an Answer to the said Message.

Then the House was adjourn'd during Pleasure, and the Lords went to the Committee; which being ended,

The House was resumed, and the Earl of *Stamford* reported what they had drawn in Answer to the Message receiv'd from the House of Commons the Seventeenth Instant; which was read, and agreed to.

A Message was sent to the House of Commons by Sir John Francklyn and Sir Lacon-William Child. See Page 374.

This Day John Lord *Haversham* delivered his Answer to the Charge of the House of Commons exhibited against him the Thirteenth Instant; which was read by the Clerk, as follows; viz.

The ANSWER of John Lord Haversham, to the Charge exhibited against him by the Commons, for Words spoken at a Free Conference, on the Thirteenth Day of this Instant June, One Thousand Seven Hundred and One.

THE said Lord *Haversham* saying to himself all Advantages of Exception to the said Charge, and of not being prejudic'd by any want of Form in this his Answer; and also saving to himself all Rights and Privileges belonging to him as one of the Peers of this Realm; for Answer to the said Charge, saith, That on the Sixth Day of June, One thousand Seven hundred and One, the Commons, by a Message sent to the Lords, desir'd a Conference upon their Message to the Commons of the Fourth of June; in which Conference they propos'd to the Lords, That a Committee of both Houses should be nominated, to consider of the most proper Ways and Methods of proceeding on the Impeachments of the Lords, according to the Usage of Parliament. That on the Tenth of June the Lords desir'd another Conference with the Commons; in which they deliver'd them their Reasons why they could not agree to the appointing such Committee; viz. *First*, That they could not find that ever such a Committee was appointed on Occasion of Impeachments for Misdemeanors; and their Obligation to be cautious in admitting any thing new in Matters relating to Judicature. *Secondly*, That altho' a Committee of this nature was agreed to, upon the Impeachments of the Earl of *Danby* and the five Popish Lords for High-Treason; yet the Success, in that Instance, was not such as should encourage the pursuing the same Method, tho' in the like Case: And, that after much Time spent in that Committee, the Disputes were so far from being adjust'd, that they occasion'd the abrupt Conclusion of a Session of Parliament. *Thirdly*, That the Method of Proceedings on Impeachments for Misdemeanors are so well settled by the Usage of Parliament, that no Difficulties were likely to happen, nor none had been stated to them: And, that all the Preliminaries in the Case of *Stephen Goudett*, and others, (which was the last Instance of Impeachments for Misdemeanors) were easily settled and agreed to, without any such Committee. *Fourthly*, That the Proposal of the Commons came so very late, that no other Fruit could be expected of such a Committee, but the preventing of the Trials during this Session. Whereupon the Commons, on the Twelfth of June, desir'd of the Lords a Free Conference on the Subject-Matter of the last Conference. That the Lords, on the said Twelfth of June, came to Two Resolutions in relation to the Lords impeach'd: "*First*, That no Lord of Parliament, impeach'd of High Crimes and Misdemeanors, and coming to his Trial, shall, upon his Trial, be without the Bar. *Secondly*, That no Lord of Parliament, impeach'd of High Crimes and Misdemeanors, can be precluded from Voting on any Occasion, except in his own Trial." And by Messengers of their own the Lords acquainted the Commons with the said two Resolutions, and also, that they agreed to a Free Conference with the Commons, and appointed the next Day. That upon the Thirteenth of June

Mr. Harcourt, one of the Managers, began the Free Conference on the Part of the Commons, and argued upon the Four Reasons given by the Lords, why they could not agree to the appointing a Committee of both Houses; and principally relied upon the Instance in the Case of the Popish Lords; and insisted upon the Delay, that the not agreeing to the Nomination of such a Committee would necessarily occasion, whereby the Lords Trials, and the Justice due to the Nation would be retarded. And departing from the Subject-Matter of the said Conference, (which was, Whether it was requisite to appoint or not appoint such a Committee?) the said Manager discoursed upon the latter of the Two Resolutions of the Lords communicated to the Commons, and said, *That he wished the Lords had sent down their Reasons, as well as their Resolutions:* Which Words seemed to the Lord Haversham, to carry therein an Implication, as if the said Resolution could have no Reason to justify it. That Sir Bartholomew Shower, another Manager for the Commons, observed the same Method of Discourse: And having argued upon the Lords Reasons, departed from the Subject-Matter of the Free Conference: And inveighing against the Manner of the Lords Judicature, asserted by their Resolutions, said, *That it was abhorrent to Justice.* Which Expression being foreign (as the said Lord Haversham apprehended) to the Subject-Matter of the said Free Conference, which was, Whether such Committee of both Houses should be appointed or not? the said Lord being appointed by the Lords for One of the Managers of the said Free Conference on their Behalf, in Vindication of the Honour and Justice of the House of Peers, and of their Judicature and Resolutions, in Answer to what has been said by the Managers for the Commons, he spoke to the Effect following:

"Gentlemen, I shall begin what I have to say, as that worthy Member who opened this Conference, That there is nothing the Lords more desire, than to keep a good Correspondence, which is so necessary to the Safety of the Nation, and the Dispatch of the publick Business; and nothing they have more carefully avoided, than what may create a Misunderstanding between the Two Houses. A greater Instance of which could not be given, than the Messages my Lords returned to some the Commons had sent them up; in which they took care to express themselves so curiously, that no Heat might arise from any Expression of theirs. And as to what the worthy Members mentioned, in relation to Delay, the repeated Remembrances sent the Commons, with relation to the sending up the Articles against the Impeached Lords, are a sufficient Instance how desirous they are that these Matters should proceed. And the Lords have this Satisfaction, that it is not on their Part that the Trials are not in a greater Forwardness; they cannot but look upon it as a great Hardship, that any should lie under long Delays of Impeachment: Persons may be incapable; Facts may be forgotten; Evidences may be laid out of the way; Witnesses may die; and many the like Accidents may happen. The Instance the worthy Members give of the Popish Lords, as it is a Crime of another Nature, and not fully to

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the Point, so it seems to make against what it was brought for: For the worthy Members say, There was but One of the Lords brought to Justice, though Four more (as I take it) were accused. And can any Man believe, that the Commons have a mind to bring only One of these Lords to Trial? It is inconsistent with the Opinion that every body must have of their Justice. And as to the Point of Judicature, it were very hard upon the Lords, that no Person should be brought to Trial, till the Judicature of the House be so first. The Judicature of the Lords is their Peculiar, and hath in former Ages been Sacred with the Commons themselves. And this House perhaps hath as much Reason to be jealous and careful of it, as any other House ever had, especially when one single Precedent is so urged and insisted upon. One Thing there is, which a worthy Member mentioned, though I cannot speak to it at large, because I think my self bound up by the Resolutions of the House; yet it must have some Answer, (this is) As to the Lords voting in their own Case: It requires an Answer, though I cannot enter into the Debate of it. The Commons themselves have made this Precedent; for in these Impeachments they have allowed Men, equally concerned in the same Facts, to vote in their House: And we have not made the Distinction in ours, that some should vote, and some not. The Lords have so high an Opinion of the Justice of the House of Commons, that they believe Justice shall never be made use of as a Mask for any Design. And therefore give me leave to say, though I am not to argue it, 'Tis to me a plain Demonstration, that the Commons think these Lords innocent; and I think the Proposition is undeniable: For when there are several Lords in the same Circumstances, in the same Facts, there is no Distinction; and the Commons leave some of these Men, at the Head of Affairs, near the King's Persons, to do any Mischief, if they were inclinable to it; it looks as if they thought them all innocent. This is a Thing I was in hopes I should never have heard asserted, when the Beginning of it was from the House of Commons."

The said Lord being here interrupted, he desired to be heard out, and that his Words might be taken down in Writing. But the Managers for the Conference broke up, and departed, refusing to hear any Explanation. Now the said Lord, as to any implicit Charge of a Design to reflect on, or dishonour the House of Commons, denies any such Design or Intention, having for many Years had the Honour to sit in the House of Commons, and having ever had an honourable and respectful Sense thereof: But the said Lord was led to express himself in the manner aforesaid, for the Reasons aforesaid, and takes himself to be justified therein, by the Facts and Reasons following.

That the Nature of that Conference was, That it should be Free: The Occasion of it, because either House apprehended the other to be in an Error: And the End of it, That each Side may urge such Facts as are true, and such Reasons are as forcible to convince. That one Article of Impeachment against John Lord Sommers was, That the Treaty of Partition, of One

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thousand Six hundred Ninety-nine, was ratified under the Great-Seal, which then was in the Custody of the same Lord, then Lord Chancellor of England. That the Commons, on the First of April, One thousand Seven hundred and One, resolved, That the Earl of *Portland*, by negotiating and concluding the Treaty of Partition, was guilty of a High Crime and Misdemeanor; and pursuant thereto, lodged an Impeachment against him in the House of Peers. Which Vote and Impeachment could not have Reference to any Treaty, other than the Treaty of Partition of One thousand Six hundred Ninety-nine, the Treaty of One thousand Six hundred Ninety-eight not being before the House of Commons till after the Time of that Vote and Impeachment; and yet the Earl of *Jersey*, who then was Secretary of State, and Privy-Counsellor, and actually signed the said Treaty of One thousand Six hundred Ninety-nine, as a Plenipotentiary with the Lord *Portland*, stands Unimpeached, and continues at the Head of Affairs, being Lord Chamberlain, near his Majesty's Person, and in his Presence and Councils (without Complaint.) That the Earl of *Orford*, and the Lord *Sommers* and *Hallifax* are severally Impeached for advising the Treaty of Partition of One thousand Six hundred Ninety-eight; and yet Mr. Secretary *Vernon*, who then was Secretary of State, and a Privy-Counsellor, and acted in the promoting of the Treaty of Partition of One thousand Six hundred Ninety-eight, stands Unimpeached, and still continues one of the Principal Secretaries of State: And Sir *Joseph Williamson*, who then was a Privy Counsellor, and transacted and signed the Treaty of Partition of One thousand Six hundred Ninety-eight, as a Plenipotentiary, stands Unimpeached. That the Lord *Hallifax* is Impeached, for that he, being a Commissioner of the Treasury, assented to the passing of divers Grants from the Crown, to several Persons, of Lands in *Ireland*; and yet Sir *Edward Seymour*, Sir *Stephen Fox*, and Mr. *Pelham*, who being severally Lords Commissioners of the Treasury, did severally assent to the passing of divers like Grants from his Majesty of Lands in *Ireland*, stand Unimpeached. That in the Impeachments against the Earl of *Orford* and Lord *Sommers*, one of the Articles against them is for procuring a Commission to Capt. *William Kidd*; and likewise a Grant under the Great-Seal, of the Ships and Goods of certain Persons therein named, to certain Persons in Trust for them; and yet other Lords, equally concerned in procuring the said Commission and Grant, stand Unimpeached. That the said Mr. Secretary *Vernon*, Sir *Edward Seymour*, Sir *Stephen Fox*, and Mr. *Pelham*, notwithstanding their being Parties in the same Facts charged in the same respective Impeachments, have been permitted to sit and vote in the House of Commons touching the said Impeachments, and the Matters thereof. That these Facts being true, and publickly known, the Consequences resulting therefrom (as the Lord *Haversham* apprehended) are undeniable; viz. That the doing of the same Thing by Two Persons in equal Circumstances, cannot be a Crime in one, and not in the other. That the Commons had no Reason to insist, That the Lords should not permit that in their Members, which the Commons had first permitted, and continued to

permit; and so begun the first Precedent in their own Members. That it must be thought, that the Impeached Lords (notwithstanding the Facts alledged in the Impeachments) are innocent of Danger to the King, when the Lord *Jersey* and Mr. Secretary *Vernon*, who are respectively concerned in the Partition Treaties, are permitted, without Complaint, to be at the Head of Affairs, and in the King's Presence, and of his Councils, as not dangerous. That the Word *Innocent*, used in the Words spoken by the said Lord *Haversham*, can extend no farther than to such Matters as were done by the Impeached Lords, of the same Nature with what was done by those Unimpeached. All which Facts being true, and the Consequences obvious, the said Lord being ready to prove the same; he insists, That the Words spoken by him at the said free Conference, were not scandalous or reproachful, nor false or reflecting on the Honour or Justice of the House of Commons; but were spoken upon a just Occasion given, in Answer to several Expressions that fell from the Managers for the Commons, remote (as he conceives) from the Matter in question, and reflecting on the Honour and Justice of the House of Peers, and in Maintenance and Defence of the Lords Resolution and Judicature, and conformable to the Duty he owes to the said House. And the said Lord humbly demands the Judgment of this Honourable House therein. And the said Lord *Haversham* denies, That he spoke the Words specified in the said Charge, in such Manner and Form as the same are therein set down. And having thus given a true Account of this Matter; and it being true and indisputable, That some Lords in this House, equally concerned in Facts, for which other Lords are Impeached by the House of Commons, are still near the King's Person, in the greatest Places of Trust and Honour, and Unimpeached; and also, That several Members of the House of Commons, equally concerned in the same Facts, for which some of the Lords are Impeached, do however remain Unimpeached; the said Lord thinks, such a Truth could never have been more properly spoken, in the Maintenance and Defence of your Lordships Judicature and Resolutions: And insisteth, That what he had said at the Free Conference was not any scandalous Reproach, or false Expression, or any ways tended to make a Breach in the good Correspondence between the Lords and Commons, or to the interrupting the Publick Justice of the Nation, by delaying the Proceedings on the Impeachments, as in the said Charge alledged; but agreeable to Truth, in Discharge of his Duty, and in the Defence of the undoubted Right and Judicature of this House.

H A V E R S H A M.

Ordered, That a Copy of the Lord *Haversham's* Answer be sent to the House of Commons.

Then a Message was sent to the House of Commons, by Sir *John Francklyn*, and Sir *Lacoe William Child*, to carry down a Copy of the above said Answer.

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Die Veneris 20^o Junii, 1701.

A Message from the House of Commons by the Lord Mordaunt, and others. See Page 378.

Order'd, That the Committee appointed to consider of the Manner of Proceedings on Impeachments, do meet presently, and draw an Answer to this Message.

The Earl of *Stamford* reported from the Lords Committees, appointed to consider of the Manner of Proceedings on Impeachments, the Answer drawn by them, in answer to the Commons Message this Day: Which was read, and agreed to, as follows:

A Message was sent to the House of Commons by Mr. *Grey* and Dr. *Newton*, to acquaint them, "That in Answer to the Message of the House of Commons this Day, the Lords do acquaint the Commons, That they might have known, by the Records of the House of Lords, that the Lords have proceeded to the Trial of the Lord *Sommers*, on *Tuesday* last, being the Day appointed; and the Commons not appearing to maintain their Articles against the said Lord, the Lords have, by Judgment of their House, acquainted him of the Articles of Impeachment against him, exhibited by the House of Commons, and all things therein contain'd, and have dismiss'd the said Impeachment.

"And the Lords have appointed *Monday* next for the Trial of the Earl of *Orford*; on which Day they will proceed on the said Trial.

"The Commons still pressing for a Committee of both Houses (which the Lords never can consent to, for the Reasons already given) their Lordships can infer nothing from their persisting in that Demand, than that they never design'd to bring any of their Impeachments to a Trial.

"As to the Lord *Haversham*, his Answer is now before the House of Commons, and the Lords resolve to do Justice in the Matter.

Die Sabbati 21^o Junii, 1701.

The House being mov'd to consider what is fit to be done in relation to the Charge of the House of Commons against *John Lord Haversham*; and after due Consideration thereof, and the Lord *Haversham* desiring to be prosecuted, it was proposed as follows:

That the Answer of *John Lord Haversham* to the Charge sent up against him by the House of Commons, having been sent down to that House; It is resolv'd, by the Lords Spiritual and Temporal in Parliament assembled, That unless the said Charge shall be prosecuted against the said Lord *Haversham* with Effect by the Commons, before the End of this Session of Parliament, the Lords will declare and adjudge him wholly Innocent of the said Charge.

Then this Question was put, Whether this Resolution shall be agreed to?

It was resolv'd in the Affirmative.

It is order'd by the Lords Spiritual and Temporal in Parliament assembled, That Sir *David Mitchell*, Sir *Edmund Harrison*, *George Dorrington*, Esq; *Joseph Burchet*, Esq; Capt. *George Bynns*, *Brooke Bridges*, Esq; *George Cornwall*, Esq; Capt. —

Griffith, — *Holmes*, *Edmund Hayman*, and — *Traverse*, Esq; his Majesty's Surveyor-General, do, and they are hereby requir'd to attend this House on *Monday* next, at Ten of the Clock in the Forenoon, as Witnesses on the behalf of *Edward Earl of Orford*.

A Complaint being this Day made of certain printed Votes of the House of Commons, dated the 20th Instant, wherein there are several Things highly reflecting on the House of Peers; It is Order'd by the Lords Spiritual and Temporal in Parliament assembled, That the Consideration thereof shall be adjourn'd to *Monday* next, and all the Lords summon'd to attend with Special Notice of this Order.

Die Lunæ 23^o Junii, 1701.

The Earl of *Stamford* acquainted the House, from the Lords Committees appointed to draw, or extract out of the Books, what is to be printed in relation to the Lords Impeach'd, and the Proceedings thereupon, what was transcrib'd in order thereunto; and, that there was more to be extracted, which as yet was not transcrib'd: Whereupon it was ordered, by the Lords Spiritual and Temporal in Parliament assembled, That any Three of the Lords of the said Committee do meet when they please, after the House is up, and give Order to the Clerk for what shall be further transcrib'd out of the Journals, in order to the printing thereof.

The House resumed the adjourn'd Debate upon the printed Votes of the House of Commons of the Twentieth Instant. After Debate, it was proposed to declare, That the Resolutions of the House of Commons, in their Votes of the Twentieth Instant, contain most unjust Reflections on the Honour and Justice of the House of Peers, and are contriv'd to cover their affected and unreasonable Delays in prosecuting the Impeach'd Lords.

The Question was put, Whether this shall be the Resolution of the House?

It was resolv'd in the Affirmative.

I. It is resolv'd, by the Lords Spiritual and Temporal in Parliament assembled, That the Resolutions of the House of Commons, in their Votes of the Twentieth Instant, contain most unjust Reflections on the Honour and Justice of the House of Peers, and are contriv'd to cover their affected and unreasonable Delays in prosecuting the Impeach'd Lords.

It being also proposed to declare, That the said Resolutions do manifestly tend to the Destruction of the Judicature of the Lords, to the rendering Trials on Impeachments impracticable for the future, and to the subverting the Constitution of the *English* Government.

The Question was put, Whether this shall be the Resolution of the House?

It was resolv'd in the Affirmative.

II. It is resolv'd by the Lords Spiritual and Temporal in Parliament assembled, That the said Resolutions do manifestly tend to the Destruction of the Judicature of the Lords, to the rendering Trials on Impeachments impracticable for the future, and to the subverting the Constitution of the *English* Government.

It being also proposed to declare, That whatever ill Consequences may arise from the so long defer-

deferring the Supplies for this Year's Service, are to be attributed to the fatal Counsel of putting off the Meeting of a Parliament so long, and to the unnecessary Delays of the House of Commons.

After Debate, the Question was put, Whether the last Words shall stand Part of the Resolution?

It was resolv'd in the Affirmative.

Then the whole Resolution was read, and the Question was put, Whether these Words shall be the Resolution of the House?

It was resolv'd in the Affirmative.

III. It is resolv'd by the Lords Spiritual and Temporal in Parliament assembled, That whatever ill Consequences may arise from the so long deferring the Supplies for this Year's Service, are to be attributed to the fatal Counsel of putting off the Meeting of a Parliament so long, and to the unnecessary Delays of the House of Commons.

It is order'd by the Lords Spiritual and Temporal in Parliament assembled, That the several Resolutions made this Day be printed, with what was formerly order'd to be printed out of the Journals relating to the Lords that were Impeach'd.

Then the House was adjourn'd during Pleasure to Robe.

Then the House was resumed.

The House was call'd over by the Clerk, and the Names of the Lords present set down by the Heralds.

Then the House was adjourn'd to *Westminster-Hall*, and the Lords went in the same Order as they did to the Lord *Sommers's* Trial: And being come to the Hall, and seated, the House was resumed.

Leave was given to the Judges to be cover'd.

Proclamation being made for Silence, the following Proclamation was made for Prosecution; viz.

Whereas a Charge of High Crimes and Misdemeanors has been exhibited by the House of Commons, in the Name of Themselves and all the Commons of England, against Edward Earl of Orford; all Persons concern'd are to take Notice, that he now stands upon his Trial, and that they may now come forth, in order to make good the said Charge.

Then the Articles of Impeachment against *Edward Earl of Orford* were read, and also his Lordship's Answer to the said Articles.

Then the same Proclamation as before was made for Prosecution; and the Lord-Keeper declar'd, That the Court is now ready to proceed upon the Trial of *Edward Earl of Orford*, and therefore their Lordships are to give Attention.

The Earl of *Orford* said, His Council were ready to be heard, if the House pleas'd.

Then the House was mov'd, and did adjourn to the House above, and return'd in the same Manner as they went down.

Then the House was resumed, and order'd, That the same Method be observ'd, in giving Judgment in the Hall, as was at the Lord *Sommers's* Trial, and the like Question put in the Hall.

The House being call'd over, and the Name of every Lord present writ down for the Lord-Keeper.

The House was again adjourn'd to *Westminster-Hall*, where the House was resumed, and Proclamation made for Silence.

Then the Lord-Keeper put this Question,

That *Edward Earl of Orford* be Acquitted of the Articles of Impeachment exhibited against him by the House of Commons, and all Things therein contain'd; and, That the said Impeachment be dismiss'd.

The Lord-Keeper ask'd every Lord present, Whether *Content*, or *Not Content*, beginning at the lowest Baron.

Lord <i>Haversham</i>	Content
Lord <i>Herbert</i>	
Lord <i>Offulston</i>	
Lord <i>Cornwallis</i>	
Lord <i>Berkeley</i>	
Lord <i>Rockingham</i>	
Lord <i>Lucas</i>	
Lord <i>Colepeper</i>	
Lord <i>Mobun</i>	
Lord <i>Lovelace</i>	
Lord <i>North</i>	
Lord <i>Wharton</i>	
Lord <i>Eure</i>	
Lord <i>Fitzwalter</i>	
Lord <i>Bergavenny</i>	
Lord Bishop of <i>Chichester</i>	
Lord Bishop of <i>Peterborough</i>	
Lord Bishop of <i>Lincoln</i>	
Lord Bishop of <i>Norwich</i>	
Lord Bishop of <i>Conventry and Lichfield</i>	
Lord Bishop of <i>Ely</i>	
Lord Bishop of <i>Sarum</i>	
Lord Viscount <i>Say and Seale</i>	
Earl of <i>Rochford</i>	
Earl of <i>Scarborough</i>	
Earl of <i>Montagu</i>	
Earl of <i>Portland</i>	
Earl of <i>Berkeley</i>	
Earl of <i>Radnor</i>	
Earl of <i>Macclesfield</i>	
Earl of <i>Shaftsbury</i>	
Earl of <i>Burlington</i>	
Earl of <i>Essex</i>	
Earl of <i>Kingston</i>	
Earl of <i>Stamford</i>	
Earl <i>Rivers</i>	
Earl of <i>Huntingdon</i>	
Earl Marshal	
Duke of <i>Newcastle</i>	
Duke of <i>Schomberg</i>	
Duke of <i>Bolton</i>	
Lord Steward	
Lord Arch-Bishop of <i>Canterbury</i>	Content.

After which the Lord-Keeper declar'd, That the Votes were Unanimous in the Affirmative.

Then the Lord-Keeper declar'd, That *Edward Earl of Orford* was Acquitted of the Articles of Impeachment against him, exhibited by the House of Commons, and all Things therein contain'd; and that the said Impeachment be dismiss'd.

And his Lordship also declared to the Earl of *Orford*, That he was Acquitted.

Then the House adjourn'd to the House above, and being resumed, It is Consider'd, Order'd, and Adjudg'd, by the Lords Spiritual and Temporal in Parliament assembled, That *Edward* Earl of *Orford* shall be, and is hereby Acquitted of the Articles of Impeachment against him, exhibited by the House of Commons, and all Things therein contain'd; and, That the said Impeachment be dismiss'd.

Die Martis 24^o Junii, 1701.

It is order'd by the Lords Spiritual and Temporal in Parliament assembled, That all the Articles of Impeachments, and Answers to them; The Lord *Haversham's* Charge and Answer; The Lord *Sommers*, and the Earl of *Orford's* Trial, and all other Things relating thereunto, and The Resolutions of *Monday* last, be transcrib'd and printed; and, That the Duke of *Bolton*, the Earl of *Stamford*, the Lord *Wharton*, the Lord *North*, Lord *Haversham*, and Lord *Sommers*, or any Three of them, do inspect the Journals, and take care that what is or shall be transcrib'd, in order for printing, be perfect; and give Order to the Clerk for printing thereof.

Then the House taking into Consideration, That there were several Lords charg'd and impeach'd by the Commons, and no Prosecution against them; Order'd as follows; *viz.*

The House of Commons not having prosecuted their Charge, which they brought up against *John* Lord *Haversham*, for Words spoken by him at a Free Conference the Thirteenth Instant; it

is this Day Order'd, by the Lords Spiritual and Temporal in Parliament assembled, That the said Charge against *John* Lord *Haversham* shall be, and is hereby dismiss'd.

The Earl of *Portland* being Impeach'd by the House of Commons of High Crimes and Misdemeanors, the First Day of *April* last; It is Order'd by the Lords Spiritual and Temporal in Parliament assembled, That the Impeachment against *William* Earl of *Portland* shall be, and is hereby dismiss'd, there being no Articles exhibited against him.

The House of Commons having Impeach'd *Charles* Lord *Hallifax* of High Crimes and Misdemeanors, on the Fifteenth Day of *April* last, and on the Fourteenth Day of this Instant *June* exhibited Articles against him; to which he having answer'd, and no further Prosecution thereupon; It is Order'd by the Lords Spiritual and Temporal in Parliament assembled, That the said Impeachment, and the Articles exhibited against him, shall be, and they are hereby dismiss'd.

The House of Commons having Impeach'd *Thomas* Duke of *Leeds* of High Crimes and Misdemeanors, on the Seven and twentieth of *April*, One thousand Six hundred Ninety-five, and on the Nine and twentieth of the said *April* exhibited Articles against him, to which he answer'd; but the Commons not prosecuting, It is Order'd by the Lords Spiritual and Temporal in Parliament assembled, That the said Impeachment, and the Articles exhibited against him, shall be, and they are hereby dismiss'd.





CLXXI.

The Trial of PATRICK HURLY, of Moughna, in the County of Clare, Gent. at the King's-Bench in Ireland, upon Two (several) Indictments, the one for Perjury, and the other for Conspiring with Daniel Hicky, &c. to Cheat the Popish Inhabitants of the County of Clare, &c. May 31, 1701. Pasche 13 Will. III.



HE Prisoner being brought from the Marshalsea to the Bar, and a Full Jury appearing, the Clerk of the Crown bid him look to his Challengers: And after some Challenged by him, the Jury Sworn, were

Edmund Perry,	}	John Drew,
James Mac Donnel,		Hugh Brady,
John Brady,		Edward Mealing,
Dennis Mac Mabone,		Austin Bennis,
Richard Hen,		Joseph Cecil,
Thomas Brown,		Patrick Connel.

Clerk of the Crown. Gentlemen of the Jury, you are to understand, That Patrick Hurly stands indicted of Perjury, for Swearing before Neptune Blood, Dean of Kilsenora, One of his Majesty's Justices of the Peace for the County of Clare, That he was Robbed of Three Hundred Pistoles in Gold, and several other Things, by four Persons altogether unknown to him, but whom, by the Tone of their Voice, he believed to be Irishmen and Papists; whereas, in Truth and Fact, he well knew them by their Names and Persons, being set on by himself, and did not take any thing at all from him.

Mr. Attorn. General. Clerk of the Crown, You have another Indictment against the Prisoner at the Bar; pray charge him with it.

Cl. of the Crown. Gentlemen of the Jury, you shall likewise understand, That the same Patrick Hurly stands here indicted, for that he did falsely and deceitfully conspire with one Daniel Hicky and several other Malefactors, unjustly to oppress the Popish Inhabitants of the County of Clare, and cheat them of a great Sum of Money, by colour of the Rapparee Act.

Mr. Attorn. Gen. May it please your Lordships, and you Gentlemen of the Jury, the Prisoner at the Bar, Patrick Hurly, is here indicted for Perjury; and the Perjury is this, That the Sixth of March, 1699, he came before Dean Neptune Blood, one of his Majesty's Justices of the Peace for the County of Clare, and made Oath

before him, pursuant to the late Statute for suppressing Tories, Robbers and Rapparees, That being at his Father's House in the aforesaid County of Clare, several Persons, with their Faces masked, came unto the said House in the Night-time, and forced into his Chamber, made a shot at him, and tied him and another Man with Cords fast to a Bedstead; that by the Tone of their Speech they seemed to be Irishmen, and that he believed them to be Papists; that he knew not one of them either by their Names or Persons; that immediately they broke open several Trunks, and took out of one of them a Bag, wherein were 374 Guineas, and 345 Pistoles; a Gold Cross set with Diamonds, and several other Diamonds to a great Value; and a great Number of Holland Sheets and Holland Shirts, all to the Value of about 1300 Pounds; all which he swore they took away from him; and this he swore, in order that he might (according to the late Act, called the Rapparee Act) make the Country re-imburse this 1300 Pounds to him. Gentlemen, this was all false, and nothing at all in it but a Mock-Robbery, acted by Persons employed and set on by himself, whom he very well knew, and who took nothing at all from him, but it was only designed to Cheat the Country; and in truth he was not robbed at all, not of the Value of a Farthing. The Second Indictment is for a Cheat, in Conspiring with the Malefactors to wrong the said Country, and deceitfully and unjustly to raise Money upon the Country, under Colour of the Act of Parliament.

Mr. Sol. Gen. May it please your Lordship, and you Gentlemen of the Jury, Mr. Attorney General has given you an Account of the Indictments: The Second is the Consequence of the First. If Mr. Hurly was really and truly Robbed, then he did not design to cheat the Country: But if he was not really and truly robbed, but that his Examinations be all false, then he was not only perjured, but did likewise conspire to Cheat the Country. We will begin with our Evi-

Evidence of the Perjury, and the Force of our Evidence is this: Mr. Hurly pretends to be robbed of about Thirteen Hundred Pounds, in March 1699. We will shew you, That Mr. Hurly, instead of being a Man of so much Cash at that Time, was the contrary, to an extream Degree: That to prevent Arrests, he had several Protections; and he told a Gentleman, there could not be a readier Way to get Money, than by the Act of Parliament; if he could fix a Robbery on the Country, he could Tax what Sum he pleased. We shall shew you with whom he concerted this pretended Robbery, and by whom 'twas acted, and that Mr. Hurly himself contrived the whole Matter, and the several Goods, that he pretended to lose, he had back again, and they were sent another Way afterwards by Mr. Hurly; and that the Gold he pretended to lose, was but Counters. We will trace you the whole Drift and Contrivance of the Matter. My Lord, we shall first produce the Information of Mr. Hurly, sworn before Dean Blood.

[Dean Neptune Blood sworn.]

Court. Look on that Paper: Was that Examination sworn before you, Sir?

D. Blood. Please your Lordship to give me leave to read it.

Court. Do so, Sir; take your own Time — You have read that Paper?

D. Blood. Yes.

Court. Was that Examination taken before you upon Oath?

D. Blood. Yes, my Lord.

Court. Who was the Person that swore it?

D. Blood. Patrick Hurly.

Court. Is that the Man, that stands there?

D. Blood. Yes, that is he.

[Clerk reads the Examination.]

Com. Clare. The Information of Patrick Hurly of Moughna, in the said County, Gent. taken before Neptune Blood, Dean of Killsemera, One of his Majesty's Justices of the Peace for the said County.

THE said Informant being duly sworn on the Holy Evangelists, and examined, saith, That on Sunday, the Third of March, One thousand Six hundred and Ninety-nine, about Eleven of the Clock at Night, being then at his Father's House at Moughna aforesaid, and in his Chamber, he saw three Men armed burst in an Out-door of the said House, which opened into a Garden, threw down Mr. Ronane, who was near the said Door, in a rude manner, with Swords and Pistols in their Hands, entered into the said Chamber, dragging the said Mr. Ronane with them: Instantly there appeared a fourth Person armed, and with their Faces masked; and making a Shot at the Informant, they immediately tied him and the said Mr. Ronane with Cords fast to a Bedstead, calling the Informant Rogue, Rascal, Son of a Whore, Treacherous Villain to his Country, and many absurd Words to that Effect. The said Informant further saith, That the said Persons, by the Tone of their Speech, seemed to be Irish-

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men, and believes them to be Papists, but knows not any one of them by their Names or Persons. That immediately they broke open three large Trunks, and took out of one of the said Trunks a Bag, wherein were Three hundred Seventy and Four Guineas, and Three hundred Forty and Five Pistoles, amounting in all to the Sum of Eight hundred Forty and Eight Pounds, Nine Shillings Sterling, or thereabouts, together with a Gold Crois set with Diamonds, and several other Diamonds, to the Value of Two hundred Twenty and Five Pounds Sterling; and also the Number of Twenty-four large Holland Sheets, each of them containing Ten Yards, or thereabouts, Price Seventy and Two Pounds Sterling, and Thirty-five Holland Shirts, amounting to the Value of One hundred Fifty and Seven Pounds Ten Shillings Sterling. The said Informant further saith, He heard a great Bustle and Noise, and Shots made in the other Parts of the said House at the same Time, which he understands was done by others of the said Robbers. And further saith, That the said Robbers took away all the aforesaid Gold, Diamonds, Sheets and Shirts, and left the said Informant and Mr. Ronane tied as aforesaid, and locked the said Door on the outside. He further saith, That he never got any of the said Gold or Goods since the said Robbery. And further saith, That when he perceived the said Robbers were gone away, he, this Informant, sent some of his Servants out through a Window about Four of the Clock next Morning, to make a Hue and Cry, and to raise the Country, to pursue after the Robbers. The said Informant being asked, Whether the said Robbery was committed by any Contrivance of his own, or any Friend of his, with Expectation to get Money raised on the Country, or for any other Self end? Declares, That it was not, nor does know of any such Contrivance or Design, by any Person whatsoever, either directly or indirectly. The said Informant further saith, That two of the said Robbers, which came into his Chamber, had red Cloaths, and understands that there were in and about the said House the Number of seven more of the said Robbers, besides the aforesaid four that entered into the said Chamber. He further saith, That he cannot give any Description of any of the said Persons, more than is herein set forth. And being examined, Whether any of his Servants or Family were from home at the same Time when the said Robbery was committed? he said, That he sent one Calaghan Carty, a Servant of his, that same Day to Mr. John Forster, at Rathorpa in the County of Gallway, for a Suit of Mourning Cloaths, which the said Mr. Forster brought from Dublin for the said Informant; and the said Calaghan returned the next Day, being Monday the Fourth of March Instant, with a Letter from the said Mr. Forster, and that the said Informant's Wife and her Brother, Mr. Edward Tirrey, and Mr. Ulick Bourk, who is married to her Sister, were the same Night when the said Robbery was committed at Captain Christopher O'Brien's House at Imishiman in the said County of Clare. The said Informant further saith, That Moughna aforesaid, where the

D d d

“ said

" said Robbery was committed, is in the Barony
 " of *Corcumoroe*, and County aforesaid. He fur-
 " ther saith, That he had about Four Hundred
 " Pounds of the aforesaid Gold from Alderman
 " *Walton* in *Dublin*, and had the rest sometime
 " before from Mr. *Christopher Fitz-Symonds*, Mer-
 " chant in *Dublin*. The said Informant further
 " saith, That he knows not who any of the afore-
 " said seven Persons were, that were in and about
 " the said House, nor yet any of the Four Per-
 " sons as aforesaid, nor from whence any of them
 " came, nor whither they went, and further
 " saith not.

Jurat coram me
 6^o Martii 1699.

NEP. BLOOD.

Vera Copia

GUL. TISDAL.

Court. Mr. Dean *Blood*, Is this the very Exa-
 mination that Mr. *Hurly* gave in upon his Oath
 before you?

D. Blood. Yes, Sir.

K. Council. Did he swear it all?

D. Blood. Yes, he swore all the Contents of
 this Examination to be true.

Mr. Soll. Gen. My Lord, and you Gentlemen
 of the Jury, the Scope of the Evidence against
 the Gentleman at the Bar is thus: We will shew
 you the great Necessity he was under, and the
 pressing Occasions he had for Money; and that
 being in great Straits, he was contriving how
 to stave off his Creditors, and save his Reputa-
 tion. We will produce the Persons that he
 had Discourse with about the probable Way of
 getting Money; and some of the very Persons
 that were to act in order to it; and that when
 Mr. *Ronane* was in the House, these Actors were
 to rush in, and to tie him and Mr. *Patrick Hurly*
 together; and then to look in such a Trunk,
 and there they should find something like
 Gold. That the Actors did lurk in and about
 the House by Mr. *Hurly's* Appointment; and came
 into the Dwelling-house, as was contrived be-
 tween them, rushing in with the said Mr. *Ro-
 nane*, who went out into the Garden after Sup-
 per, as was contrived beforehand. When Mr.
Hurly was giving in his Information, Mr. *Blood*
 asked him, What Witnesses he had besides him-
 self? He said, a Servant of his, one *Calaghan*
Carty. We will produce that same *Calaghan*
Carty, who will give a full Relation of the Mat-
 ter.

Calaghan Carty call'd.

Mr. Bernard. My Lord, one Word for the Tra-
 verser. My Lord, this *Calaghan Carty* and others
 were the Persons taken up for this Robbery, and
 actually in Goal for it; they were the Persons
 that did actually rob us. My Lord, they were
 put into Irons, and threatened to be hang'd un-
 less they would swear it was a Sham-Robbery;
 and thereupon were discharged; and after came
 to this Town, and went before my Lord Chief-
 Justice *Pyne*, and they swore, That their Exami-

nation was forced from them. It is here in
 Court.

Calaghan Carty sworn.

Court. Do yo know *Patrick Hurly*?

Carty. Yes, my Lord.

Court. How long have you been acquainted
 with him?

Carty. Since he came into this Kingdom from
England.

Court. How long was he come before he was
 prosecuted?

Court. 'Twas about two Years.

K. Council. Will you give the Court and the
 Jury an Account what you know concerning this
 Robbery? Tell the whole Truth, and nothing
 but the Truth.

Carty. My Lord, I was one of his Servants.
 He came to me, and called me out to his Stable,
 and drew out a Purse of Gold, and shewed it me,
 and told me, he was to pay one Mr. *Arthur* some
 Money, who was to come such a Day to com-
 pound with him for the Money; and if he did
 give him that Money, he would be ruin'd for
 ever; but that if I would do as the rest would, I
 would do him a Kindness: And says, That when
 Mr. *Arthur* should hear the Money was robbed,
 he would compound with him: And he told me
 where the Money was to be, and the Trunk he
 would put it into.

Court. Did you, according to his Desire, take
 away the Gold and the Linnen?

Carty. Yes, my Lord.

Court. Was there any others to do it besides
 your self?

Carty. Yes, Four more, *Donagh O-Brien An-
 drews, Daniel Hicky, Daniel Carty, and Teigue Carty*.

Court. What did you do with the Linnen?

Carty. It was *Daniel Hicky* took it out, and, he
 said, he gave it all back again to his Master.

Court. Were you disguised?

Carty. Yes, we had some of us Blue Coats,
 and some of us Red Coats and Vizards.

Court. Where had you the Coats?

Carty. Mr. *Hurly's* Man threw them into the
 Barn to us.

Court. Had you any Arms?

Carty. Yes, my Lord, we had Swords.

Court. Who gave the Arms to you?

Carty. *Daniel Mac-Cay*, Mr. *Hurly's* Footman.

Court. Whose were the Swords?

Carty. I was told they were brought from
Dublin by Mr. *Hurly*.

Court. Was there any Fire-Arms?

Carty. Yes, there was Fire-Arms left on a Table
 by the Door, and charged with Powder.

Court. Had you any Directions about them?

Carty. Yes, my Lord, they were laid there on
 purpose for the Men.

Court. Who gave those Directions about the
 Fire-Arms?

Carty. It was *Daniel Mac-Cay*.

Court. Were they charg'd?

Carty. Yes, with Powder only.

Court. Was any of 'em fired off then?

Carty. Yes, there was.

Mr. Sol. Gen. My Lord, though they were fired
 off, there was no Ball in them: It was not to do
 Harm, but only to frighten those who were not
 in the Secret.

Court. Did you take the Gold in the Purse, or whatever it was?

Car. My Lord, we were directed by Mr. Hurly to pour it on the Table, that Mr. Ronane might see it.

Court. How long had Mr. Ronane been there?

Car. Two Nights.

Sir J. Mead. Was there any particular Time appointed when you was to do this Fact?

Car. There was, my Lord; when Mr. Ronane should come out of the Back-door.

Court. Had you any Directions in particular what to do with the Servants?

Car. Yes; we had Directions to tie Mr. Hurly and Ronane together, and there was a Bed-cord laid in the Room ready for the Purpose.

Mr. Recorder. Who gave you the Directions to tie them?

Car. Mr. Hurly.

Mr. Sol. Gen. Do you know one Walter Neylar?

Car. Yes.

Mr. Sol. Gen. Where was he?

Car. He was in Goal at Ennis, for Mr. Hurly's Debt.

Mr. Sol. Gen. You were Mr. Hurly's Servant.—Pray, did he appear publickly about that Time? or, Was he on his Keeping?

Car. He was on his Keeping.

Court. Explain you self — What was that Keeping?

Car. My Lord, he was on his Keeping, for fear of being taken upon Writs and Executions: He had Servants in his House, and he kept one watching constantly, for fear of being taken.

Court. At whose Suit?

Car. At Mr. Arthur's Suit.

Mr. Atto. Gen. My Lord, I am told his House was a sort of a Garrison, and there were regular Works about it.

Court. You say, there were Scouts abroad, and some Wall: Pray give an Account what Works there were about the House.

Car. Yes; there was a Brick-Wall about one Side of the House.

Court. Do you imagine it was to prevent his being arrested, that he built that Wall?

Car. Yes, it was, my Lord.

Mr. Recorder. What sort of Money was there when you open'd the Bag? — What did appear to be?

Car. It was yellow Pieces; and Mr. Hurly gave his Seal, to seal the Bag up again.

Court. Was Mr. Ronane there at that Time?

Car. The Seal was given before, my Lord.

Mr. Sol. Gen. He says, It was not he that pour'd the Money out. — Did you judge the Money to be Gold or Counters?

Car. That, my Lord, I did not know.

Mr. Sol. Gen. My Lord, Mr. Hurly pretends, that this Man gave an Examination contrary to this. Now we will shew you, That that was done by another Person, employ'd by Mr. Hurly to perfonate this Man. But, before that, please to ask him as to the Linnen that was carried away, what became of it, and who disposed of it.

Court. You say, there was Linnen taken away, — What Linnen?

Car. There was Holland Sheets, and they were put into a Chest in the Barn; and we brought them in again.

Court. Who brought them in?

Car. Daniel Hicky, and I my self.

Court. Who did you deliver them to?

Car. To Mr. Hurly's Wife.

Court. Was he privy to it?

Car. Yes, he was.

Court. Did you ever make Mr. Hurly acquainted, that you had restor'd the Linnen?

Car. Yes, my Lord.

Mr. Recorder. Pray, was there any Jewels or Diamonds taken away?

Car. My Lord, he said there was some in a little Bag, some Jewels and Diamonds; and he bid us not to open it, and we did not.

Court. Was that Bag in the same Drawer with the other Money?

Car. Yes, my Lord, it was.

Sir J. Mead. Pray, my Lord, I desire to know, whether he was ever tamper'd with by any body, and who it was.

Court. Was you ever tamper'd with, to take off your Evidence?

Car. Yes, my Lord, I was — by Daniel Carty, and I refus'd it.

Court. Was you by Mr. Hurly?

Car. No, — but he sent his Brother to me.

Mr. Forster. Pray, my Lord, let us see that Examination: He, after that Examination, gave Evidence contrary to what he has now given.

Court. Do you admit, that there was an Examination?

Mr. Sol. Gen. That there was an Examination sworn before my Lord Chief-Justice — But that this was not the Man.

Mr. Recorder. Was you sworn before my Lord Chief-Justice Pyne?

Car. Never in my Life.

Court. Look on it; Is that your Hand?

Car. It's none of my Hand?

Mr. Recorder. Pray look upon it.

Car. It's none of my Hand.

Mr. Forster. (Produces another Paper.) — Pray look on that Paper, and see if that be your Hand or not.

Car. I don't know whether it be or no; I believe it may.

Mr. Sol. Gen. Pray mind which he owns to be his Hand, and which not.

Recorder. We have to deal with a nimble Person.

Court. What will you have next?

Mr. Bernard. The next Thing is, What Time of the Day or Night the Robbery was committed.

Car. My Lord, it was about Ten a-Clock at Night, before the People went to Bed.

Court. What Month?

Car. The Month of March.

Court. What Day of the Month?

Car. As I understand, the Third of March.

Court. What Day of the Week?

Car. Sunday.

Mr. Bernard. Where was you on Monday Morning?

Car. I was at Corrofin.

Mr. Bernard. How far is that from Mr. Hurly's?

Car. It is five Miles.

Court. How long did you stay at Corrofin?

Car. I stay'd there till News came, that the Robbery was committed; I stay'd till Night.

Mr. Bernard. Pray, was Mr. Ronane privy at all to this Robbery?

Car. I don't know; I believe he may, for I know no other Business he had there, nor I saw no other Business he did there.

Court. Mr. Bernard, he says this, — As Mr. Ronane was to go out of the Back-door, then at that very Time they came thro' the Garden.

Car. Yes, my Lord, Mr. Hurly's Man came to give us a Call.

Court. He says, Hurly's Man did give them Notice when Mr. Ronane did go abroad.

Mr. Bernard. Do you believe that Mr. Ronane went abroad?

Court. He says, it was usual for Mr. Ronane to go abroad.

Mr. Att. Gen. My Lord, the next Witness we shall produce is another Servant, that was in the House with Mr. Hurly the same Time.

Margaret Conneene.

Mr. Sol. Gen. This Lady goes in the Family by the Name of Peggy Rabbet; Margaret is Peggy, and Conneene, Rabbet.

[An Interpreter sworn, because she could not speak English, — Then she was sworn.]

Mr. Sol. Gen. Pray ask her, whether she knew Patrick Hurly, and let her point at him.

Con. There he is.

Mr. Sol. Gen. What does she know of this Robbery, this pretended Robbery?

Court. Pray ask her, how long she has been acquainted with Mr. Hurly.

Interp. This Year and a half.

Court. Was she a Servant, or no?

Interp. Yes, a Servant in the House for a Year and half.

Court. Does she know of any Robbery, or pretended Robbery, committed on Mr. Hurly?

Interp. She knows there was a Robbery.

Court. Was she a Servant in his House at that Time?

Interp. Yes, my Lord, she was.

Court. Let her tell what she knows of it from the Beginning to the End.

Mr. Record. The whole Story, the whole Intrigue.

Interp. She says, one Hicky, and Calaghan Carty, Donogh O'Brien Andrews, came into the House at Night, and Teigue Carty and Daniel Carty.

Court. Were they disfigur'd?

Interp. Yes, she says, they were.

Court. How did she know them?

Interp. As Calaghan Carty told her.

Court. When was that?

Interp. After he came out of Goal.

Court. Did she know any of them when their Disguise was on?

Interp. No, she did not.

Court. Did she know of any Contrivance of a Robbery?

Interp. No, she did not.

Court. What Time of the Day or Night was this Robbery committed?

Interp. She says, my Lord, about Ten of the Clock at Night.

Court. What Month? or, What Time of the Month?

Interp. She does not know; but it was about Ten of the Clock at Night, as she believes.

Court. Pray, in what Manner was it that they came into the House?

Interp. She says, my Lord, that about that Hour of the Night she came in before Mr. Ronane went out at the Back-door; and, That these Five Persons came in at that Time into the House.

Court. What Part of the House was she in then, when these five Persons came in?

Interp. She was in the Kitchen.

Court. Ask her, How could she see these Persons, when they came into the House, from the Kitchen?

Interp. She says, she could not.

Court. How soon after they got in had she Notice the Robbers were got into the House?

Interp. She says, that as soon as they came in, one Mac Caie cry'd Murder, and said, his Master was kill'd.

Court. Where were the Robbers then?

Interp. In the Parlour, near her Master's Chamber.

Court. What Arms had they that Time there?

Interp. She says, that they had Fire-Arms and a Sword; and, that they shot at them.

Court. Which of them had Arms?

Interp. She says, All that she saw had Arms.

Court. Was there any Body wounded? or, Was there any Opposition given by any Servants, that occasion'd them to fire?

Interp. There was no Body to oppose them.

Court. What made 'em fire off the Gun then?

Interp. She does not know, unless 'twas to keep them in, and frighten 'em.

Court. How far was this House where Mr. Hurly liv'd from any Neighbours?

Interp. She believes there were some Neighbours half a Mile off.

Court. Was she in the Parlour? or, Did she see any Arms in the House before the Robbers came in? or, Did they bring the Arms with 'em?

Interp. She says, there were Arms in the Parlour when they came in.

Court. Were these Arms she saw with them the same that she saw in the Parlour before they came in?

Interp. They were the same Arms?

Court. Did she see those Arms? — How long did she see 'em there before the Robbers came in?

Interp. She says, that the Arms lay there all the Evening before.

Court. Was it usual for the Arms to lie there before?

Interp. 'Twas so sometimes.

Mr. Sol. Gen. What was Mr. Hurly's Motive for keeping Arms always ready at the Door? What Occasion had he for them?

Interp. She does not know any other, than that her Master was in Debt, and apprehensive of Trouble; and, that he kept those Arms for his Defence.

Court. Pray, does she know what was taken away from her Master at that Time?

Interp. She knows that they took twelve Pair of Holland Sheets.

Court. Did she ever see any of the Linnen that was taken away from her Master with him afterwards?

Interp.

Interp. There were Sheets in the House after the Robbery, and she believes they were the same Sheets.

Mr. Butler. The Sheets in the Robbery were large, double Holland Sheets.—Pray, what Sheets were they she saw afterwards in the House?

Interp. Large Holland Sheets.

Mr. Sol. Gen. How many Pair of Holland Sheets did she see in the House after the Robbery?

Interp. She saw four or five Pair of Holland Sheets in the House after the Robbery.

Mr. Sol. Gen. Pray, how soon after the Robbery did she see those Sheets in the House?

Interp. After the Affizes.

Mr. Attor. Gen. Pray ask her, whether any Goods were sent out to any Neighbour's House, and what Neighbour's, and what Goods.

Interp. She believes 'twas usual, when *William Haloway* came to the House, that was a Person who prosecuted *Mr. Hurly* for Debt, to send away the Goods, to secure them.

Mr. Attor. Gen. As I understand this Woman, when these Robbers had come into the Parlour, *Daniel Mac Caie* ran into the Kitchen, and cry'd Murder! Murder! I would fain know, since *Daniel Mac Caie* was not tied, and that the Robbers did not tie her, why they did not go out to make Hue and Cry, and raise the Country.

Interp. She says, my Lord, that there was none of them tied; but they did not go out.

Court. Pray, how came it about, that after the Shots went off, no Neighbours came in?

Interp. She says, she believes they could not hear.

Mr. Attor. Gen. Pray, when they fired off the Fire-Arms, did they present them at her, or at *Daniel Mac Caie*? or, Did they find any Holes the Shots had made in the Cieling, or Marks of the Bullets in the Wall, or in any other Place?

Interp. She says, they hurt no Body, and they saw no Holes or Marks of Shot or Bullets.

Mr. Attor. Gen. Ask her, whether the Arms that were in the Parlour did not usually hang on Racks or Hooks; and where were they a little before the Robbers came into the Parlour.

Interp. They were upon the Table, my Lord, near the Door.

Court. Where did these Arms use to be at other times?

Interp. She says, at the same Place, near the Door.

Mr. Foster. What number of Arms did *Mr. Hurly* use to have in the House? and, Of what Sort?

Interp. A couple of Fuzees, a Blunderbuss, a couple of Carbines, and Pistols.

Mr. Bernard. Pray how many Swords were there usually?

Interp. She did not know of any but her Master's Sword; she saw but Two.

Mr. Bernard. How does she know that the Shots were made out of these Arms that were *Mr. Hurly's*?

Interp. She says, that she was shot at twice.

Mr. Bernard. And was it out of these Arms that used to be in the Parlour?

Interp. She was shot at with a Pistol.

Mr. Bernard. Was it with *Mr. Hurly's* Pistol?

Interp. She believes it was.

Court. Whether these Arms, that were fired off, were the Arms that lay on the Table?

Interp. She was told afterwards, by the Person that did it, that they were her Master's Arms.

Court. Who told her of it?

Interp. *Calaghan Carty*.

Mr. Bernard. She has no other Knowledge of this but as *Calaghan Carty* told her?—When was it he told you this?

Interp. After he came out of Gaol.

Mr. Bernard. How long was that after the Robbery?

Interp. They were long in Goal—she does not know.

Mr. Bernard. Tho' she was our Servant then, we shall shew whose Servant she is now, and how she has been promis'd to be Portion'd and Petticoated; ——— Does she know *Teigue Carty*?

Interp. Yes, she does.

Mr. Bernard. Does she know *Daniel Hicky*?

Interp. Yes, my Lord.

Mr. Bernard. Does she know *Donogh O'Brien*?

Interp. Yes, she does.

Mr. Bernard. Had she this Account from any of those Persons?

Interp. She did not ask them.

Sir John Mead. Whether the Arms *Mr. Hurly* had, were carried away by these Persons, or left there?

Interp. She says, they took 'em out, and lock'd the Door, and left 'em without the House.

Mr. Sol. Gen. Upon my Word, a Man that had robb'd Thirteen hundred Pounds, would hardly have parted with his Arms till he was safe lodg'd. —What becaitie of the Arms? Who had 'em afterwards?

Interp. She saw the Arms in the House again.

Court. Were the Arms abused any ways?

Interp. She heard they were stuff'd with Gravel, but she does not know whether it was so or no.

Court. Who did she hear say so?

Interp. She heard the Family say so.

Mr. Bernard. Pray, when did she see that *Calaghan Carty*? How long was it from the Time of the Robbery to the Time he told her this?

Interp. Next Day in the Evening she saw him after the Robbery.

Mr. Bernard. About what Time?

Interp. She does not know certainly what Time of the Day.—It was afternoon, pretty late, after the Cows were milk'd.

Mr. Hurly. She says, the next Day this Man came back.—The Man says, he was at *Corrofin* till Night.

Mr. Sol. Gen. He says, That after the Robbery was committed, he went that Night as far as *Corrofin*; and, that being weary himself, he sent his Father with the Letter to *Mr. Foster's*, and afterwards came back again in the same Evening.

Mr. Sol. Gen. My Lord, we are inform'd, that this Woman can give direct Proof, that some of the Goods, and particularly the Linnen, came back to the House; and that, being dirty, she wash'd them.

Court. What Goods were taken away, does she know, the Night *Mr. Hurly* was robb'd?

Interp.

Interp. She says, they took Twelve Pair of Holland Sheets, and about Three and Thirty Shirts.

Mr. Sol. Gen. I desire to know, Did she afterwards wash any Linnen, Sheets or Shirts, and how they were dirty'd with ordinary wearing, as by going abroad?

Interp. She says, there was at least four or five Pair of Holland Sheets that were soil'd.

Mr. Sol. Gen. Did she wash any Linnen?

Interp. She was at the Washing of 'em.

Mr. Sol. Gen. Did she observe after what manner they were dirtied, by People lying in them, or otherwise?

Interp. She does not know.

Mr. Butler. Does she know of any Holland Sheets sent to any Gentleman in the Country from Mr. Hurly?

Interp. She knows that some of his Linnen was sent to Mr. O'Brien's.

Mr. Dean. How came she to stay in the Room after Shots made at her? How came she to be so stout?

Interp. She says, she durst not stir: One had a Pistol in one Hand, and a Sword in the other, and she durst not stir.

Mr. Dean. How long before the Robbery did she see Calaghan Carty?

Interp. That Day the Robbery was committed, which was Sunday, he dined there.

Mr. Bernard. My Lord, I desire to know whether she did not see Calaghan Carty very often after the Time the Robbery was committed, and how often.

Interp. My Lord, she says, that after the Robbery was committed, Calaghan Carty was in the House after his Return from his Errand: He continued in the House until such time as he was taken.

Mr. Bernard. Pray, who took him?

Interp. One Haloway, she says, one Buck, and some Dragoons.

Mr. Bernard. Pray, did Calaghan Carty tell her any thing of this Robbery during the Time he was in Prison?

Interp. She says, he did not.

Mr. Bernard. Whether she did not believe this to be a real Robbery, until he told her after he came out of Prison?

Interp. She did then believe it was a real Robbery.

Mr. Bernard. Does she believe now, in her Conscience, it was a real Robbery?

Interp. She does not.

Mr. Bernard. What is the Cause she does not believe it now?

Interp. She says, that she found it out since to be otherwise.

Mr. Sol. Gen. Ask her again, — What is the Reason that she does not believe it to be a real Robbery, as well now as at the Time it was committed?

Interp. She says, my Lord, the Reason for believing that it was not a real Robbery, is, That she found it out to be otherwise, not only by the Actors, but by the Servants and the Neighbours.

Mr. Sol. Gen. Pray ask her again.

Interp. She believes it was not, for she found it out, and they confess'd it: And a Portmanteau with some Linnen, that was sent away to

Mr. O'Brien's, being afterwards come back from Mr. O'Brien's, when the Linnen was taken out of it, she saw there the Table-Cloth that was taken away by the Robbers that Night.

Mr. Attor. Gen. Pray, was that Table-Cloth used that Night of the Robbery at Mr. Hurly's Table?

Interp. She says it was.

Mr. Sol. Gen. She was ask'd, Whether or no she believes it was a real Robbery? and she says, It was not a real Robbery; and her Reason was, That in a Portmanteau that came from Mr. O'Brien's House there came back a Table-Cloth that was used and taken away that very Night of the Robbery at Mr. Hurly's House.

Court. Ask her, whether she took Notice of any Table Cloth that was in Mr. Hurly's House the Night of the Robbery, that afterwards came back from Mr. O'Brien's.

Interp. She says, they had that Table Cloth in the House that Night of the Robbery.

Court. Was it taken away by the Robbers?

Interp. They did take it away that Night: It was upon the Table in the Parlour, and they took it away.

Court. She says, the Table-Cloth was in the Parlour, on the Table, the same Night the Robbery was committed: Pray ask her, Was it on the same Table where the Arms were?

Interp. It was upon a Side-board, my Lord.

Mr. Bernard. Pray, when did she leave Mr. Hurly's Service?

Interp. She says, that she left his Service, and continued in his Father's House, till about Christmas.

Mr. Bernard. Pray, whose Service did she go to afterwards?

Interp. She went to Service to one Mr. Wogan.

Mr. Bernard. Was she at Sir Donogh O'Brien's House after that Time? — Whether she was sent for by Sir Donogh O'Brien — and for what?

Interp. She was there after she left her Service.

Mr. Bernard. How long after she left her Service?

Interp. She believes, within two or three Days after.

Mr. Bernard. Did she go of herself, or was she sent for?

Interp. One Constance Davoir brought her there.

Mr. Bernard. Is he a Servant?

Interp. No.

Mr. Butler. He is a Man that keeps an Ale-house in Corrofin. — Did he tell her Sir Donogh O'Brien sent for her?

Interp. No, he did not.

Mr. Bernard. What Business had she there?

Interp. He did not tell her what Business.

Mr. Bernard. To what End or Purpose did she go there?

Interp. She said, that he was her Friend, and she went along with him.

Mr. Sol. Gen. What did she go thither for?

Interp. To give an Account of what she knew, concerning this Robbery.

Mr. Bernard. Mr. Hurly was very severe on Sir Donogh O'Brien. — Did she see Sir Donogh O'Brien?

Interp.

Interp. She did.

Mr. Bernard. Had he any Discourse with her?

Interp. She said nothing to Sir *Donogh*, nor Sir *Donogh* to her — but she was carried before a Justice of Peace.

Mr. Bernard. What Justice of Peace?

Interp. She does not know that.

Mr. Bernard. Whether Sir *Donogh O'Brien* was there? — Whether she did not hear the Country, and all the Neighbourhood, say, That if they did not make this no Robbery, Sir *Donogh* would be ruin'd?

Interp. She says, she heard no such thing; but was desir'd to say nothing but Truth.

Mr. Bernard. Was there any Promise made you of a Portion?

Interp. No, there was not.

Mr. Bernard. Was he tamper'd with by any?

Interp. She says, No.

Mr. Sol. Gen. Don't ask her if she has been tamper'd with, for she does not understand it; but, whether she was offer'd any thing at all for Swearing in this Cause?

Interp. She says, No; she was offer'd nothing at all.

Mr. Sol. Gen. Now we will call *Walter Neylan*, who will give an Account of this Matter out of *Mr. Hurly's* own Mouth.

Walter Neylan sworn.

Court. Give an Account to the Jury what you know in this Matter.

Mr. Sol. Gen. Let him tell if he was in Prison in *Ennis* Goal, and on what Account, and what pass'd there between him and *Hurly*.

Neylan. My Lord, the same Time that *Mr. Hurly* was committed upon Suspicion of the Robbery, I was in Prison my self.

Court. On what Occasion was you there then?

Neylan. I was bound for *Mr. Hurly*, and was confined for his Debt. I was in Conversation with him during his Confinement.

Court. Was he confined in the same Goal?

Neylan. Ay, and in the same Room.

Court. Who was in the Goal with you? Was there one *Donogh O'Brien Andrews* there?

Neylan. There was four Servants of *Mr. Hurly's*, *Donogh O'Brien Andrews*, *Daniel Hicky*, *Calaghan Carty*, and, I think, *Daniel Carty*.

Court. What pass'd between you and *Mr. Hurly*?

Neylan. My Lord, Three of them discover'd the Robbery, and the other held out for two or three Days. But, as I was coming out of the Room where I was confined, this Man, *Donogh O'Brien Andrews*, said to me, Do you know whether my Master is working any thing for my Liberty? No, says I, I do not. Pray, says he, tell him out of Charity, that he take Care for my Release, or else I must discover as well as the rest.

Jury. We do not hear him.

Court. He says, he was in Prison at the same Time with *Mr. Hurly* and four of his Men at *Ennis*: That he was conversant with *Hurly*, being Chamber-fellows: That Three of the Persons, that were thus confined, confess'd the Rob-

bery; but there was *Donogh O'Brien Andrews*, he stood out, and disown'd it for some Time; and afterwards this *Donogh O'Brien Andrews* came, and said to him, Pray, do you know whether my Master is doing any thing for my Release? and he said, No, he did not. Pray tell my Master out of Charity, that if he does not soon work out my Liberty, I must discover, as well as the rest of my Fellow-servants.

Neylan. My Lord, upon this I came to *Mr. Hurly*, and told him the whole Matter. Says *Mr. Hurly*, If that Man does own it, I am undone, for he is the Man that knows most of it; and call'd me aside, gave me a Piece of Money, and desired me to give it to him, that he might not discover; and to tell him, that he would send for Security, and get him discharg'd, tho' it were from the County of *Galloway*. I went down accordingly with the Piece of Money into the Goal; and because I was unwilling to hold any Discourse with the said *Donogh O'Brien Andrews* alone, I gave the Piece of Money to *Calaghan Carty* to give him, and told him what *Mr. Hurly* said. Says *Donogh O'Brien Andrews*, This will not do, for I love Liberty better than my Life, and I will discover. At the Time of this Man's saying he would discover, *Mr. Hickman*, a Justice of Peace, came into the Goal; whereupon *Mr. Hurly* desired me to speak to *Mr. Hickman*, and pray him to speak to the Goaler, that this same *Donogh O'Brien Andrews* may have more Liberty than he had, and desired me to be Security for him, and that he would give me Counter-Security. I told him, I would not speak to him: Says *Mr. Hurly*, You ought to do it, if not in point of Friendship, yet in point of Gratitude; for it's through your Means I was forced to take those Measures.

Court. *Mr. Neylan*, Pray, Sir, what did *Mr. Hurly* say to you when you came to him, and told him what *Donogh O'Brien* said to you?

Neylan. He said, That was the First Man to whom he communicated the Contrivance of the Robbery; and, That it was most dangerous if he should discover it.

Mr. Sol. Gen. Who said so?

Neylan. *Mr. Hurly* said, That this Man was the First Man that he spake to of the Contrivance; and he said, He was the Principal of the Four that contriv'd it.

Mr. Sol. Gen. Who did you give this Information to?

Neylan. I gave it to *Mr. Butler*; and there was present three or four Justices of Peace more.

Court. At the Time he was examined before the Justices of the Peace, he did not give the latter Part of the Evidence: I ask'd him why he did not? he says, Because he did not recollect himself. The first Part he did not give, concerning the Piece of Money.

Mr. Forster. The Prisoner desires to know after what distance of Time he recollected himself?

Court. After he had given his Examination in to the Justices of Peace.

Neylan. A Month or Six Weeks, I think, my Lord — But I told several People of it before.

Mr. Forster. How came he to send for a Justice of Peace to take his Examination at first, and not

to do so afterwards, when the latter Part of it came to his Memory ?

Neyland. Because Mr. Hurly was in Goal at the first Time, and I thought he might have come to a Trial ; but after he was remov'd up here, I despair'd of his coming to a Trial, and so did not think it material.

Mr. Hurly. My Lord, this is a Man that was in Trouble for me, and bound to *Thomas Artbur* on my Account: He had a Pique to me, and I to him ; he lampoon'd me, and I him. I appeal to the Gentlemen of the Jury, whether I, that had my Wife and Sister with me, whether they don't think I should rather have trusted them with such a Thing ? All that he here says is out of Pique and Malice, which the Gentlemen of the Country do know.

Court. Mr. Hurly, you are a Man of Parts, and you know what is us'd to be done in this kind : If you please, you may have Pen, Ink, and Paper to take Notes ; and, when it comes to your Turn, you shall ask what Questions you please.

Mr. Hurly. My Lord, 'tis all Malice.

Neyland. My Lord, I did contrive to make him pay the Debt of Two hundred Pounds (for which I was bound for him) ; but I suffer'd Damage above Threescore Pounds more—— I did indeed get an Execution against his Goods.

Court. He says, he was mightily damnified by being bound for you ; and that, having Counter-Security, he did order Judgment to be enter'd up against you ; knowing that you had valuable Goods in the Goal, he order'd them to be taken.

Mr. Hurly. He says, my Lord, that he was so much damag'd : I'll prove, my Lord, that his Debt was satisfied, and over and over.

Mr. Attor. Gen. My Lord, we will produce a Witness, that saw this Rapparee Act perus'd in Mr. Hurly's House at *Moughna* ; and we will shew you what pass'd at reading the Act.

Capt. Charles Mac-Donagh sworn.

Mr. Attor. Gen. My Lord, Captain *Mac-Donogh* will give your Lordships and the Jury an Account of the Necessity the Prisoner was under ; and, that the Rapparee Act being read on some certain Occasion at a certain Place, what happen'd thereupon.

Court. Pray, Sir, give an Account to the Jury what you know of Mr. Hurly, and his Circumstances.

Capt. Mac-Donogh. My Lord, I was very well acquainted with Mr. Hurly since the Time he came out of *England* ; I receiv'd Letters from him, and I was employ'd by him in negotiating several Affairs in the Country, and particularly against his Brother, that ow'd him some Money. I thought he was very severe against his Brother, and I charg'd him for being so unkind to him : He said, He was in want of Money, and so could not help it. And I was with him when he was reading the late Act of Parliament relating to the Article-men, and he said, He would pass his Adjudication according to the Articles of *Galloway*. I said, I thought he was in *France*, and not in *Galloway*. Said he, It's no matter, I will prove it. And he came after to *Dublin*, and pass'd his Adjudication. And after he came down again

from *Dublin* I was with him ; and he brought with him the Act of Parliament, commonly call'd *The Rapparee Act* ; and he said, That Rapparee Act was a cleaver Way to recover Money from the Country.

Court. When was this ?

Capt. Mac-Donogh. The latter end of *Christmas*, before the Robbery.

Court. Pray, what Year ?

Capt. Mac-Donogh. My Lord, it was *Christmas* 1699.

Mr. Butler. Have you any of those Letters of Mr. Hurly, that shews he was in great Want of Money ?

Capt. Mac-Donogh. Yes, I have.

Mr. Recorder. Pray, in what Circumstances was he at *Christmas* 1699 ?

Capt. Mac-Donogh. He was poor and indigent ; and he said, He was so great a Friend to his Brother, and lov'd him so well, that he would not have prosecuted him, if he had not wanted Money.

Mr. Attor. Gen. Had you any Discourse with Mr. Hurly after the Robbery ? Pray, what was it ?

Capt. Mac-Donogh. My Lord, *Capt. O'Brien* writ me a Letter after he came to the Place, and was perswaded by him, that it was a real Robbery, and desir'd me to come, that we might consult the Matter : And knowing, that he had no such Money, I wrote him a Drolling Letter, That I believ'd it was some *Papists* robb'd him ; and, that he would recover his Money of the County. I came to *Ennis*, and he told me, He had lost all that he had in his House to pay his Debts ; which I smil'd at, because I was before in his House when he came from *Dublin* ; and I said to him, I hope you have brought Money, for otherwise the Country will be too hot for you now, because Mr. *Neylan* lies in Goal for you ; and this Sheriff is not your Friend. And he did not pretend that he had Money ; but, said he, never matter that, for Sir *Toby Butler* and Colonel *John Macnamarra* will make my Interest good with the Sheriff. And so the Letter coming after from *Capt. O'Brien* to me, that Mr. Hurly had lost such a Sum of Money, I laugh'd at it, because I knew that he had no such Sum. And when he told me, at the Assizes at *Ennis*, how that he was robb'd, he said, He would give me Two hundred Guineas if I manag'd the Business for him, to get the Money from the County.

Mr. Att. Gen. You had several Letters from Mr. Hurly : Pray, let us see 'em.

[*Shews a Letter.*]

Mr. Recorder. Did you receive this Letter from Mr. Hurly ?

Capt. Mac-Donogh. Yes, 'tis his Hand-writing—— There has pass'd many Letters between him and I.

Mr. Recorder. Did you ever discourse with him since you receiv'd this Letter about the Subject and Matter of it ?

Capt. Mac-Donogh. Yes, I did.

Court. Did you ever answer it ?

Capt. Mac-Donogh. Yes, I did.

[*The Letter read.*]

Thursday, August 17. 1699.

Dear Cousin,

*J*UST now I received the enclosed from our never-failing little Agent. What we have hitherto done, is but very insignificant to the main Matter. If this be not duly executed, and without Loss of Time, there is no other Way on Earth to do it, but that we thought of and proposed; that is, When the Colonel comes in Person, immediately after the Assizes, to execute the Surplus of the Fier. Fac. The Gentleman will, no doubt on't, send to him (as he did before) to know if he has any against his Person? When he sends him Word he has not, he will come to him; and when they are together, you must get some Clever Fellow, that will put it into his Hands. Spare no Cost to do this, my Dear Friend: You possess the Matter fully, and I have several convincing Proofs of the Sincerity of your Intentions towards me; therefore will say no more, but refer it wholly and solely to your Self; and desire once more, you will spare no Cost to compass it. The great Friend arrived in Dublin, and he expects our Cousin there Wednesday next: He goes away Saturday Night to Solomon his Brother-in-Law's House, where it would be a vast Comfort for him, towards his Journey, and the carrying on the Clever Touch, to receive a Box of Pills from you, which will be very much wanting. If not, and that you could get a Bill for't from Pierce Verrony, who will be there to meet my Brother John, it shall be highly serviceable; make it payable to our Agent, at Mr. Thomas Hewlet's House in Smithfield, and she will pay it to Mr. Baldwin. Let not our generous Friend's Good-Nature be prevail'd upon to give any Time or Forbearance; for, I do assure you, that and more must be laid out to carry on the Clever Touch; which I have the greater Hope will not fail taking the good Effect, since you are so positive in it. I hope you have a Will. Do your Business with Sir Theo — and send his Opinion about the Elegit. Our Cousin will write to you from Dublin, directed as you shall appoint in the Answer to this. I will take Leave, begging the Favour you will remember me most thankfully to our worthy Friend, whose Services I shall find a Way to return as he deserves. The longer he stays after the Assizes, the worse 'twill be for us. Dispatch me back the Bearer as soon as you can, and pay an Express, if you do not come your self, of Saturday Night to Solomon's: Our Cousin will go from thence on Sunday before Day. My Service to Mr. Conner, and know whether he delivered and seconded the Letter to my Lord C. J. Put this Letter and the enclosed into your Fob, lest you should drop it. As you have appeared all along a true Friend for me, my Dear Kinsman, go through with it, and assure your self, your Pains shall not be ill bestowed. The executing

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this is the Clever Touch indeed; and I am sure it will succeed, since you undertake it. My most kind Service to my worthy Friend; I hope he hunted well.

Mr. Soll. Gen. Pray give me that Letter — My Lord, I shall take leave to read it, and ask some Questions out of it. — Sir, by the Oath you have taken, pray what does he mean by Our never-failing little Agent?

Capt. Mac-Donagh. That was his Wife, that was here in Dublin — There was a *Fieri Facias* against the Goods of his Brother John; but that would not do, so he desired his Wife to send an Execution against his Body.

Mr. Soll. Gen. Our great Friend is arrived at Dublin — Who does he mean by that?

Capt. Mac-Donagh. Really, Sir, by what I understand, it was the Attorney-General.

Mr. Soll. Gen. Who was his Cousin here, Solomon?

Capt. Mac-Donagh. He is one Donogh O-Dea, married to his Sister, whom he thought an insignificant Man; and therefore he called him Solomon, by way of Ridicule.

Mr. Soll. Gen. What was the Clever Touch, and the Box of Pills?

Capt. Mac-Donagh. The Clever Touch, was the Adjucation; and the Box of Pills, was the Money to be sent to Dublin, to pass the Adjucation.

Mr. Butler Have you any other Letters?

Capt. Mac-Donagh. Yes, I have.

Moughna, October the 5th, 1699.

I Have Advice from a very sure Hand, Dear Sir, that I am liked to be Blocked up very soon, or rather regularly Besieged by the formidable Captain Thomas Bourk, and a select Party he brags to have hired of the Enniskillin Dragoons for that Purpose. He received Fifty Pounds Sterling for that generous Undertaking, and entered into Bonds of Two Hundred Pounds Penalty, to have me in Salv. Custod. before the First Day of next Term. And, as I am resolved to keep my Ground, and maintain this Post to the last Extremity, I have detached Corporal Malone for Ammunition to put my self in a Condition to receive the Thrice-worthy Captain; for this is no Time of Day for me, (post varios Casus) to give my Head for the Washing. The Corporal is but very lately arrived into my Service, and consequently has but young Skill in Powder and Ball: Therefore must entreat you to chuse and send me a Pound of the best Powder, and three Dozen of Carbine, Musket, and Pistol-Ball.

E c c

Poor

Poor Tom is very much in the right on't, to revenge his Quarrel with a Party, since his Courage never inspired him to do it single Hand: And his select Party (as he calls them) are resolved to follow the Col. General of the French Dragoons (Mareschal de Boufflers) Maxim: For he was of Opinion, No Man was fit for a Dragoon, that in Time of War out-liv'd two Campaigns; or in Peace, did not once at least in every fifteen Days, seek Adventures for a broken Head. Pray dispatch me back the Corporal; and though the Enemies Lines of Circumvallation should be perfect, nay, their very Batteries be rais'd and fix'd, if you let me know the Day precisely that you intend to call this Way, I will make a Sortie to facilitate your Entrance. I have not one Word from our Friend since I saw you. If your Leisure will permit it, pray let me know what Progress you have made in the last Affair that was communicated and recommended to you by, Dear Sir,

Your affectionate Kinsman,

and very humble Servant,

Patrick Hurly.

For Capt. Charles Mac-Donagh, at Ennis.

Mr. Soll. Gen. You see that the Gentleman was very apprehensive of Debt, and guarding himself against it at this Time.

Mr. Attor. Gen. I desire to know, in this first Letter, who it was that was his good Friend?

Capt. Mac-Donagh. He told me, Sir, he look'd upon you to be his great Friend?

Court. Had you any Communication or Discourse with Mr. Hurly about this Robbery? Did he confess it?

Capt. Mac-Donagh. I did not put it to him: But I told him he would be Indicted for Perjury, and lose his Ears. He said, twenty Pounds would save them.

Mr. Hurly. He said, I must not stay in the Country, if I did not pay Mr. Arthur. I desire to know, Whether I did not tell him I was to meet Mr. Arthur?

Capt. Mac-Donagh. You told me you would make an end with Mr. Arthur: And you said at the same Time, that you had Sir Toby Butler and Mr. Macnamarra to make the Sheriff your Friend: And that did imply to me, that you had no Money.

Mr. Hurly. I came to Dublin in August, and they arrested me. I went to perfect Bonds to Mr. Arthur for the Debt, which was 723 Pounds.

He exacted upon me, and I was forced to consent to him a Bond for the whole Demand. I sent for Sir Toby Butler, and we made up the Account; and Mr. Arthur made it up near 1000 Pounds, for which I gave him my Bond. Mr. Butler told me, you will be reliev'd, by preferring a Bill in Chancery against Arthur. I did not serve him with a Subpoena, but he absconded, and so I got no Remedy to this Day. And the Reason why I paid him not, was to make him come to Terms, that I might retrench the extravagant Charge.

Court. Did he give that as a Cause why he would not pay Arthur, because he had exacted upon him?

Capt. Mac-Donogh. He did not tell me so.

Court. Was this the Reason, as you apprehended, why Mr. Hurly absconded, that he was on his keeping for fear of Arthur?

Capt. Mac-Donogh. For ought I know, it was for fear of others as well as Mr. Arthur. I remember the Night he came home from Dublin, some few Days before the Robbery, that he was barricading his Door, and telling me of making the Sheriff his Friend; whereby I concluded, that he could not have that Money that he afterwards pretended he had lost.

Court. How came you, Mr. Hurly, to barricade that House, when Mr. Arthur had promised not to disturb you at the Assizes of Ennis? He swears the very Night you came from Dublin you were barricading that House.

Mr. Attor. Gen. I desire to know, whether he believes that he had Money in his House the Night he was robbed?

Capt. Mac-Donogh. He did tell me so; but I did not believe him.

Court. Do you know any thing of those Counters?

Capt. Mac-Donogh. My Lord, about February last, the Wife of Daniel Hicky, who was suspected to be in the Robbery, came to me and said, that her Husband was like to be undone for passing some Counters: That if he could get his Liberty, he would go to Dublin, and swear the Cheat of the Robbery; and, says she, we have some of the Counters, that they said was Gold, in our keeping, and we will produce them.

Court. Did you see any of those Counters at any Time?

Capt. Mac-Donogh. Yes, I did, when the Constable took them out of Hicky's House.

Mr. Soll. Gen. It seems that Daniel Hicky's Wife told him, that she could produce the Counters. We shall shew you, that there was search for them accordingly. To whom did you make a Discovery of this of Hicky's Wife?

Capt. Mac-Donogh. I told it to Mr. Butler, who is a Justice of the Peace in the County of Clare, and to Capt. Bindon: The Woman was taken and Indicted for passing these Counters.

Mr. Foster. How came she to be discharged after she was taken?

Capt. Mac-Donogh. She was bail'd at the Quarter-Sessions.

Mr. Soll. Gen. My Lord, we shall shew you where the Counters were found, and who found them.

Mr. Bernard.

Mr. Bernard. And we shew, that the Man that found them hid them.

The high Constable Walter Huonin sworn.

Court. Had you any Warrant, and from whom, to search for Counters or Counterfeit Money?

Huonin. Yes, my Lord, I had a Warrant from Dean Blood, to search for Goods that were pretended to be robb'd from Patrick Hurly. I came to the Town of Moughna, and brought with me five Men and a Petty Constable; and I went to the House of John Hurly, Patrick Hurly's Father, who was Bed-ridden, and removed him out of his Bed: And I went to Carty's House, and dug there, and found none; and I came to Daniel Hicky's, and digged about; and there was a Bed of Dung by the side of the House, where they fodder their Cattle, and it was a Foot above the Floor of the House; and after searching the rest of the House, I ordered the Dung to be removed out of the Place; and I bid the Fellows come and dig there, and they did; and Hicky's Wife held the Candle her self; and one of the Men that was next the Wall hit a Stone in the Ground, and it was a Slate over a hole in the Floor, and the next of them threw it out, and along with it a Suggane and a Purse; and when I saw the Purse, I would not let him handle it. I opened it, and found it full of yellow Counters, and took an handful of them out, and called the People of the Town, and reckon'd them all before their Faces.

Court. What did you find in the Purse?

Huonin. My Lord, nothing but Counters.

Court. Have you them?

Huonin. Yes, I have all that was found—I came to the Assizes at Ennis, and my Lord Chief-Justice Haly ordered me to keep them till I should appear at the Trial.

[Shows the Suggane and Purse with the Counters, which was opened, and were 121 in Number.]

The reason why I was so careful to search there, was because Hicky's Wife was pressing for my not touching the Dung; and after they were found, when she saw the Counters, she dropt the Candle, and went away: Says I, good Woman, you must go along with me. I brought the Woman to Ennis; and I was brought before my Lord Chief-Justice, who desired me to keep the Counters against the Trial.

Mr. Hurly. Whether it be likely, that this Woman, that was indicted for these Counters, would not have removed them, and thrown them into a by-hole; and if they were in the Ground, whether the Purse would not be rotten.

Court. He says, when it was taken up, the Suggane that was about it was mouldy and wet, for the Purse it self is dammified.

Mr. Soll. Gen. Pray what is the Name of the Village where the House stands?

Huonin. It is Moughna, where the Father of Mr. Hurly lives.

Mr. Bernard. How long after the Robbery was this found?

Huonin. It was a whole twelve Month.

Mr. Bernard. Was you directed to search that

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Dunghill before you went to the House?

Huonin. No; I was not; only a Fellow told me that he suspected that Place.

Mr. Recorder. Was it in the first Place, or in the last Place; you search'd, that you found these Counters?

Huonin. It was in the last Place.

Mr. Recorder. How near is this Hicky's House to Mr. Hurly's?

Huonin. About a quarter of a Mile; or less.

Alderman Walton sworn.

Mr. Forster. Sir, Mr. Hurly calls you, to know what Money you paid him?

Ald. Walton. My Lord, I came over with Mr. Hurly in October, 1697. And some time after he was here, he came to me and told me, he had some Money to receive, and ask'd me if I would receive it for him? I told him it was Mr. Burton's business; but he said he was a Stranger to him, and so let my Servant receive 400 Pounds from Mr. Arthur, and 100 Pounds from Mr. Fitz-Symons.

Mr. Bernard. I desire Ald. Walton to tell, when they came over in the War-time, whether he saw any Jewels with Mr. Hurly?

Ald. Walton. We did see a Ship, that we thought was a Privateer, but it prov'd a Friend: He then told me, he had some things of great Value, which he was going to secure; but I did not see them.

Sir John Mead. How long was the Money in your Hands?

Ald. Walton. It was all drawn out in three or four Months time.

Mr. Attor. Gen. Pray was it all drawn out of your Hands before 99?

Ald. Walton. Yes, yes.

Mr. Soll. Gen. The next thing that was drawn out was Writs and Proviso's, to force Mr. Hurly to pay back the Money to Mr. Fisher. My Lord, we will call two that were by when these Counters were found by the Constable.

Thomas Edwards sworn.

Court. Do you know of any Search made in any Body's House concerning Gold or Money?

Edwards. My Lord, I was commanded by the High-Constable, Walton Huonin, to the House of Daniel Hicky; and when I came, I found a Youth on his Knees making up the Dung: I asked him, what he was doing there? The Woman said, He was endeavouring to hide some Potatoes. I told her, there was no body would take them away. Now, my Lord, there was no Potatoes there; but we found the Counters under the Dung, about eight Inches deep in the Ground; they were in a Leather Wallet, whip'd about with a Thumb-Rope of Hay.

Court. How did the Woman behave her self?

Edwards. When the High-Constable told her, You must go along with me, she said, Now these are found, I believe I must.

Mr. Foster. Did you see the Counters when they were taken?

Edwards. Yes, I did.

Mr. Foster. Did they look fresh?

Edwards. Yes, they did.

E c c 2

Mr. Soll.

Mr. Solk Gen. My Lord, before we go any further, the Gentlemen that are Council for the Traveller, would fain insinuate, that the Counters were laid there, — that *They that hide can find*. Now therefore, to shew that to be impossible, we shall prove to you, that this Woman, the Wife of Daniel Hicky, did offer some of these Counters for a Cow, before this Discovery.

Mortogh Mac-Colloghy sworn.
(Per Interpreter.)

Mr. Attorn. Gen. Does he know one Daniel Hicky?

Interp. He does.

Mr. Attorn. Gen. Does he know his Wife?

Interp. Yes.

Mr. Attorn. Gen. Had he any Dealing with any of them?

Interp. He says, he had a Cow, and it was stray'd, and he found her, and was hurrying her home by Hicky's House; — he rested there, being weary, and was taking a Pipe of Tobacco, and they ask'd him, if he would sell the Cow? He said, he would: And she went into a Back-room, and brought two yellow Pieces, — he says, he has the two Pieces here to shew.

[Produces the Pieces, being two yellow Counters, the same with those that Huonin produced in the Purse.]

Court. Are those the Pieces Hicky's Wife offer'd him for this Cow?

Interp. He says, they are. When he was receiving the two Pieces the Woman gave him, he ask'd her what they were? She said, Two Guineas: He said, He believ'd they were some of Patrick Hurly's Gold.

Court. Why did he say so?

Interp. Because he imagin'd he had some Gold Counters.

Court. Did he sell his Cow for the Money then?

Interp. No.

Court. How came he to keep the Money then?

Interp. He told her, he did not like the Coin, and he would not sell his Cow for them, because they were some of Patrick Hurly's Gold; and he said, What will you take for 'em? I have Three-pence Half-penny, and some Tobacco, and if you will take them, I'll give 'em you for the Pieces: Yes, said she, I will; and I wish I had so much for every one I have.

Court. He says, he was after this examin'd by a Justice of Peace concerning these Things; How came he to be examin'd?

Interp. He went himself, and shew'd 'em to Mr. Bindon.

Court. Did he go of himself? or, Was he sent?

Interp. He says, he told Sir Donogh O'Brien what had happen'd, and he directed him to go to the Justice.

Court. Pray, how long was it after he had these Counters?

Interp. He says, Nine or Ten Days.

Court. Did he go to Sir Donogh of his own accord? or, Did any one bid him go?

Interp. He went freely of himself.

Court. When was it that he receiv'd those Counters he speaks of?

Interp. About Christmas last.

Court. When was it he bought the Cow?

Interp. He says, he bought her at Clare Fair, about Allbolland-tide before.

Court. What Time was it that the Woman would have bought it of him?

Interp. It was a good while after.

Court. Was it before or after Christmas he was selling the Cow to this Woman?

Interp. After Christmas, my Lord.

Court. How long after?

Interp. He does not exactly remember the Time.

Court. Now, pray Gentlemen, we must do right to every body. — When he comes to receive the Counters, he said, it was about Christmas; — and when he comes to tell you when he bought the Cow, it was all at the same Time.

Mr. Soll. Gen. No, no; the Matter of the Counters was at the Time when she cheapen'd the Cow; but he bought the Cow at All-Saints before, and he was about selling her at Christmas.

Mr. Recorder. About nine Days after he was in possession of the Gold, he came to Sir Donogh O'Brien, of his own accord, and he bid him go to a Justice of Peace.

Mr. Bernard. Pray, why did he not go to Sir Donogh O'Brien sooner? — And, what made him go then?

Interp. He waited for the Quarter-Sessions.

Mr. Bernard. Who is the nearest Justice of Peace living next his House?

Interp. Mr. Bindon.

Court. How came he not to go before Mr. Bindon immediately when he got the Counters?

Interp. He says, he waited for the Quarter-Sessions.

Court. Pray, how came he not to go immediately to Mr. Bindon, being the next Justice of Peace, rather than to Sir Donogh O'Brien?

Interp. He expected all the Justices would be together at the Quarter-Sessions.

Mr. Forster. Mr. Hurly desires to ask that Man some Questions. — How came the Cow to go out of the Barony after he had bought her? How came the Cow there?

Interp. The Man that sold him the Cow in Clare Fair liv'd there, and she stray'd back again.

Mr. Hurly. How came the Cow to go astray?

Mr. Soll. Gen. We cannot tell you; you may examine the Cow, the Cow knows best.

Mr. Attorn. Gen. We will not shew, that when Hurly came from Dublin he lodg'd at Capt. Jobe Lynch's House, and he pull'd out of his Portmantau a large Bag, that look'd as if it were full of Gold; and Capt. Lynch handling of it, and finding it light, he open'd it, and found it to be Counters. This Capt Lynch is Landlord of Moughna, and they were intimate together.

Capt. Lynch sworn.

Mr. Attorn. Gen. Pray, do you know Mr. Patrick Hurly, now at the Bar?

Capt. *Lynch*. I have known him these Thirty Years.

Court. Have you intimate acquaintance with him?

Capt. *Lynch*. He cannot deny but I have.

Mr. *Attor. Gen.* Pray give an Account of his coming to your House.

Capt. *Lynch*. I met Mr. *Hurly* at *Loughbrea*, at one *Harry Bargery's* House, in the Year 1699, either a little before or after *Christmas*.

Court. Where was he going?

Capt. *Lynch*. He was going to the County of *Clare*, from *Dublin*; and as we were drinking a Bottle of Wine, — he went to a Portmanteau that lay on a Table, and taking out Linnen, he pull'd out a Bag that held about a Quart; said I, Mr. *Hurly*, you are well stock'd with Money coming from *Dublin*. — And I clapp'd my Hand into the Bag, took out an handful, and they were Counters, my Lord, of several sizes, like single and double *Louis d'Ors*.

Mr. *Soll. Gen.* Shew him some of the Counters.

[*He looks on them.*]

Capt. *Lynch*. This is like them.

Hurly. When was it?

Capt. *Lynch*. It was a little before *Christmas*, or soon after. — I wonder, Mr. *Hurly*, that you should deny it.

Mr. *Soll. Gen.* Upon the Oath you have taken, Had you any Discourse at this Meeting about any Acts of Parliament?

Capt. *Lynch*. I'll tell you, my Lord: He ask'd how Mr. *Banks's* Money went? (Mr. *Banks* was one that was robb'd of the Value of Two hundred and fifty Pounds, and the Grand-Jury, at the Assizes, allow'd him the Money, when he petition'd for it.) A while after, in our Journey, says he, Cousin, I have a great deal of Confidence in you, and if you'll assist me to get Money — I told him, in any just Way I would, but not otherwise.

Mr. *Attor. Gen.* Had you any Discourse about the Rapparee Act?

Capt. *Lynch*. He told me plainly, that if I would but assist him, — and then brought down the Statute, and ask'd me again, how Mr. *Banks's* Money went in our County? I told him, he recover'd his Money from the County. Says he, Cousin, I really want Money; and if you'll assist me in such a Matter, and come to me, I will deliver you your Lease. I told him, I would assist him in any just Way, but no further.

Mr. *Recorder*. You said just now, that he spoke of the Act.

Capt. *Lynch*. He told me, That the Act was a very good Way for a Man to get Money that wanted it.

Mr. *Attor. Gen.* Are you a Relation to Mr. *Hurly*?

Capt. *Lynch*. I have a Friendship for him; and if I had known I was to be summon'd, I would not have been within forty Miles of this Place this Day.

Court. Pray, what Relation are you to him?

Capt. *Lynch*. His Brother was married to my Sister, and he and his Father was Tenants to me and my Father these forty Years.

Court. Had you any Linnen sent to your House? And by whom?

Capt. *Lynch*. My Lord, I cannot tell was it Linnen or no, but there came a Trunk, and I had a Letter beforehand (it was in *April* or *May* 1700) informing me, that the Trunk would be with me that Night, and desiring me, that I would not let the Men that brought it see it afterwards.

Court. Did the Trunk come?

Capt. *Lynch*. Yes.

Court. Was it weighty?

Capt. *Lynch*. It was as much as any Two could carry. — The Servants told me, they were coming all Night, that they did not sleep.

Court. How far is your House from Mr. *Hurly's*?

Capt. *Lynch*. Seventeen Miles.

Court. Had you any Discourse with him in the Goal of *Ennis*?

Capt. *Lynch*. Yes; I went to see him at the Goal of *Ennis*, and Mr. *Butler* met me: I told him, I was going to see *Hurly*. And as we were taking a Bottle of Wine together, I said, Cousin, it is not fit for any Gentlemen to visit you, for the Pranks you play'd in *France*, and now this Robbery. — He said, Sir *Donogh O'Brien* was the greatest Enemy he had against him, — but he would lose his Blood, or he should lose his.

Court. Did the Servants that brought the Trunk tell you what was in the Trunk?

Capt. *Lynch*. They told me, that it was really full of Linnen. — And *Ulick Bourk* came, and expected Mrs. *Hurly* that Night. — My Wife was like to die. — The Servants that brought me the Trunk brought me a private Token, not to let any body have it, — not Capt. *Bourk* himself. — But I suspected there was no good in it, and I let them take it away; so the Trunk was taken away from my House that Night, and brought to a Neighbour's about a Mile off.

Mr. *Soll. Gen.* What Relation is *Ulick Bourk* to Mr. *Hurly*?

Capt. *Lynch*. They are married to two Sisters.

Mr. *Bernard*. My Lord, this Gentleman hath sworn very materially, and I desire he may fix a Time, and tell us within a Fortnight: Was it before or after *Christmas*?

Capt. *Lynch*. I am not positive, but it was in the Year 1699.

Mr. *Attor. Gen.* What House was it at *Loughbrea*?

Capt. *Lynch*. It was at *Harry Bargery's* House.

Mr. *Hurly*. What Time was it?

Capt. *Lynch*. I cannot be positive to Time, but it was before the Robbery.

Court. Pray recollect, as near as you can, what Time it was you were together at *Loughbrea*.

Capt. *Lynch*. I can't be positive.

Mr. *Bernard*. Was it in the Time of *Lent*, or not? It is strange!

Capt. *Lynch*. If I did know to a Day, I would tell it.

Mr. *Recorder*. You say, it is strange; he says, that Mr. *Hurly's* Denial to him is more strange! He is particular as to the Time of the Trunk, and yet he can't be so as to the other Time.

Court.

Court. Mr. Hurly, you shall make the best Use of it you can; when the Man tells you on his Oath, that he cannot tell; and we can't make a Man swear more than he can swear: He says, it was in 99, and before the Robbery. Was it in Winter, or Summer?

Capt. Lynch. In the Winter, as I do really remember it.

Mr. Hurly. My Lord, I humbly offer this: This Gentleman says, he met me at *Harry Barger's* House in *Loughbrea*; and, that I open'd my Portmanteau for him to take out a Bag.

Court. No, he says you open'd the Portmanteau to take out some Linnen; and you took out a Bag, and you look'd into it.

Mr. Hurly. Was this half a Year before the Robbery?

Capt. Lynch. I do not know.

Mr. Hurly. My Lord, I will prove I was not there, at *Loughbrea*, the last time I went home. And, my Lord, my Father held some Land from him: There came some Difference, and he told his Brother, that if I did not give up the Land, he would give me a Lift.

Mr. Bernard. Was there any one in the Room then with you?

Capt. Lynch. No body but Mr. Hurly and I.

Mr. Hurly. Pray, Sir, what sort of Portmanteau was it?

Capt. Lynch. It was a Cloth Wallet, blue and red.

Mr. Attor. Gen. The next Evidence we produce, is one *Charles Cassidy*; he was thought a fit Man for the Service, and was solicited to be Commander in chief of this Robbery.

Charles Cassidy sworn.

Court. Give an Account what you know of any Robbery of Mr. Hurly.

Cassidy. My Lord, I was a Practitioner in Surgery; and Mr. Hurly's Father fell sick, and I was sent for to attend him three Weeks or a Month; and then one Dr. Brady, a Relation of Mr. Hurly's was sent for: And as we were going up to see other Patients, the said Dr. Brady and I, says the Doctor, If you will take upon you a Business, you shall have Twenty Guineas. What is it to do, says I? It is to head a Party, says he, to rob Hurly, and then he will raise Money on the County. And after this, when he came back, the Doctor told him what he had offer'd me. Hurly said, I will give him Forty Guineas; and said, he would get People himself: And he said, I have four Persons, that I will trust with you, &c. but I went away, and never came near him since.

Court. When was this?

Cassidy. It was thirteen or fourteen Months before he was robb'd. — I serv'd in the House from before Christmas to Easter.

Court. Mr. Hurly, he swears thus; That he was employ'd to attend your Father, that was sick at that time; and, that after some Attendance you took Occasion to send for Dr. Brady, a Relation of yours: And going with the Doctor abroad to visit other Patients, he told him, You get little Fees from Mr. Hurly; but, says he, if you will head a Party for a pretended Robbery on Mr. Hurly,

he will get Money of the County, and you shall have Twenty Guineas. He said, he did not care to meddle with it, for his Relations would suffer by it; but he said, It would be but little that every one would pay: Then, said he, I don't care if I do. And when he came home, the Doctor told before your Face what he had done. You said, What! give him Twenty Guineas! I'll give him Forty Guineas. And after, when he went home, he thought not fit to do it; for he told you, his Face was very remarkable, and known in the County, and, that he should be discover'd. Oh! Sir, said you, I'll help you to another Face. You told him, he should have one *Donogh O'Brien*, *Daniel Hicky*, and *Calaban Carty* to assist him.

Mr. Soll. Gen. Has not *Donogh O'Brien* another Name?

Cassidy. I know, my Lord, it is *Donogh O'Brien Andrews's* Son.

Court. You have been acquainted since Christmas was two Years; When was it that this was said to you by Dr. Brady?

Cassidy. It was the February after.

Mr. Robbins. How long after this Discourse of Dr. Brady and Mr. Hurly did you speak of it?

Cassidy. My Lord, I did not speak of it; and the Night it was to be transacted I ran away from my own House, for fear of being suspected.

Mr. Robbins. Did you go before a Justice of Peace voluntarily? or, Were you call'd to give that Examination?

Cassidy. I kept it to my self till last Sunday; being at Church, and after dining at Mr. Hickman's, they were talking of Hurly's Business. I said, There is a Man in this Country that can do Mr. Hurly more Mischief, in relation to this Robbery, than any other. Who is that? said he. I, being afraid to bring my self into Trouble, said no more. Says the Minister, You ought to be punish'd, if you don't do your best for to save your Country from Ruin. And, upon this, after I came home, I recollected my self, and I went to a Justice of Peace, and swore it; and after I had given my Testimony, he bound me over to prosecute.

Mr. Soll. Gen. He has done like an honest Man.

Mr. Foster. How came you to conceal it for Two Years past? Did you never tell it to any Man before?

Cassidy. But to one young Man, that I thought would joyn with me.

Court. What young Man is that?

Cassidy. 'Tis one *Conner*. When I was at Mr. Hurly's House, I often play'd a Game at Tables with him: When he had not then Money to send for a Bottle of Wine, he got me to send my Note for twelve Bottles of Wine at *Ennis*.

Mr. Attor. Gen. The Persons concern'd in the Robbery had Vizards: We shall shew you, that when Mr. Hurly was in *Dublin* last, what Shop he was at, and what sort of Commodities he bought. There was a Masque to be acted.

Daniel Kiefe sworn.

Mr. Attor. Gen. Pray, where do you live?

Kiefe.

Kiefe. In Town, my Lord, with Counsellor *Turner*.

Mr. Att. Gen. If your Lordships please to ask him, Whether he knows *Mr. Hurly*?

Kiefe. I knew *Mr. Hurly* these many Years.

Mr. Att. Gen. Pray give an Account what you observed when *Mr. Hurly* was going into the Country; what Shops you met him in, and what Commodities he was buying.

Kiefe. In *February*, 1699, he came into *Mr. Bently's* Shop, and asked for Masks to wear at a Masquerade: He told him he sold none, but there were some in *Christ's Church-Yard*; and he went in at the Gate towards the Yard; and when he was gone, I said, *Mr. Bently*, I wonder what he designs to do with them, I fear 'tis for no good Design.

Mr. Att. Gen. Pray where did he go when *Mr. Bently* told him they were to be had in *Christ's Church-Yard*?

Kiefe. He went streight into the Yard.

Mr. Att. Gen. What Time was it?

Kiefe. It was in *February*, 99, the latter End of the Term.

Joseph Bently sworn.

Mr. Att. Gen. Pray, my Lord, that *Mr. Bently* may give an Account whether he knows *Hurly*.

Bently. Yes, my Lord, I do — And I remember he came into our Shop to ask for Masquerading Masks or Vizards. — And I think it was about *January* or *February* — I told him we had none. Pray, says he, can you tell me where I can get any? — I said, I cannot tell, unless you get them in the Yard: And he went thro' the Shop into the Yard.

Mr. Att. Gen. When was this?

Bently. It was *January* or *February*, 99.

Mr. Foster. Did you ever see him before that Time?

Bently. Yes, several times — He bought several Things in our Shop.

Mr. Foster. But no Masks?

Bently. No, but asked for Masquerading Masks or Vizards.

Mr. Att. Gen. My Lord, the Reason why we have been the more particular in this, is, that it has made a great Rumour and Noise, that it would be of great Disadvantage to *Mr. Hurly*; and therefore we go to these Particulars, that no Man may pretend but the Matter is made plain against him. We shall produce some few Evidences more.

Mr. Recorder. *Hurly* has lately published a Libel against the Gentlemen of the County.

Mr. Geary sworn.

Mr. Butler. Had you any Discourse with *Mr. Hurly*? And what?

Mr. Att. Gen. Pray give the Court and Jury an Account, Whether you know *Mr. Hurly*, and his Circumstances, and any great Quantity of Money that he had?

Mr. Geary. *Mr. Hurly*, in *February* last was Twelve-month, told me his Protection was out; and he desired me to get a Lodging for him. I desired him to come to my own Lodging in *Capel-street*. When he went out of Town I went with him as far as *Island-Bridge*: He said, he had

no Money: And a Day or two after he writ me a Letter, and desired me to raise his Wife some Money on a Bond of *Capt. Mac-Donnel's*. I sent to *Mr. Connor*, and got him to endorse a Bill to *Mr. Lum*, and the Money was supplied: And after he came to Town again, I went to his Lodging, to *Mr. Rascow's* in *Capel-street*; there were two Soldiers that would not let me in: I spoke to the Sheriff, *Mr. Cusack*; so I went into him, and told him, I was sorry for him. He said, it was for prosecuting *Sir Donat O'Brien*. Says he, you know *Sir Richard Nagle's* Hand, and *Sir Donat O'Brien's*; there are Letters to *King James*; and, said he, you and I must live, and we may get Money by it.

Mr. Sol. Gen. Now, my Lord, we call this Gentleman to shew, that at the Time of his sending this Money, *Mr. Hurly* was in an indigent Condition. When was it?

Mr. Geary. It was in *Michaelmas* Term, 1699.

Mr. Hurly. By Virtue of your Oath, Have you no Gratification for coming here?

Mr. Geary. No, by Virtue of my Oath, I have not.

Thomas Connor sworn.

Mr. Sol. Gen. What do you know of *Mr. Hurly*, about Money?

Thomas Connor. That Gentleman, *Mr. Geary*, came to me, and told me, it would be an Obligation on him to get twenty Pounds for *Mr. Hurly's* Lady: Upon that I drew a Bill of Exchange; so they had the Money, but what they did with it, I do not know.

Mr. Hurly. Was not the Money paid again?

Connor. Yes, it was paid.

Mr. Hurly. Then did I want Money, when you drew the Bill, and the Money was paid?

Mr. Att. Gen. My Lord, *Mr. Hurly* was not able to pay this Bill; and we shall give you an Account who paid it.

Capt. Mac-Donnel sworn.

Mr. Butler. You heard the Evidence of *Mr. Geary*?

Capt. Mac-Donnel. Yes.

Mr. Butler. What do you know of the Matter?

Capt. Mac-Donnel. I did owe some Money by Bond to *Mr. Hurly*, and he writ to me to pay thirty Pounds: I don't know what the Sum was that *Mr. Geary* had advanced; but I writ him word, I would not pay him any such Sum; but I bid him send my Bond to *Capt. Gardiner's* in *Limerick*, and the Money should be paid there; and it was sent accordingly, and the Money was paid: It was something less than 50*l*.

Mr. Att. Gen. Pray, when this Robbery was talked of, did any body apply to you to take you off, that you should not oppose the Presentment, but suffer it to go on.

Capt. Mac-Donnel. *Mr. Hurly* spoke to me to be his Friend. I was always his Friend: And *Capt. Bourk* spoke to me to speak to a Gentleman of the Grand-Jury, that lay with me, (that was much against him) to desire him, that he would not appear against him; and that he and his Tenants should be freed from paying any Part of the Money.

Mr. Ber-

Mr. Bernard. My Lord, I am Council for the Traverfer. The Question is, Whether he be Guilty of Perjury in an Information, sworn before Mr. Blood. — If your Lordships will hear the Proofs, we shall turn the Table, and prove Mr. Hurly was a Man that came with a good Fund of Money into this Kingdom, and left a good Fund in France, and that he drew Bills of Exchange upon his Correspondent in France; that his Correspondent gave him an Account, that Mr. Arthur discovered where all his Effects lay, and all was seized; and the Bills came back protested. Then he comes and advises with Sir William Hardcock, who advised to an Accommodation with Mr. Arthur: And so we did, and agreed to give him what he demanded; and accordingly, we gave him Bonds. And in 1699, we brought a Bill in Chancery. We met Mr. Arthur's Brother in Dublin; he said, we should not be disturbed at the Assizes at Ennis. We went down accordingly, and carried our Money along with us, and we did go another Way, and not by Loughbrea. And we shall shew your Lordships further, that there was a Quarrel between Mr. Hurly and Sir Donagh O'Brien: Sir Donagh had such great Interest in the Country, prevailed with the Jury, for some Reasons, that the Presentment was not found for us at the Assizes; but four Men were taken up for the Robbery, and laid in Irons; and they were told, there was a Commission of Oyer and Terminer coming down, and that they should be Arraigned — Here is Life or Death proposed: If you confess the Matter, and place it upon Hurly, you shall have your Lives; but, if you do not, as soon as the Commission comes down, you shall stretch for it. The Persons were sensible, that those who threatened them could effect it, and they were kept close from all others but these Persons, and they solicited them, until they got them to give in Examinations against Mr. Hurly. But they came afterwards to Mr. Hurly, and told him, it was the Threats and Dangers they were in, made them do what they had done, and that they were troubled for it. And after that, they went before my Lord Chief-Justice Pyne, and they forswore all. After this the Contrivance of the Counters, that must be managed; and a Bag of Counters is brought down to Hicky's Wife, and she must hide it where it may be found by this Huoxin. My Lord, we shall shew your Lordship all these Matters. I apprehend they are Men of Credit that will swear the Matters in my Brief, that Mr. Hurly was really and truly Robb'd, and that these Prosecutions have been carried on by Bribery, and such-like Practices in the Country.

Mr. Foster. We'll shew you, that Mr. Hurly had 2000 l. and that he carried a Part of it into the Country to pay off Arthur. We shall shew where we had the Money, and that he brought it down.

Charles Fitz-Symmons, Merchant, called, did not appear.

John Hurly sworn.

Mr. Foster. Pray give an Account to the Court and the Jury, whether you were employ'd

to receive Money for Mr. Hurly, and of whom?

John Hurly. I was employed in 1696, and I received of Mr. Jeremiah Donovan, 200 l. and Col. Lovet paid me 490 l. for 500 Louis d'Ors.

Court. In what Year did you receive it from Col. Lovet?

John Hurly. It was in 96 or 97.

Mr. Foster. And how much more?

John Hurly. From Mr. Fitz-Symmons, 306 l. 10 s. in 1697. — And I received a Bill in Limerick, of 200 l.

Mr. Foster. What did he bid you do with the Money?

John Hurly. He sent me this Money out of Holland, and bid me secure it for him.

Mr. Foster. Did your Brother lay out any Money for a Mortgage.

John Hurly. Not any at all.

Mr. Hurly. I appeal to the Gentlemen of the Country, whether I did purchase any Thing.

Mr. Recorder. You are not accused for a Purchaser, Sir.

Court. Did you pay him that Money again?

John Hurly. Yes, my Lord.

Court. Was it before he was Robb'd?

John Hurly. Yes, it was.

Court. Pray what Discourse had your Brother with you concerning any Money he had by him?

John Hurly. He told me all along, that he could pay Arthur, and that he had a Fund to pay it. And I tell you, Sir, before this Robbery, I came to his House, and his Wife told me, My Brother will do very well, for that he has brought Money to pay off Arthur. — How do you know that, said I? — Says she, I saw a Bag of Gold with him.

Court. Were you there after the Robbery?

John Hurly. I came next Morning, and I found the Trunks broken open, and all the House in Disorder.

Mr. Foster. Do you know Capt. Lynch?

John Hurly. Yes.

Court. Do you take this Lynch to be a fair honest Man?

John Hurly. I will tell you what I know. About Christmas last, I came to the County of Gallway to Mr. Lynch. — There were some Land that my Father held from him; and he set the Reversion of the Land. I told him, that it was ill done, that we should not have the Preference of the Land; and I told him, my Brother would keep him out two Years. — The Servant that was with me, told me, that he proffer'd him Twenty Pounds to swear the Robbery upon my Brother. — When he came back, I asked him about it, and he said, he feared he would prove him not to be within the Articles of Gallway; and, said he, if he will give me quiet Possession of my Lands, 'tis well; if not, I'll give him a Lift.

Mr. Foster. Do you know of any Jewels that belong to Mr. Hurly, besides the Money.

John Hurly. He gave me a Diamond Ring for my Wife, and shewed me a Ring he said was worth 100 l.

Mr. Foster. Do you know of any Rewards proffered to swear against Hurly?

John Hurly. One Hicky shewed me a Note under Mr. Hickman's Hand, and Mr. Cusack's Hand. That

That *Hickman* and *Cusack* promised to intercede with the Government for Pardon for him and others, if they proved the Robbery on *Patrick Hurly*. — And that they should be found with good Meat, Drink, Washing and Lodging, and discharged without Fees. — He shewed me this Note within a Week or some short Time after he was discharged.

Court. You say, That this Note was no more, than that *Mr. Hickman* and *Mr. Cusack* promised they would intercede to the Government, if so be he would tell the Truth?

John Hurly. Yes. — In proving a Robbery upon *Patrick Hurly*.

Mr. Foster. Were you at *Ennis*?

John Hurly. Yes, I was.

Mr. Foster. Who was there examined on Oath to prove this Robbery?

John Hurly. There was *Dorothy Kemp*, and *Jane Hurly*, and this *Margaret Conneene*, and she was examined at Home.

Mr. Foster. Was *Mr. Ronane* examined?

John Hurly. Yes, and his Man too.

Mr. Sol. Gen. Now, Sir, I'll ask the Witnesses a Question. — Pray what Credit did the Jury give to it? Was you desired by your Brother, before the Robbery, or at the Time of the Robbery, to join with one *Cassey*, to be bound with him for the Money?

John Hurly. I was desired to join with *Cassey*. My Brother pretended I owed him Money. I told him it was an unreasonable Thing, for I had my Rent to pay.

Mr. Sol. Gen. Did you pass a Bond to *Cassey*, *Mr. Hurly*?

John Hurly. I did, Sir; I told you before.

Mr. Sol. Gen. Who was bound in that Bond?

John Hurly. None but my self.

Mr. Sol. Gen. Who did you give the Bond to?

John Hurly. I gave it to *Cassey*.

Mr. Sol. Gen. My Lord, about *Christmas* last was Twelve-month, he comes to this Gentleman, his Brother, and desired he would get him Fifty Pounds, and he told him, he craved yet the Money, if he would pass his Bond for it to one *Cassey*, which he accordingly did: This Bond comes into *Patrick Hurly's* Hand, and he enters up the Judgment, and an Execution upon it, against his Brother's Goods, for his own Use. Sir, had you any Money from *Cassey*?

John Hurly. No, I had none.

Mr. Sol. Gen. Who took the Execution out, and who took your Goods upon that Execution?

John Hurly. *Charles Mac-Donogh* did it; I paid him the Money.

Mr. Sol. Gen. Who had the Money for *Charles Mac-Donogh*?

John Hurly. I had it, Sir. — I will unriddle this Matter. — I was very unwilling to go to Law. — I came to *Cassey*, and desired him to pretend to lend me 50*l.* and my Brother would give him his Bond for it. — He will pay you, said I, but will not pay it me.

Court. Did you owe your Brother 50*l.*

John Hurly. I did owe him near it, only he took some Cattle of mine.

Mr. Att. Gen. Pray, Sir, are you in Custody of the *Marshalsea*, at your Brother's Suit?

John Hurly. Yes, I am; and likewise at *Mr. O'Brien's* and *Mr. Fitz-Simon's* Suit. The Money

that I received from *Mr. Fitz-Simons*, and paid my Brother the same Day, I am now in Custody for it since *April* last.

Mr. Recorder. You say, that you received several Sums of Money for your Brother, and you said, there was a Balance between you and your Brother: How much was that Balance? And what became of it? How much Money had your Brother in 97, 98, and 99?

John Hurly. When my Brother went into the Country, I discounted with him.

Mr. Att. Gen. You say, you received several Sums; that you paid 200*l.* to *Mr. Gardner*, and some other Sums: How much did you pay back in Specie to your Brother?

John Hurly. The Money *Mr. Fitz-Simons* gave me, I came to my Brother's Lodging, and paid it him.

Court. This is a Matter that has been transacted within the Compass of three or four Years, and this cannot slip out of your Memory. You say, all the Money you received of *Fitz-Simons* you paid your Brother again. — What more did you pay him?

Hurly. I paid him the 200*l.* in *Limerick*. — I paid him 190*l.* or thereabouts, more.

Court. When was that?

Hurly. I paid it him in the Year 1697, in the beginning of 98.

Mr. Sol. Gen. You say, you paid *Mr. Burton* 200*l.* — Did you pay any others?

Hurly. I paid him no more, but what I paid him for the Farm — I gave him Bullocks, 20 old Bullocks, at 46*s.* a-piece, and the rest came to 30*l.* more.

Mr. Sol. Gen. There was a Sum of 200*l.* paid, and the rest drawn out in small Sums from Time to Time, as he had Occasion to call for't: How much was *Brien's* Money?

Hurly. It was about 40*l.* and I gave him a Bond of *Capt. Lynch's*, of about 6*l.* 10*s.* and I gave him a Bond on a Brother-in-Law of mine, and a Bond on *Lynch*.

Mr. Att. Gen. How much of the Money that you received for *Patrick Hurly*, did you lend out, and to whom? — Did it amount to 200*l.*?

Hurly. Yes, it did.

Mr. Att. Gen. Did it amount to 300*l.*?

Hurly. No, it did not.

Mr. Att. Gen. Was this Money paid back again to *Mr. Fitz-Simons*?

Hurly. I have a Bill in *Chancery* against him.

Mr. Recorder. I desire to know, whether *Mr. Fitz-Simons* had the 300*l.* back again?

Hurly. My Brother told me he paid him every Farthing, and said, he had a Discharge from him.

Mr. Recorder. Pray how much of this Money had *Mr. Arthur*?

Hurly. I don't know of any Dealing with *Mr. Arthur*.

Mr. Att. Gen. I did hear, that he assigned a Bond of *Capt. Christopher O'Brien's* to him.

Hurly. That 300*l.* my Brother owed me; and the Bond my Brother gave for it, I gave *Mr. Fitz-Simons* the Bond, and he arrested him on it.

Mr. Att. Gen. Pray, Sir, did you send any *Holland Sheets*, after this pretended Robbery, to any Place?

Hurly. Yes, I did, to *Capt. O'Brien's*.

F f f

Mr. Att.

Mr. Att. Gen. Where did you find them?

Hurly. I will tell you, my Lord. — We were told, that one *Halloway* was coming to my Father's, at the Suit of one *Neylan*, to take all away. — My Father sent for me, and desired me to come to him, for *Halloway* was coming to ransack the House.

Mr. Att. Gen. How long was this after the Robbery?

Hurly. It was a Month afterwards. — I came there, and one of the Maids told me there was a Portmanteau in the Turf-stack. — I took it Home that Night, and I was order'd by her to deliver it to *Capt. Christopher O'Brien*. I sent for him to a Friend's House, and opened it before *Capt. O'Brien*, and took an Inventory of what was in it. — There were five or six Pair of *Holland Sheets*. — This was a Month or two after the Robbery.

Mr. Recorder. Another Man swore, it was the beginning of *May*, or the latter end of *April*.

Mr. Foster. We had this Money, and will shew you how we lost this Money, and shall prove the Robbery.

Dorothy Kemp sworn.

Mr. Foster. Pray *Mrs. Kemp*, where did you dwell in 99?

Mrs. Kemp. I dwelt in *Moughna* in the County of *Clare*, within a quarter of a Mile where *Mr. Hurly* lived.

Court. Where did you live at the Time that he was robbed? Were you in the House when the Robbery was committed?

Mrs. Kemp. Yes, I was.

Court. Pray give an Account what you know of that Robbery.

Mrs. Kemp. My Lord, There was Counsellor *Ronane* three Days waiting for *Mr. Arthur* to pay him some Money. My Mistress went out of Town upon *Saturday* before, and took some Gold out of her Chest, and shew'd some of it, and put it in again; and she did not come Home till *Monday Morning* after the Robbery was committed. I went to the Trunk, to get some Table-Linnen, and I laid my Hand on the Bag were the Gold was. My Master came in the mean time, and said, What do you do there? I said, I wanted some Table-Linnen; and my Master took away the Bag, and put it into the Closet.

Court. And so you concluded, that was the Bag of Gold?

Mrs. Kemp. Yes, I did.

Court. Did you know any of the People that were at the Robbery?

Mrs. Kemp. No, my Lord, I did not.

Court. How many Robbers were there?

Mrs. Kemp. As I understand, there were seven of them.

Court. Did you see them all?

Mrs. Kemp. Just after Supper, Counsellor *Ronane* got up to go to Bed, and went out of the Door, and then the Robbers got in. We went up to lay down the Bed, and my Master's Man came running and crying, my Master is murdered; so we got open the Door, and there was five came up with Swords and Pistols.

Court. Had they any Masks or Vizards?

Mrs. Kemp. I cannot tell. They commanded us into the Room, where my Master's Father lay Bed-ridden these three Years past.

Court. How many did you see there at that Time?

Mrs. Kemp. I saw five come up, and there was two more in the Parlour.

Court. Pray Mistress, by Virtue of your Oath, what Arms was there?

Mrs. Kemp. My Lord, we kept Arms just by the Door, a Carbine and Fuzee, because he was something in Debt.

Court. Were those the same Arms your Master had before?

Mrs. Kemp. I cannot tell; but they took his Pistols, and put Gravel into them.

Mr. Att. Gen. Who put the Gravel into the Pistols?

Mrs. Kemp. The Tories.

Mr. Bernard. Was there any Offers made to her to put Counters into *Hicky's House*?

Mrs. Kemp. My Lord, I was promised Ten Pounds, to put Counters into my Master's House.

Court. She says, she was desired by one *Murrough O'Brien*, to lay Counters in her Master's House, or *Hicky's House*; a Bribe of Ten Pounds was offered her, and she refused it. But that he sent to *Daniel Hicky's Wife* twenty times; and she has some of the Letters he writ.

Court. By whom were these Letters written?

Mrs. Kemp. By *Murrough O'Brien*, for his Man brought them.

Court. Pray when was this, that you were offered Ten Pounds to hide Counters in your Master's House, or *Hicky's*?

Mrs. Kemp. It was before the Assizes a pretty while.

Mr. Sol. Gen. My Lord, here is *Donogh O'Brien*.

Court. Where was it he offered you this Money.

Mrs. Kemp. It was at *Shenoge*, a quarter of a Mile from where he lives.

Mr. Recorder. And he was to give you Ten Pounds to bury Counters in *Hicky's House*.

Mr. Butler. When the Rogues came in, how did they use your Master?

Mrs. Kemp. They ty'd him, and Counsellor *Ronane*.

Mr. Foster. You know *Murrough O'Brien*; Pray how often did you see him with *Mrs. Hicky*?

Mrs. Kemp. I saw him often with her. Said he, *Mrs. Hicky*, *Mr. Hicky* is cast down, and he is not worth a Farthing, he is ty'd Neck and Heels.

Court. Did you hear this?

Mrs. Kemp. She told me so.

Mr. Foster. We only offer it as far as it will go.

Mr. Att. Gen. It will not go at all.

Mr. Sol. Gen. I am told, that *Murrough O'Brien* is in Court; she speaks of some Words and Letters between her and him and *Mrs. Hicky*.

Mr. Foster. What Linnen was taken away by the Robbers?

Mrs. Kemp.

Mrs. Kemp. My Lord, I partly can swear, that I wash'd twenty Pair of *Holland* Sheets; there was thirty Pair, I wash'd twenty Pair my self.

Court. How many was left?

Mrs. Kemp. There was but five Pair.

Court. How came they to leave them behind?

Mrs. Kemp. They did not stay to take them away.

Murough O-Brien sworn.

Court. Pray had you any Discourse with this Woman concerning Counters?

O-Brien. By Virtue of the Oath I have taken, I never had.

Court. Did you never offer her 10 l. to lay Counters in Mrs. Hicky's House?

O-Brien. By Virtue of my Oath, I did not.

Mrs. Kemp. By Virtue of my Oath, you did.

Court. Did you send any Letters to Hicky or his Wife?

O-Brien. Yes, I did write to Hicky, and to his Wife.

Court. Upon what Occasion did you write?

O-Brien. Hicky's Wife came to me, and told me, that if I could get a Protection for her Husband, from Sir *Donough O-Brien*, he would make it plain, that this was a Sham-Robbery: And Hicky's Wife said, she could produce those very Counters. *Charles Mac-Donogh* was by when she said, If we would procure a Pardon for her Husband, they would produce the Counters, and and make the Matter plain.

Mr. Soll. Gen. This Woman says, that *Murough O-Brien* came to Hicky's Wife, and said so and so, and writ Letters to Hicky's Wife. *Murough O-Brien* comes now and says, that Hicky's Wife came to him, and told him, that her Husband could make out the Sham-Robbery, if he could get a Protection for him. Mr. O-Brien, this Woman says, that you did send to Hicky's Wife, and that you did tamper with her.

O-Brien. It's a very improbable Thing, if I had a mind to tamper with her, that I would tamper with Hurly's Whore — My Lord, if I would have come on such a Business, would any one believe that I should employ this Woman, that has had a Bastard or two by Mr. Hurly?

Murough O-Brien's Letter to Hicky read.

Mrs. Hicky,

"I pray do me the Favour to come hither as soon as possible; for I have some Business to talk with you, which chiefly concerns yourself: And least you may apprehend any evil Design against you, I do here promise you, that you shall be as safe as your Heart can wish, whilst you are in the Company of"

Murough O-Brien.

A Second Letter read.

Mrs. Hicky,

"When I sent for you on Saturday was Seven-night, I thought I should see you at Mass, but I missed that Opportunity: I desire you

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"will step hither To-morrow, and meet me in some convenient Place, where we may talk without Censure or Suspicion: I have no other Design, but to serve you and your Husband. Be sure you don't fail to come to me, if you ever expect any Friendship from"

Mac-B.

Daniel Mac-Cay sworn.

Mr. Foster. Where did you live in March, 99?

Mac-Cay. I lived with *Patrick Hurly*.

Court. Where were you the Time of the Robbery?

Mac-Cay. I was in his House, my Lord; I was there on Sunday the 3d of March, and there was *John Ronane* and himself, and they were just going to Bed, and *John Ronane* was going out of the Door, and there came five Persons with naked Swords, and rushed in; they were disguised and disfigured: My Lord, when they came in, they fell'd him down on his Face, and gave him some Strokes; and I was there, and they pursued me and *Gillian Hurly*, and we ran up, and they locked the Door after us; they made a Shot below; then I was assured it was some Bailiffs that came to take my Master; some of the Family was in Bed, and some up.

Mr. Recorder. Your Master was upon his keeping then?

Mac-Cay. And when we heard the Noise below, we got some Sticks, and broke open the Door, and perceived two Fellows at the Door; they made a couple of Shots at us, but did us no Harm; and then came three or four, and one of them pursued me, and made a Shot after me, but did me no Harm. We did not go out till these Fellows went out, and then we broke open the Door, and we found my Master tied fast to his own Bed-side, and Counsellor *Ronane*; and all the Trunks were broke. My Master bid me go to the next Village, and raise the Neighbourhood; so I did.

Court. Pray, Friend, How many did you see of the Robbers?

Mac-Cay. I saw five, my Lord, and two without at the Window.

Court. The Woman said there were five in her Master's Parlour, and two at the Door. Sir, did you know any of the Parties that robbed him, upon your Oath? What Disguises had they? Were they black, or had they Vizards?

Mac-Cay. I cannot tell, my Lord.

Court. Did you take any Notice of any of the Arms, whether those Arms belonged to your Master? Take Care, upon your Oath, you speak nothing but Truth.

Mac-Cay. My Lord, we had Arms of my Master, which they seized on, and we found them abroad next Morning.

Court. Did the Bullets hit any Part of the House?

Mac-Cay. No, my Lord, I did not observe that.

Court. Pray, Friend, was there any more than one Shot made?

Mac-Cay. There was, my Lord.

Court. Was there any Mark of any Bullet to be seen?

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Mac-Cay.

Mac-Cay. I did not see any.

Mr. Forster. You say, they came in with Fire-Arms and Swords; Had your Master any Swords?

Mac-Cay. There was none but one; and they had five naked Swords.

Mr. Forster. They had no Fire-Arms but your Master's?

Mac-Cay. We found them abroad next Morning in the Street.

Mr. Foster. What Road did your Master Hurly travel when he went from this Town, the last Time he was in *Dublin* before the Robbery?

Mac-Cay. He went through the County of *Gallway*, through *Mount-Talbot*.

Mr. Foster. Do you know *Capt. Lynch*?

Mac-Cay. Yes, he lives in *Capperquin*.

Mr. Foster. Were you with your Master all the Way home?

Mac-Cay. Yes, I was.

Court. *Mr. Lynch* said (I must do him right) that he did not remember what Company was with him, but that he drank a Bottle of Wine with him at *Loughbrea*, and there saw the Counters; and it is much about the Time this Man swears.

Mr. Recorder. Exactly, my Lord.

Mr. Foster. Were you with your Master when he was in *Dublin*? Did you see any Quantity of Money with him?

Mac-Cay. Yes, I did.

Court. Pray, did you see any Counters with him?

Mac-Cay. No, my Lord: I was offer'd to have my Fortune raised for ever if I would swear, that he bought the Counters, and brought them to the County of *Clare*.

Court. You saw Money with your Master: Where was it he receiv'd the Money?

Mac-Cay. I do not know; but he shew'd it me, and said, It was a sad Thing to pay away so much Money: And he put his Hand in his Pocket and pull'd out some Gold, some Broad-Pieces and a Gold Cob; and he said, he would keep the Purse, and not take any Thing out until he got home to pay *Mr. Arthur* off.

Carty. Was it in the Portmanteau?

Mac-Cay. Yes, it was.

Mr. Recorder. Was this the Time that your Master was in *Loughbrea*?

Mac-Cay. No, this was in *February*, and it was before *Christmas* he was at *Loughbrea*.

Court. Upon what Occasion was it that your Master shew'd you the Gold?

Mac-Cay. He told me, at his own Lodging in *Warbur-street*, Is it not a sad Thing to pay so much Money to that Rogue *Arthur*, that had serv'd him such a Trick?

Court. Did you take notice of it your self?

Mac-Cay. Yes: It was not Counters; no, I know Gold from Counters.

Court. Were they Guineas or Louis d'Ors?

Mac-Cay. They were Louis d'Ors.

Mr. Butler. Pray, when you went the last time with your Master from *Dublin*; what Way did you go to *Mount-Talbot*? At what Place did you cross the *Shannon*?

Mac-Cay. I do not know the Place; I do not know the Name of the Place at all.

Mr. Butler. Did you swim over, or go over a Bridge?

Mac-Cay. I think we went over a Bridge.

Mr. Butler. What Bridge?

Mac-Cay. I do not know the Name of it.

Court. Did you go thro' *Atblone*?

Mac-Cay. Yes, we went thro' *Atblone*.

Court. If I had said *Laneborough*, he would have said so too.

Mr. Butler. You are positive, that in the last Journey before the Robbery, you nor your Master were not at *Loughbrea*?

Mac-Cay. I am positive.

Mr. Butler. Where did your Master lie the Night before you came to *Tiaquin*?

Mac-Cay. It was at *Balliboy*.

Mr. Butler. Pray, Sir, what Way did you go from *Atblone* to *Eyres-Court* or *Balliboy*?

Mac-Cay. I do not know the Names of the Towns.

Mr. Butler. Pray how far is it from *Tiaquin* to *Eyres-Court*?

Mac-Cay. I do not know.

Mr. Butler. What Way did you come to *Balliboy* back again, for that is on this side the *Shannon*, and many Miles on this side of *Atblone*?

Mac-Cay. My Master had his Brother-in-Law, *Mr. Terry*, along with him, and when he came to *Balliboy* he would see his Sister, and so he went to *Tiaquin*.

Court. How could you go from *Atblone* to *Balliboy*? Did you lie at *Atblone* that Night?

Mac-Cay. No, my Lord, we did lie beyond it, at a Place where there is a Bridge.

Court. Where is that Bridge?

Mac-Cay. It is on the *Shannon*, on this side *Aghrim*.

Mr. Butler. If you please, Sir, did you carry the Portmanteau to *Tiaquin*?

Mac-Cay. Yes, I did.

Mr. Butler. And was it not left at any other Place behind you?

Mac-Cay. No, it was not.

Mr. Butler. You are positive you carried it to *Tiaquin*?

Mac-Cay. Yes, I did carry it to *Tiaquin*.

Mr. Butler. Was it left at *Gort-Insbigory* before you went to *Tiaquin*, or after?

Mac-Cay. My Master hired a Horse, and he was lame; and he desir'd me to go on *Saturday*, before he came himself, or *Capt. Bourk*, and his Father-in-Law kept him.

Mr. Butler. Was the Gold in the Portmanteau at that Time?

Mac-Cay. Yes, it was.

Court. And you carried the Portmanteau to *Gort* from *Tiaquin*?

Mac-Cay. Yes; I came from my Master from *Tiaquin* to *Gort*; he sent me on *Saturday*, and he came on *Sunday* Night.

Mr. Butler. My Lord, I will make it appear, by three or four Men of undoubted Credit, that *Mr. Hurly* did swear, at the Assizes of *Ennis*, that he was at *Loughbrea* before he went to *Tiaquin*, and, that he left the Portmanteau there, and did not carry it to a *Tiaquin*.

Mr. Butler. Did your Master pay for the Horse he hired? or, Did you hear he gave a Bond for it?

Mac-Cay. I do not know.

Court. Do you know of any Bond given by *Mr.*

Mr. Hurly, to pay the Hire of the Horse?

Mac-Cay. I do not know indeed, my Lord.

Mr. Recorder. He said, his Master shew'd him the Money in Town, and said it was a Shame to pay it to *Arthur*. Now, did your Master pay the Money?

Mac-Cay. He told me, that *Arthur* promis'd to come to his House in the County of *Clare*; and, that he would make him take it on easier Terms than if he should pay it in *Dublin*.

Court. If he had the Money, why did he not pay it him?

Mac-Cay. He said, he hoped to compound with *Arthur* easier than to give him all that he demanded.

Mr. Bernard. My Client tells me, that this *Mac-Cay* is a material Witness, as to *Calagban Carty*: Do you know *Calagban Carty*?

Mac-Cay. Yes, very well.

Court. How long have you known him?

Mac-Cay. These two Years.

Court. Were you with him before my Lord Chief-Justice *Pyne*?

Mac-Cay. Yes, I was; he made an Affidavit, and swore before my Lord Chief-Justice *Pyne*.

Court. What was the Substance of it?

Mac-Cay. That he knew nothing of the Robbery; and, that he was much concern'd he had sworn against Mr. Hurly. They lodg'd at the *Black-Bull* in *Church-Street*.

Court. Are you confident, that this *Calagban Carty* swore before my Lord Chief-Justice *Pyne*?

Mac-Cay. Yes, he did.

Mr. Butler. Where did you lie the Night before you went thro' *Athlone*?

Mac-Cay. I am not sure of the Name of any Place where we did lie since we left *Dublin*.

Mr. Butler. You are positive you did lie in a Place that had a Bridge upon a River?

Mac-Cay. Yes, I am.

Court. Pray, one Question more: You say, you have gone with Mr. Hurly several times to the Country; How often did he go *Conaught Way*?

Mac-Cay. He went always *Conaught Way*.

Court. How often has he gone, that you can recollect your self?

Mac-Cay. We came from the County of *Clare* the Summer after I came to him, to *Loughbrea*, and *Eyres-Court*, and over *Banagher-Bridge*, and so to *Munster-Evin*.

Court. Which is the Way you used always to go?

Mac-Cay. That Way; but that Time he went to *Athlone*.

Christopher O'Brien sworn.

Mr. Butler. Pray, Sir, by Virtue of your Oath, did you offer any Money to that Man?

O'Brien. No, upon my Oath.

Mr. Butler. Did you offer him Money, or promise to raise his Fortune, if he would give Evidence about Counters?

O'Brien. Never, my Lord; he came to me and told me, there was some came to his Master, and would swear, that ——— were come from *France*.

Court. Did you ever make him any Promise, or any Offer at all?

O'Brien. Never in my Life, my Lord.

Mac-Cay. Did not you, at the *Swan-Tavern*, when I carried a Letter to Capt. *Bourk*?

Court. How long ago was this?

Mac-Cay. Before the Term, I think.

Court. Was it before *Christmas*?

Mac-Cay. No, my Lord, it was after *Christmas*.

Court. Mr. Hurly, you know the Contrary to this your self: If you'll have me, I'll send for the Examination sworn by your self concerning this Matter.

Pat. Hurly. He speaks to him more than once.

Mr. Recorder. Had you any Discourse with Mr. O'Brien about the Counters?

Mac-Cay. Yes, once or twice.

Mr. Recorder. Had you any Discourse about them more than once?

Mac-Cay. He never spoke to me about the Counters, but once at the *Swan-Tavern*.

Court. That of Mr. O'Brien's tampering with this Man; Mr. Hurly, you are complain'd of before *Christmas* last. He said, he was once with a Letter at the *Swan-Tavern*; and, that Mr. O'Brien did there talk to him about tampering with other Witnesses; but it was before that, that you said Mr. O'Brien tamper'd with himself about the Counters.

Court. Where was it?

Mac-Cay. At the Tavern.

Court. At what Tavern?

Mac-Cay. The *Swan*.

Court. When was this?

Mac-Cay. Before *Christmas*, or a little before the last Term.

Court. He says, it was the Time of his delivering of a Letter.

Mac-Cay. My Lord, I deliver'd a Letter to Capt. *Bourk* at the *Swan-Tavern*, and, I think, it was before *Christmas*.

Court. So that you deliver'd more Letters than one?

Mac-Cay. I deliver'd several to him.

Court. This Gentleman is accus'd by this *Mac-Cay*; and how far that will weigh with any Man, must be left to the Jury.

Mr. Butler. This Mr. *Mac-Cay* was very positive, that the Portmanteau was carried to *Tiaquin*, and, that it was not left behind. I am ready to prove, by two or three credible Evidences, that Mr. Hurly did swear at the *Affizes*, that it was left behind at *Loughbrea*, and, that it was not carried to *Tiaquin*.

Mr. Bernard. My Lord, I desire we may first produce another Witness to the Subornation; *John Crips*, a Person suborn'd to swear against my Client.

John Crips sworn.
(Per Interpreter.)

Court. Where does he live? and, With whom?

Interp. He lives at *Moughna*, in the County of *Clare*.

Court. Ask him, what he can say of any tampering with him to swear against Mr. Hurly.

Interp. He says, one *Halloway* and *Walter Neylan* tamper'd with him: That *Halloway* sent for him three Weeks after Mr. Hurly was taken to *Ennis*, and he ran into a Rabbit-hole, for he was

afraid of him, and sent his Wife to know what he would have of him.

Interp. And, my Lord, he is telling a long Story of this *Halloway* being a troublesome Man; and, that the whole Country would joyn with him, to give an ill Character of him, if it were not for the Persons he appears against. — And, he says, he was always inclin'd to do Evil, and every body was afraid of him.

Court. Ask him, Was there any Offer made to him?

Interp. He says, that *Neylan* and *Halloway* offered him Fifty Pounds to swear against Mr. *Hurly*, that he contriv'd the Robbery against himself.

Court. Were they both together? or, Did they speak to him severally?

Interp. They spoke to him severally.

Court. Ask him, Where was it that *Halloway* propos'd this to him?

Interp. About three Weeks after Mr. *Hurly* was put into Goal, he says, *Halloway* first spoke to him

Court. Did *Halloway* speak to him any more than once?

Interp. He says, He desir'd him to go with him before Mr. *O'Brien*; and he offer'd him Six Guineas to go and prove the Matter, and, that he would give him the rest afterwards.

Court. Was any body by?

Interp. He says, No body.

Court. Where was it that *Neylan* offer'd him the Money?

Interp. He says, my Lord, that *Halloway* used several threatening Words, if he did not comply with what he desir'd him to do; and, that he would send him to Goal at *Ennis*, where he should not see the Light any more.

Court. Can he remember the Day that this was?

Interp. About Six Weeks after *Hurly* was taken.

Court. Where was it that *Neylan* proffer'd him any Reward, and what it was he offer'd him?

[At this the Fellow splutter'd, and made a terrible Noise in Irish.]

Interp. My Lord, he will not answer to the direct Question. He says, my Lord, that *Halloway* threaten'd him, and broke open his Doors, and came there with Arms, and brought a disbanded Soldier, and took him by the Hair of the Head, and threaten'd him, because he did not come to him at the Time appointed.

Court. Did he complain to any Justice?

Interp. He says, He complain'd to Mr. *Fitz-Gerald*.

Court. Pray ask him, what *Neylan* said to him.

Interp. He says, He offer'd him the grazing of Six Collops free, and an House and Garden during his Life, to swear against *Patrick Hurly*.

Mr. Butler. What Time was it that *Neylan* made him this Offer? and, in what Place?

Interp. My Lord, the Answer he made to that is, That *Halloway*, after he had taken him out of his Bed, and dragg'd him by the Hair of the Head, that then they and *Neylan* met.

Court. Where was it he met *Neylan*?

Interp. At *Bally-Ryan*, in a House there.

Court. What Time?

Interp. About a Month before *Michaelmas* last.

Court. Pray ask him, where it was that Mr. *Neylan* did tell him he would give him the Six Collops grazing, to swear against *Patrick Hurly*?

Interp. He says, he will recollect it: He says, last Summer.

Mr. Recorder. I am inform'd, my Lord, that while this Man was ask'd the Question, *Hurly* said, last *Michaelmas*. — *Mr. Hurly.* I never saw any Man, so far presum'd to be a Criminal, behave himself with so much Impudence before.

Court. Mr. *Hurly*, if you don't give over throwing out Words to your Witnesses, we must put you into the Dock. Ask him Interpreter, Does he know *Calaghan Carty*, that was Witness here to day?

Interp. He has known him since he was a little Boy, and his Father, Mother, and Family.

Court. What does he know of that *Carty's* Swearing before my Lord Chief-Justice *Pyne*?

Interp. He says, my Lord, that he did Swear before my Lord Chief-Justice *Pyne*, and there was a great Lady and a young Man by.

Mr. Bernard. Now, as to Mr. *Lynch*, whether he made any Proposal or Offer, or had any Discourse with him on *May-Day* last?

Interp. He says, He saw him the Day before *May-Day*; and, that he was very civil to him: There was some Controversy between him and Mr. *Hurly*, about the Land of *Moughna*; and he said to me, Now *Patrick Hurly* is gone to Goal, and so is *John* too, and they are both in Irons, and they will never retrieve it, and you had best come and live with me in *Conaught*. He told him, That neither his Wife, nor his Mother-in-Law, would consent to go to *Conaught*. Says he, I have set the Land from the *Hurly's* to the *Bloods*, and *Hurly* shall never have any thing to say to it more.

Court. Did he ever persuade him to take a false Oath against Mr. *Hurly*?

Interp. He said, That in his Agreement with the *Bloods*, he reserv'd the Grazing of four Collops, which he should have, if he would swear, that he was one of the Robbers himself, and prove the Robbery upon *Hurly*: And he made answer to *Lynch*, Why should I do that, that will hang me? And then *Lynch* seem'd sorry that he had propos'd it to him.

Mr. Recorder. Ask him, Who was with him when *Calaghan Carty* swore an Examination before my Lord Chief-Justice *Pyne*?

Interp. *Daniel Hicky*, *Daniel Mac-Carty*, *Donogh O'Brien Andrews*, and himself.

Mr. Recorder. How came he to go along with these Persons?

Interp. He says, That he came there to prevent being persuaded to take a false Oath.

Mr. Recorder. Does he know what *Calaghan Carty* swore?

Interp. He does not know.

Mr. Recorder. Who writ the Examination of *Calaghan Carty*?

Interp. He does not know.

Mr.

Mr. Butler. Was it written at my Lord Chief-Justice Pyne's? or, Had he it written before?

Interp. He brought it written to my Lord Chief-Justice Pyne.

Mr. Butler. My Lord, this Man does not seem to be a Man of any Credit. Neylan and Lynch are sworn, pray let them attend.

Court. If two Witnesses speak directly contrary one to the other, must not it be left to the Jury which they will believe? What does the Witness Crips say?

Interp. He desires a Guard, for the Safety of his Person.

Mr. Lynch stands up again.

Court. Mr. Lynch, had you ever any Discourse with this Man concerning Mr. Patrick Hurly and Mr. John Hurly's being in Goal?

Lynch. Yes, I had, my Lord: I said to him, that I heard he has been lately in Dublin, and, that he has been an Evidence for Hurly. No really, says he, I was not; I am weary of him, and if I could get these People, that you set the Land to, to let me be here a Year, I would not live any longer with him.

Court. Did you offer him the grazing of four Collops?

Lynch. I never did, my Lord.

Mr. Butler. The Credit of this Gentleman, and of that Fellow, is left to the Jury.

Lynch. This Discourse was about this Time Twelvemonth, at the Fair of Moughna, and Richard Hurly, Patrick's Uncle, declar'd to me, that it was a Sham-Robbery.

Walter Neylan stands up again.

Court. Mr. Neylan, had you any Discourse with this Man about Mr. Hurly?

Neylan. I never had any Discourse with him, or saw the Man, till this Day, never since he was born.

Court. What Time was it, he says, that he had this Discourse with Neylan?

Mr. Butler. In the Place where he says he had the Discourse with Neylan in a House; there never was a House, nor so much as a Hut there.

Neylan. No, my Lord, there never was a House there in my Memory.

Court. Mr. Neylan, how far is this Moughna from you?

Neylan. Three Miles.

Mr. Bernard. And you not know this Man!

Mr. Wakeham, my Lord Chief-Justice Pyne's Clerk, sworn.

Court. Mr. Wakeham, Sir, pray do you know any Person that came to swear Examinations before my Lord Chief-Justice Pyne, concerning the Robbery of Mr. Hurly in the County of Clare?

Mr. Wakeham. My Lord, there came four Men, but I was busy; the Gentleman read the Examinations.

Court. Do you know the Persons?

Mr. Wakeham. I do not know 'em; they were ordinarily clad; there was a Gentleman, one Mr. Terry, that brought 'em.

Daniel Hicky sworn.

Mr. Bernard. Pray give my Lord an Account of any Offers that were made you, or Threats used to you, to make you swear against Mr. Hurly?

Daniel Hicky. I told it twice before, my Lord, in August last. My Lord, I was taken by William Holloway and Thomas Bourk; they took me to Goal, and they bolted me; and there was Mr. Neylan in the Goal, and he spoke to me about the Robbery that was committed on Mr. Hurly. I said, I knew nothing of it at all: And he told me, I would be hang'd, for it was sworn against me: And I was brought before Mr. Hickman and Cusack, and they told me, That there was one Carty had sworn that I was at the robbing of Mr. Hurly, by his own Consent; and, that if I did not declare it, I should be hang'd; and said, That Mr. Hurly will hang us if we say we robb'd him. Never heed him, said they, it will be no Harm to any Man that swears against him.

Court. How long did you remain in Goal?

Hicky. I was kept in Goal till August, from the 26th of March.

Court. Was any body with you?

Hicky. Calaghan Carty and Daniel Carty.

Court. What had you a Day?

Hicky. We had Twelve Pence a Day; and Mr. Neylan brought red Coats, and would have us swear we had those Coats on when we robb'd Mr. Hurly. And they carried us before Mr. Butler, and we would not swear; and then we got but Nine Pence a Day.

Court. Did you swear, that Mr. Hurly was not robb'd?

Hicky. I did swear, that I was not at the robbing of him my self.

Court. But were you examin'd about this Robbery before Mr. Hickman and Mr. Cusack?

Hicky. They desir'd me to swear, that I was at the robbing of Mr. Hurly with Daniel Carty; and they told me, I should be hang'd if I did not swear it.

Court. Did you swear it?

Hicky. Yes, I did.

Mr. Bernard. After you satisfied these Gentlemen's Importunity, how long was it before you were discharg'd out of Prison?

Hicky. I was kept in Prison till after the Assizes.

Court. Who did you swear was with you at the Robbery?

Hicky. Calaghan Carty, Donogh O'Brien, and Daniel Carty.

Court. Has he any other Name but Donogh O'Brien?

Hicky. Yes, he generally goes by the Name of Donogh O'Brien Andrews; some call him so: His Name is Donogh O'Brien.

Court. How came you to get your Discharge out of Prison?

Hicky. My Lord, when my Lord Chief-Justice Pyne came, we were carried to the Bar. When I was at the Bar, I was told I must take the Affidavit against Mr. Hurly, and if I would not, I should

should return to Goal again. — The Goaler would let no body come near the Bar; for we said, We will tell the Truth, and would not tell a Lye against Mr. Hurly. And he went out, and came in again, and took us back to the Goal.

Mr. Bernard. How long after this were you discharg'd?

Hicky. We petition'd my Lord Chief-Justice, and sent after him to *Limerick*, but got no Answer; and then they sent a *Mittimus* to keep us in Goal. They said, If we got Bail, they would enlarge us: So *Donogh O-Brien's* Friends were bound for him, and I got a Friend to be bound for me; and I was bound for another of the Prisoners.

Court. Did you ever make an Affidavit before my Lord Chief-Justice?

Hicky. Yes, we came to Town, and made an Affidavit before him.

Court. Who was with you?

Hicky. *Calaghan Carty*, *Donogh O-Brien*, *Daniel Carty*, and *Crips*.

Mr. Foster. After you gave in that Affidavit, and went home, what did you do then?

Hicky. We went home then; and we heard that they had a Warrant against us.

Court. You say, you swore before the Lord Chief-Justice, and, that *Calaghan Carty*, *Crips*, and *Donogh O-Brien* were there: And you are very sure that *Calaghan Carty* was one?

Hicky. Yes, he knows me, and I know him; he is my Relation.

Court. Mr. Neylan, you are upon your Oath: Did you see this Person in the Goal at *Ennis*? Pray give an Account of what pass'd there, and what Fine was put upon him, to make him discover.

Neylan. My Lord, when he came to Goal, he fought for me, and I told him that one had discover'd: And he ask'd me, what I would advise him to do? and I said, I'd advise him to discharge a good Conscience.

Mr. Justice Coote. I am not a Judge of the Fact, but the Jury is. Hicky, you were brought before me; and when I examin'd you, you went backward and forward, and I committed you that Night to the Goaler's Care; and when you were brought into the Court, you said, You would stand by the Examination you swore before my Lord Chief-Justice Pyne.

Mr. Soll. Gen. What did Mr. Hickman persuade you to do when, he tamper'd with you?

Hicky. When *Walter Neylan* went from me, I was brought to Mr. Hickman and *Cusack*; and they told me, there was an Examination of Mr. *Daniel Carty*. It is in vain for you, said they, to deny the Fact; but you must say what we will have you to say, or else you shall be hang'd; for *Carty* has sworn, That you and he were at the robbing of *Hurly*; That you left all the Gold and Linnen in his Barn for him.

Mr. Attor. Gen. And did Mr. *Cusack* say so too?

Hicky. Yes, he did say so.

Mr. Soll. Gen. What should be the Seducement of Mr. Hickman, or *Cusack*, to have you forswear your self?

Hicky. There was a Contrivance between *Halloway*, *Hickman*, and *Carty*, to swear.

Mr. Soll. Gen. But why should Mr. Hickman do this? What End could he have in it?

Hicky. I cannot tell.

Mr. Attor. Gen. You Hicky, is Mr. Hickman a Papist, or Mr. *Cusack*?

Hicky. No, Sir.

Mr. Attor. Gen. For what Purpose should they come to you, to have you forswear your self?

Hicky. They did do it.

Mr. Dean. What became of that Note Mr. Hickman and *Cusack* gave you?

Hicky. *Calaghan* had it, and brought it to Town.

Mr. Butler. Hicky, you were examin'd at this Bar before: Did not you swear the same Thing against Mr. *Cusack*? And after, when he came into Court, and you saw him, did not you retract in open Court what you swore before? Did you? or, Did you not?

Hicky. I cannot tell what I did: I told him that he gave me the Note.

Mr. J. Coote. Then I'll tell you what you did. Mr. *Cusack*, to the best of my remembrance, came to the Side-Bar there. Mr. Hurly, you were there; and after Mr. *Cusack* came in, this Person was asked the Question, Whether that Mr. *Cusack* tamper'd with him? And he said, No, that he only desired him to swear nothing but the Truth.

Mr. Huish sworn.

Mr. J. Coote. I'll ask Mr. Huish a Question or two; for such a Fellow as this is not to be endured. Mr. Huish, was not you present when this Man was brought before me?

Mr. Huish. I was, my Lord.

Court. I only ask, what happened in my House, as to the Behaviour of this Man?

Mr. Huish. When I came first, the Book was put into his Hand, and he was sworn: But, on Examination, he seemed to be fullen, and would not answer: But he owned, that the Examination he gave in the Goal was false, and the Examination he gave before my Lord Chief-Justice was true. And when you sat down to reduce what he said into Writing, he began to retract. When it was written, that he said, that before my Lord Chief-Justice was true, and the other false, he began to fall off and falter, and said, Did I say so? You examined him alone that time, and gave him Encouragement to speak the Truth. And after it was asked, Had you rather be examined before the Judge alone, or before all the People here? Then he was for being examined before the Judge alone. So I went out, and left him and this *Daniel Hicky* together for near three Quarters of an Hour: Then your Lordship called us in, and said, this Fellow is fullen, and will not give any Account.

Mr. J. Coote. I did press this Man to tell the Truth; did Hickman or any of those People entice him to swear any false Oath? and one Time he said, They did not; and another Time he said, They did.

Mr. Foster.

Mr. *Foster*. Did he at any Time desire that his Examination should be deferr'd, until he came to Court the next Day?

Mr. *Huish*. Truly, I don't remember that Particular.

Mr. *Foster*. *Hicky*, What was the Meaning, that when you were examined before Mr. Justice *Coot*, that you said, Did I say it? or did I not say it?

Hicky. I was afraid some of them would swear against me: They were following me all Day—Mr. *O'Brien's* Man was after me: And Mr. *Huonin* came and told me, I should be hang'd if I did it not.

Donogh O'Brien Andrews *sworn*.

Mr. *Foster*. My Lord, if it please your Lordship, I desire he may give an Account of this Matter.

O'Brien.—My Lord, I was then Prisoner by *Thomas Bourk*, and they would shew no Warrant, till they had ty'd me with a Cord, carried me to *Emis*, and bolted me; and afterwards brought me before Mr. *Hickman*—And they told me, that *Daniel Carty* had given an Examination against me, that I was one of the Persons employed to rob *Hurly*; and that if I did swear as *Carty* did, I should have the same Reward *Carty* had; and that it was not for me to pretend to live in the County of *Clare*, if I did not swear as *Carty* did.

Court. And did you swear then?

O'Brien. If your Lordship pleases, I'll declare the Matter.—*Tom Hickman* and *John Cusack* told me, that I had Reason to curse the Time that I did not swear as *Daniel Carty* did.

Mr. *Att. Gen.* How long is it since Mr. *Hickman* and you were so familiar, that you call him *Tom*?

O'Brien. They said, I should be hang'd for it, if there were no more Men in the Kingdom; and I was accordingly sent into the Dungeon, and hand-cuff'd, and they came and ty'd me, and told me, that *Calaghan Carty* and *Daniel Carty* had sworn; and they would put a Lump of Gold in my Wife's Lap, if I would swear I was employed to rob Mr. *Hurly*: And *Halloway* came to me, and said, Declare the Truth of the Matter, and swear as the rest did, and I'll go and speak to the Goaler, and get you eased as well as *Carty*. Every Day *Halloway* came to me and said, I should want for nothing, if I would swear as they did. So on Sunday Morning a Yoke was brought to me, and they were going to yoke me, but they did not do it; and after Service, that Sunday, *Tom Buck* came to me, and told me, they came from *Tom Hickman*, and if I did not say as the rest had said, I should be hanged; but I was weary of the Bolt and Hand-cuff, and I had not my Friends to come near me, nor my Wife, so I resolved I would do any thing, rather than lie in the Condition I was in, and I said, I would swear what they pleased.

Court. And did you swear?

O'Brien. My Lord, upon this Answer my Bolts were taken off, and the Hand-cuff; and I was carried abroad to *William Butler*, and he asked me, when I came before him, Why I was

so obstinate against the County, as I had been? But if you resolve to do it now, says he, it will do as well; and if you swear as the rest did, you shall have as good a Reward as *Daniel Carty*, and twelve Pence a Day, during the Time you was confined.

Court. Did you not repeat the Words he had then written down?—Did not you speak the Words he had written?

O'Brien. No, I did not.

Court. But you swore to them afterwards—Did he read the Examination to you?

O'Brien. Yes, he did.

Court. Did you swear to it?

O'Brien. Yes, I did it to ease my self.

Mr. *Recorder*. Is the Examination true, at this Day?

O'Brien. No, it is not.

Mr. *Sol. Gen.* I desire that Examination may be read, and he may tell us, what part of it is true, and what not.

O'Brien. My Lord, I after went to Goal, and received the Allowance Mr. *Butler* ordered me, twelve Pence a Day—And, my Lord, some time in Summer before the Assizes, *Walter Neylan*, that was now in Court, brought down one of Mr. *Hurly's* Coats, and asked us, Whether we knew these Coats that we wore in the Robbery?—He told us, Mr. *Butler* desired us to swear to the Coats; but we refused to do it; and then we were turned into the Goal, and 6d. of the 1 s. taken from us.

Mr. *Robbins*. Were you sworn last August, and before whom?

O'Brien. Before the Lord Chief-Justice *Pyne*.

Mr. *Robbins*. Did *Calaghan Carty* make an Affidavit at the same time?

O'Brien. Yes, he did.

Mr. *Sol. Gen.* Who writ your Examination?

O'Brien. I writ it my self.

Mr. *Sol. Gen.* Who writ *Calaghan Carty's* Examination?

O'Brien. I do not know; I was by at the swearing of it.

Mr. *Sol. Gen.* Who writ *Hicky's* Examination?

O'Brien. He writ it himself.

Mr. *Sol. Gen.* How long were you in Town before you gave in your Examination?

O'Brien. It was not passing three or four Days.

Mr. *Sol. Gen.* Who came into your Company?

O'Brien. No body, until I came to *Kiltartan*, and that Night *Madam Hurly* came into the House, and lay in the House that Night, she and her Brother.—She ask'd me where I was going? I told her, I was coming to Town to declare the Truth.

Mr. *Sol. Gen.* And did you come to Town in their Company?

O'Brien. Yes, I did.

Mr. *Sol. Gen.* And what other Company came along with you and Mrs. *Hurly*?

O'Brien. There was no body but *Terry* and *Crips*.

Mr. *Sol. Gen.* And within three or four Days after you came, you swore the Examination?

O'Brien. Yes, I did.

Mr. Sol. Gen. How long after you came to Town, did you see *Calaghan Carty*?

O'Brien. I saw him at *Kilcock*, before I came to Town.

Mr. Sol. Gen. And where did you meet *Daniel Hicky*?

O'Brien. Coming towards *Kilcock*.

Mr. Sol. Gen. It was remarkable, that he should accidentally meet Mrs. *Hurly* and her Brother at *Kiltartan*, and *Calaghan Carty* and *Hicky* and she should meet on the Road and Way together, to clear their Consciences! — Did *Hicky*, *Carty* and you lie in one Lodging?

O'Brien. I lay in *Church-street*.

Mr. Sol. Gen. And *Calaghan Carty* and *Hicky* lay there too?

O'Brien. Yes, they did.

Mr. Sol. Gen. Were you examin'd in Irons?

O'Brien. No, I was not: I had them taken off me, and was carry'd abroad; and I was told, That if I did not swear as the rest did, I should be hang'd in eight Days time.

Mr. Recorder. Would Mr. *Butler* make you forswear your self?

O'Brien. He would make me swear as the rest did.

Mr. Sol. Gen. What Distance from the Goal was you examin'd?

O'Brien. Near the Goal.

Mr. Sol. Gen. Had you any Hand-cuffs, or Irons, when examined.

O'Brien. No, I had not.

Mr. Sol. Gen. My Lord, I must ask this Man, whether his Father be in Town, and whether he had any Discourse with his Father — Do you know your Father?

O'Brien. I know my reputed Father.

Mr. Attorn. Gen. By Virtue of your Oath, Did you see your Father since you came to Town?

O'Brien. No, I did not.

Mr. Attorn. Gen. Had you any Discourse with your Father concerning this pretended Robbery? — And did you say any thing to him about it, and what was't?

O'Brien. I saw him at Home; I never acknowledged to him I was concern'd in this Robbery.

Mr. Recorder. Pray, my Lord, did he declare to his Father, that he was concern'd in this Sham-Robbery?

O'Brien. No, I did not.

Mr. Recorder. Did you tell your Father any thing of the Contrivance; or would your Father have prevail'd with you to own you were in the Robbery?

O'Brien. Yes, he would.

Mr. Recorder. Did you ever tell your Father, that you used Mr. *Hurly's* own Arms in the Robbery?

O'Brien. No, I did not.

Mr. Recorder. Well, now we'll call your Father.

Donogh O'Brien Andrews senior sworn.

Mr. Sol. Gen. Pray, upon the Oath you have taken, give an Account of what Discourse pass'd between your Son and you about this Robbery?

Donogh O'Brien Andrews senior. My Lord, this will be look'd upon to be very strange, and very unnatural, for a Father to appear against his Son; yet I must have regard to my Oath, and shall not be backward to declare the Truth — When this Robbery happen'd, some time pass'd, before the Contrivance of it was fully discovered, and when my Son was taken and carry'd to Goal about it, I did not go near him for three Weeks. When I went to him, I was passionately concern'd for him, and I ask'd him, What should make him so wicked, as to be concern'd in such a Fact, as he and the other Rogues were accused of? And I asked him with Vehemence, Did you do it? He said, Yes, I did do it; and he never deny'd it, nor no one doubted of it until such time as he went afterwards to *Dublin*. The Particulars I was not curious in asking him, because I had an Account of them from others; and all Men allowed them to be true, because they own'd it themselves. After the Assizes, and that they came out of Goal, I took Opportunity to discourse my Son; but found by him, that he had no mind to discourse me — But then, my Lord, I asked him one Day, Whose Arms he had; were they *Patrick Hurly's*? Says he, Where else should I get Arms.

Court. Had you all this Discourse with your Son *Donogh O'Brien*, that young Man there?

Old Donogh. Yes, I had.

Young Donogh O'Brien. When he taxed me with this, I was indifferent in the matter; and when he asked me about the Arms, Whether they were *Patrick Hurly's* Arms? What else, said I.

Mr. Sol. Gen. Is the rest that your Father said true or not? You have heard what your Father said, That you confessed to him you were concern'd in the Robbery?

Young Donogh. I said what I told you of the Arms; but as to the other part, I do not remember that ever I said it to him.

Mr. Sol. Gen. Old Man, Do you remember?

Old Donogh. Aye very well, too well, to my Sorrow.

Mr. Recorder. Young Man, Do you believe that he is relating Truth or not?

Young Donogh. I do not know whether he is or no.

Mr. Sol. Gen. Are you a married Man?

Young Donogh. Yes, I am.

Mr. Att. Gen. Pray who are you married to? What Relation is your Wife to Mr. *Hurly*?

Young Donogh. Mr. *Hurly* is her Uncle.

Mr. Foster. Old Man, What Relation are you to Sir *Donogh O'Brien*?

Old Donogh. I know no Consanguinity between Sir *Donogh O'Brien* and me: But Sir *Donogh* purchased the Reversion of my Farm, and I live in it, paying him Rent.

Patrick Hurly. Pray whose Horse, and whose Expence brought him here?

Old Donogh. The Horse belongs to one Mr. *Everbing*.

Patrick Hurly. At whose Charge?

Old Donogh. At the County's Charge, who prosecuted you for Perjury.

Court.

Court. Do you expect any Abatement of your Rent?

O. Donogh. I am so far from it, that I am raised 50 l. this Year more than ever.

Court. By whom?

O. Donogh. By my Landlord, Sir *Donogh O'Brien*.

Court. Are you to have an Abatement from Sir *Donogh O'Brien*, after this Year?

O. Donogh. I am not to have any. I have not any Trick or Quillet in any way: I do not expect any thing of that sort.

Mr. Sol. Gen. There is another Part of this Young *O'Brien Andrews's* Evidence, that relates to the Justice of the Peace, *Mr. Butler*, and he is here in Court.

Mr. Attor. Gen. Your Lordship has heard the Evidence of this young *Donogh O'Brien Andrews*, wherein he has been flinging against a whole Court and County.

Court. It was never otherwise; tho' a Justice of Peace be in the just Execution of his Office, yet when Criminals come to be charged, they'll recriminate those that appear against them.

William Butler sworn.

William Butler. My Lord, I had an Account, that this Sham-Robbery, that *Mr. Hurly* set up, as I do believe, was discovered by *Carty*; and I had an Account that *Donogh O'Brien*, that young Man, was in Goal, and was willing to make an ample Discovery too; and I rid to *Ennis*, and went to my Quarters where I generally lodge, and sent to the Goaler for him, who brought him to me; and then I told him, my Business to Town was to examine him, if he were willing to give a true Account of the Matter. He went then about proposing to make Bargains with me, but I told him I had no more to say; but if he would give a true Account of the Robbery of *Mr. Hurly*, any Kindness I could do for him, it should be done. He said, he was afraid of the Gallows; and, sitting down, gave me that Examination which he has given me, and I have writ it down faithfully, as distinctly and truly, as if it was for Life and Death; and I promised him nothing, nor threatened him. He seemed to be so penitent for being concerned in the Action, and was so much troubled that it was discovered against *Mr. Hurly*, that he wept a great deal in my Company, and did declare, That if others had not discovered against *Mr. Hurly*, he never would. And I parted with him, and bid the Goaler be civil to him.

Mr. Sol. Gen. *Mr. Butler*, Did you tell him, that he should be hanged, if he did not swear?

Butler. By Virtue of my Oath, I did not.

Y. Donogh. Did not you tell me, the Quarter-Sessions was adjourned for a Week longer, on account of this Commission of Oyer and Terminer?

Butler. No, by Virtue of my Oath, I did not — I sent for *Mr. Hickman*, and he was with me by the time I went midway thro' this his Examination; and when I had finish'd it, it was read to him distinctly, and he swore to it.

Mr. Attor. Gen. Now, my Lord, if your Lord-

ship be pleased, the Examination that was taken by *Mr. Butler*, I desire it may be read Paragraph by Paragraph.

Mr. Sol. Gen. Was this Information written by *Mr. Butler* out of his own Head; or did you give him that Account as it is down there, or is it a Story framed by him?

Y. Donogh. *Mr. Butler* writ it. I told him several Things, but he framed them as he pleased himself.

Mr. Sol. Gen. What Information did you give then to *Mr. Butler*?

Y. Donogh. I don't remember.

M. Sol. Gen. 'Tis impossible for any Man to frame such a Thing out of his own Head

Mr. Foster. Whether there was not a Report, that there was a Commission to come down of Oyer and Terminer?

Mr. Butler. They did talk so, but I had no Discourse of it; I used him mildly, and only desired him to tell the Truth.

The Examination read.

Mr. Recorder. Did you lie at *Daniel O'Keane's* House that Night after the Robbery?

William Butler. Yes, I did.

Mr. Recorder. Who told *Mr. Butler* that?

Y. Donogh. I told him it.

Donogh O'Brien's Second Examination, taken before Lord Chief-Justice Pyne, read; where he answers what he swore in the former.

Mr. Foster. I desire, my Lord, the Examination before *Baron Ecklin* may be read.

[Clerk reads Calagan Carty's Examination before Baron Ecklin.]

Mr. Sol. Gen. My Lord, I desire the same Method may be observ'd in this, as in other Cases; for Hands may be alike, and not the same.

Mr. Robbins. Here has been two Examinations of *Calagan Carty*; one he owns, the other he denies. Now, my Lord, we have produc'd three or four Witnesses, that he was never before my Lord Chief-Justice, and there swore, that what he had formerly swore in the Country was false, that *Patrick Hurly* did contrive a Robbery against himself.

Mr. Recorder. *Mr. Robbins* (with submission, my Lord,) is mightily mistaken; they said, there was an Examination taken before my Lord Chief-Justice, but not that this was it.

Mr. Butler. You cannot here read an Affidavit sworn before a Baron of the *Exchequer*; there is no Colour for it.

Court. *Calagan Carty*, Pray, were you examin'd before any of the Judges as to that Matter?

Carty. No, my Lord, never in my Life.

Mr. Sol. Gen. Never in his Life. — There is no proving it but by my Lord Chief-Justice, and to prove that this is the Man; for a Man may come in the Name of another Person and swear, and the Man he personates know nothing of the Matter. — Who drew your Examination, *Donogh O'Brien*?

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Carty.

Carty. I did it my self.

Mr. Sol. Gen. And who drew *Hicky's*?

Carty. Himself.

Mr. Sol. Gen. And who drew *Calaghan Carty's*?

— I can't tell.

Court. I never knew an Examination, but where the Person was examin'd, whether it was true or not; otherwise it goes for nothing; and if the Person does not own it now, it must be prov'd upon him.

Mr. Foster. My Lord, an Examination given in before the Court, and upon Record, we come and desire it may be read, to confront an Evidence; for this Man is forsworn.

Court. I had the Curiosity my self, for the Satisfaction of Justice, to send for my Lord Chief-Justice's Clerk, *Mr. Wakebam*, and examin'd him here in open Court. Being examin'd, I remember, said he, there did come such four Men, and they were sworn before my Lord Chief-Justice; but, that this is one of the Men, I cannot swear.

Mr. Sol. Gen. I have no such Examination at all. If you please, read the Affidavit before *Baron Ecklin*.

Mr. Recorder. [Comparing the Affidavits.] These are both the same, Word for Word, drawn both by *Mr. Terry*; they are both his Hand-writing.

Mr. Butler. I desire *Mr. William Butler* may give an Account (he is sworn) about the Portmanteau; Whether *Mr. Hurly* did not swear, that he left the Portmanteau at *Loughbrea*, at *Bargery's* House, whilst he went to see his Brother at *Tiaquin*?

Christopher O'Brien. My Lord, I ask'd *Patrick Hurly*, what Care he took of his Money at his coming to the Country? he said, He left it at *Loughbrea*, and would not carry it to *Tiaquin*, for that was a loose Family. — This he told at his own House, after he had sworn it in the Court.

Mr. Taylor sworn.

Mr. Butler. *Mr. Taylor*, declare what you know of *Mr. Hurly's* swearing at the Assizes, about the Portmanteau.

Mr. Taylor. I was at the Assizes at *Ennis*, and *Mr. Hurly* swore, that he left his Portmanteau at *Loughbrea* when he went to *Tiaquin*; and, that he told *Mr. Bargery* there was Matters of great Consequence in the Portmanteau, and desir'd him to take care of it; and, that *Bargery* did so, and deliver'd it safe to him at his Return.

Mr. Hurly. *Mr. Butler* knows the County of *Galloway*: I desire to know, whether it is likely for me, going to the County of *Clare*, that I should leave my Portmanteau at *Loughbrea*, and come back again?

Mr. Butler. I don't know that; but you did swear it.

Mr. Recorder. And his Man swore he carried it with him to *Tiaquin*. So 'tis — *Trim Tram*, like *Master like Man*, both forsworn.

Mr. Sol. Gen. My Lord, the Persons produc'd by *Mr. Hurly* are Men, by their own Confession, who at some Time or other were forsworn; and they are such Men as have nothing between them and the Gallows but this Shifting: They are sensible no Jury can believe them.

Mr. Robbins. My Lord, we are charg'd but with one Indictment; there is but one *Venire*, I think.

Mr. Butler. There are two.

Mr. Attor. Gen. *Mr. Robbins*, if your Client be guilty of the Perjury, clear him of the Cheat if you can.

Court. The constant Practice of this Court is, That if there goes a *Venire* between the King and a Party indicted, and that there be several Indictments against the same Party, the Court will charge the Jury with 'em all, unless he comes in by Council, and shew some good Cause why you cannot go on with some of 'em.

Mr. Attor. Gen. My Lord, I think that the Contrivance is made out so fully to the Satisfaction of every Man present, that there never was stronger Evidence than of both these Villainies, the Perjury, and Conspiracy to Cheat. When a Man has liv'd extravagantly, and then goes about all manner of Ways to retrieve himself, if Perjury goes unpunish'd, it shall lie at the Door of those Gentlemen that have heard this Matter so fully prov'd to day; and this poor Country must suffer by Perjury, if Care be not taken to suppress it. 'Tis now growing late, and I will not take up more Time in summing up this long Evidence to the Jury, but leave it to the Court.

Mr. Justice Coote. Gentlemen of the Jury, you have heard a very long Evidence; and I will repeat the Heads of it to you as well as I can, that you may discharge your selves with Honour and Conscience. You have taken an Oath, and I hope you will not be led to the preventing of Justice, one way or the other. *Mr. Hurly* stands indicted here of Perjury, for making a false corrupt Oath before a Justice of Peace, *Mr. Blood*; before whom he swore, in an Examination, that was read in Evidence, That he was robb'd of so many Guineas, Pistoles, and other Goods, at his Father's House in *Moughna*, in the County of *Clare*: That he was robb'd by four Persons, whose Names he knows not, but by their Tone they seem'd to be *Irishmen*; and, that the same was not done by any Contrivance of his. After which, he did exhibit a Petition to the Judges of Assize, and did endeavour to recover from the County the Value of what he was so robb'd of.

Gentlemen, *Mr. Dean Blood* prov'd to you, That the Prisoner at the Bar did take his Oath, that the Contents of the said Examination was true, and, that he sign'd it in his Presence.

Gentlemen, the first Witness that was produc'd unto you to prove the Perjury, and that *Mr. Hurly* was not robb'd, but had sworn falsely in that Information, was one *Calaghan Carty*: And he being sworn, tells you, That at the Time that this Robbery was committed he was in *Mr. Hurly's* Service; and, that *Mr. Hurly* came to him, and made Moan to him, that he did owe Money; and, that he could pay his Debts if this same *Calaghan Carty* would observe his Directions, and do what he would have him to do; and, that thereupon this *Calaghan Carty* did tell him, he would; and the Direction was, That he should joyn other Persons, he nam'd, and put on a Disguise, and take an Opportunity when *Mr. Ronane* was at the House, and personate themselves

selves to be Robbers, and take away the Goods and Money out of the House, and when they should have so done, to return them again. And this *Calaghan Carty* was to go to one *Mr. Foster's* for a Suit of black Clothes, and he was to come back again. These were the Orders he receiv'd, by the Direction of *Mr. Hurly*. He tells you, That he did accordingly join the rest; that they had Coats, Disguises, and Swords left for 'em in the Barn, which they took and put on; that they did actually bolt into the House at *Mr. Ronane's* coming out of the Door, and took those Fire-Arms that were laid for 'em; and, that they had their Intelligence from *Mr. Hurly*, the better to personate their being Robbers. And he tells you, That part of them went up to *Mr. Hurly's* Chamber, and there took the Bag; and, that they were directed by *Mr. Hurly* to pour it out before *Mr. Ronane* (the better to make the Pretence out against the County) and likewise, when they should get in, tie *Mr. Hurly* and *Mr. Ronane*; and, that a Bed-cord was laid in the Window for that Purpose: And he tells you, that they had fir'd off the Fire-Arms, and, that there was nothing in them but Powder. And, Gentlemen, you will see anon how far this Man swears the Truth, out of the Mouths of *Mr. Hurly's* own Evidence.

Mr. Hurly, to lessen this Man's Credit, has produc'd to you several Witnesses, who swear, That he swore an Examination before my Lord Chief-Justice *Pyne*, or Baron *Ecklin*; wherein he pretends, that this *Calaghan Carty* swears directly contrary to what he swore in his Information before a Justice of the Peace in the Country, and to what he pleads now. To this *Calaghan Carty* says, He never swore any Examination before any Judge; and if any was sworn in his Name, it was done by some other, that did personate him. That Examination was produc'd here; but there was no Evidence, that this *Calaghan Carty* was the Person that swore it, and he deny'd that the Name to it was his Hand-writing; and he seems to be too ignorant a Person to contrive such an Examination. Now, whether you credited him, or those Persons that swore against him, is left to you.

The next Witness in behalf of the King is *Margaret Conneene*: She tells you, That she was a Servant in the House, and, that these Persons did come into the House; and she hearing Murder cry'd out by *Mr. Hurly's* Servant, she came out of the Kitchen: She tells you, that they made several Shots, particularly at her, and, that there was no Hurt done, nor any Marks of the Shot or Bullets in the Wall. She tells you, That at first she was of Opinion, that it was a real Robbery; but afterwards, discoursing with *Calaghan Carty*, he told her how it was: And besides, that she was of another Opinion upon the account of a Table-cloth taken away at the Time of the Robbery, which she saw afterwards come back in a Trunk or Portmanteau that was sent to *Mr. O'Brien* after the Robbery.

Walter Neylan was likewise sworn; who gives you an Account, that he was in Prison at *Ennis* for *Hurly's* Debt, being bound for him to one *Thomas Arthur*, and that he was in the Prison when *Hurly* was brought thither; that they were

Chamber-fellows: That *Mr. Hurly* did go so far in the Confession of this Fact to him, that when *Daniel Carty* became a Discoverer, and began to accuse *Mr. Hurly* of this Matter, *Donogh O'Brien Andrews* junior, who was then likewise in the same Goal, did desire to know of him, what Method *Mr. Hurly* would take to get him discharg'd; and, that if he could not do it soon, that he must be forc'd to confess the whole Truth: And he swears, That he did acquaint *Hurly* therewith; who said, that he should be undone if the said *O'Brien Andrews* should confess it; and gave him a Piece of Money to give to the said *O'Brien*, and bid him tell him, that he would soon get him discharg'd. *Neylan* was so cautious of this, that he would not do it himself; but one *Daniel Carty* being present, he gave him the Money, and he gave it to *O'Brien*: That *O'Brien* said, This will not do, I must and will tell the Truth. He says, *Mr. Hurly* went so far, that he told him he would give any Gratification in the World to prevent *Donogh O'Brien's* coming in against him; for, if he did, he should be ruin'd entirely. Against this, *Mr. Hurly* says, that *Neylan* was exasperated for being in Prison thro' his Means, so that he tamper'd with Witnesses, and became his inveterate Enemy; and not only swore falsely himself, but tamper'd with others to swear falsely too; of which he has offer'd such Evidence, as I shall observe to you hereafter.

The next Evidence, Gentlemen, that was produc'd to you, was one *Charles Mac-Donogh*. He tells you, That he was employ'd as a Solicitor to *Mr. Hurly*; and, that he was intimately acquainted with *Mr. Hurly*, and knew a great deal of his Concerns; and, that one Night, being come back from *Dublin*, the very Time before he was robbed, he talk'd with him, and said, He was a strange Man to come to the Country without Money; and, that it would be too hot for him; that the present Sheriff was *Mr. Arthur's* Friend; and says, that *Hurly* did even then fortify his House, because he look'd upon himself to be in no condition to pay his Debts; that he was so extremely poor, that he durst not appear. He tells you, that *Mr. Hurly* did tell him, that he brought down Money; and tho' he did tell him so, that yet he did not believe it; because when he told him of the Sheriff, *Hurly* said, that *Sir Toby Butler* and Colonel *Macnamarra* had a great Influence upon the Sheriff, and would make Interest with him, so that he will do me no Harm.

He tells you, That much about this Time *Mr. Hurly* employ'd himself in reading Acts of Parliament, and one of 'em was the Act relating to the Articles of *Limerick* and *Gallway*; and, that he had some Discourse of being comprehended within the Articles of *Gallway*. That *Mr. Mac-Donogh* told him, he thought he was then in *France*, and that he was not there; and he said, He would prove that he was then in *Gallway*: And reading the Rapparee Act, he said, That it was a very pretty Way for Persons to recover Money from the County. He tells you, Gentlemen, that after this he left *Mr. Hurly*, and *Capt. O'Brien* writ him word that he was robb'd, and desir'd that he would come and sollicite at the Assizes of *Ennis* on his behalf: But he was so far from believing that he was robb'd, or yielding to that Design,

Design, that he writ back a Drolling Letter, as he calls it himself, and he did not think it proper to be concern'd for him. He further tells you, That there were some Persons that gave an Account to him of certain Counters, one *Hicky's* Wife, and, that if her Husband might be produced, he and she might make great Discoveries relating to these Counters.

This took Wind, and the Justices of the Peace gave a Warrant to the High-Constable, *Walter Huonin*, to search for those Counters. They came to the Place where this *Hurly* liv'd; the first Time he miss'd, but the second Time he sent one before, to take care that nothing might be remov'd: And when he came there, he observ'd there was a Dunghil; and, by the Behaviour of *Hicky's* Wife, he had reason to suspect that Place. He tells you, That the Woman held the Candle, and in digging the Place where the Dunghil lay, at length the Spade hit upon a Slate where the Counters lay: That he took up a Bag wrapp'd about with Hay, he call'd it a Suggane; and, that there those Counters, which he has here produced, were taken up. He told you, That the Woman was under so much Consternation, that she dropt the Candle; and when she was told she must go along with him, she said, Now that was found, she believ'd she must.

The next Person examin'd was *Thomas Edwards*. He swears, He was employ'd to go along with *Walter Huonin*; That he saw a Youth on his Knees by the Dunghil: He ask'd him what he was doing? he said, He was hiding his Potatoes; but he saw no Potatoes, which made him suspect that Dunghil; and, that digging there, they found the Counters, as *Huonin* has given an Account.

The next Man that was sworn was *Mortagh Mac-Carty*. He tells you, He had bought a Cow, and that she had stray'd away from him, and finding of her, and bringing her home, he call'd at this Place, where *Hicky's* Wife was, and she agreed to buy his Cow, and she brought out two Pieces of Gold, which she call'd Guineas: Says he, These are not Guineas; I believe this is some of *Patrick Hurly's* Gold. He ask'd her what she would take for them? and he said, I have Three Pence Half-penny, and a Quarter of Tobacco, which I'll give you for them; and she took it, and wish'd that the rest were sold so too. He says, He acquainted Sir *Donogh O-Brien* of this, and he directed him to Mr. *Bindon*, a Justice of the Peace, where he gave in the Examination; He produced to you these two Pieces, which you have here compar'd with the rest of the Counters.

Gentlemen, the next Person that was sworn was one *Joseph Lynch*. He tells you, That he was very well acquainted with Mr. *Patrick Hurly*, and, that *John Hurly* was married to his Sister; and, that Mr. *Hurly*, before or about *Christmas*, came to *Loughbrea*; and, that at one Mr. *Henry Bargery's* House they were both together a drinking; and, that Mr. *Hurly* taking out some Linnen out of his Portmanteau, he saw a Bag that held about a Quart; and taking it to be Money, he look'd into it, and found in it all Counters; and he ask'd him what he did with them? he said, He intended to make use of them for his Diversion. He tells you after this, That he walk'd with Mr. *Hurly* part of the Way, and, that

Hurly discours'd him about Mr. *Banks's* Robbery. Mr. *Lynch* told him, that the Country had found for *Banks*, and, that he propos'd something in relation to his own Robbery, if Mr. *Lynch* would assist him; what a pretty Way it was to get Money! *Lynch* told him, in what was honest and just he would assist him, but in nothing else. Mr. *Hurly* then fell into Discourse with him about his Farm, and said, he would give up his Farm too, if he would come into the Design he had to get Money. Mr. *Lynch* answer'd as before, If it be honest and just, I will; if not, I will not; and for the Farm, said he, I'll force you to do that without it.

He tells you, That Mr. *Hurly* sent a Trunk of Linnen to his House after the Robbery was committed; and, that Mr. *Hurly* did desire no Body should see the Trunk with him; that he heard his Brother *Bourk* say, That it was Linnen, but he did not mind it, his Wife being then sick; and says, they took away the Trunk that same Night after Mr. *Hurly* was in Goal. He tells you, he had the Curiosity to go and see him in the Goal of *Ennis*, and after discoursing with him, he said, He had done something very irregular in *France*, and now to come into the Country and charge it with a Robbery, was very ill.

The next Evidence is *Charles Cassidy*, Surgeon; and he gives an Account, That this *Hurly's* Father being sick, his Sister sent for him to come there; and after he came, they sent for one Dr. *Brodin*, a Relation of Mr. *Hurly's*; and, that this *Brodin* and he, some Time after, went to visit some other Patients; and being abroad, *Brodin* propos'd to him, says he, Mr. *Hurly* gives you small Fees, I can put you in a Way to get 20 Guineas; and told him of the Design, and how he might be a Party concern'd in the pretended Robbery; and he answer'd, He was a Man too well known; but he persuaded him to accept of the Employ. When they came home to *Hurly*, the Doctor told him, he had offer'd him 20 Guineas; and *Hurly* was so far from denying it, that he chid Dr. *Brodin*, and said, he would give him 40 Guineas; and then *Cassidy* said, he was afraid of being known: Hereupon *Hurly* told him he had provided Vizards, to prevent his being known; and after going home, his Heart fail'd him, and he would not be concern'd. He told you, he heard of this Robbery; but this Thing was not discover'd by him till last Sunday, where being at Church, he went with Mr. *Fitz-Gerald* to Dinner; and *Fitz-Gerald* talking of this Business of *Hurly*, *Cassidy* said, He knew a Person in the County, that could do him more Harm than any Man living: Says a Clergyman, there present, You ought to do the County that Right, as to find out that Person, that the County may not be so oppress'd, but Justice done to the Criminal. And, that he went home, and considering it, he went and gave in his Examination to a Justice of the Peace, who bound him over to prosecute, and accordingly he attended here.

The next Witness is *Daniel Kiese*. He tells you, That he was very well acquainted with Mr. *Hurly*, and, that Mr. *Hurly*, some Time before this Robbery was committed, came to Mr. *Bentley's* Shop, and enquir'd there for Masks, or Vizards, such as they use for Masquerades; and *Bentley* made answer, That they had none, but they might be had in *Christ-Church-Yard*. He

tells you, that thereupon *Hurly* went into the Yard. He tells you, that at that Time, hearing *Hurly* enquire for Masks, he was apprehensive that he had some evil Design in hand, and told *Bently* so; and *Bently* agrees in what *Keefe* swears, that he did enquire for Masks, and went into *Christ-Church-Yard* for them.

Mr. *Gray* (the next) tells you of the Poverty of Mr. *Hurly*; and that he could not have any such Sum of Money; that he desired him to raise some Money for him, and for better Security he lodged in his Hand a Bond of Captain *Mac-Donnell's*; and, accordingly, that he got Mr. *Connor* to indorse a Bill to Mr. *Lumm*; and Mr. *Hurly* afterwards paid the Money.

The next that was produced for the King was Captain *Mac-Donnell*; and he tells you, That he had given such a Bond to Mr. *Hurly*, upon Account of a Farm they had purchased jointly, and that he ordered him to pay this Fifty Pound that was borrowed; that he would not be concerned in paying part, unless he paid it all; that the Money was paid.

Mr. *Attorn. Gen. Cassidy* tells you, That he had used to play at Tables with *Hurly* at his House; and that *Hurly* got him to send for a Dozen of Bottles of Wine to *Ennis*, to drink with *Hurly*, because *Hurly* had no Money.

Mr. *J. Cote*. I will give you an Account now as faithfully as I can, of what is sworn for the Traverfer.

But I should have told you first, That Captain *Mac-Donogh* gave you an Account of the greatest Severity used by *Patrick Hurly* towards his Brother *John*, which, he said himself, he would not have done, but that he was forced to do it, by reason of his own necessitous Condition.

Now Mr. *John Hurly* he tells you of considerable Sums of Money he received from *Holland*, viz. 490*l.* from Colonel *Lovet*, and 200*l.* from *Jeremiah Donavon*; and in 97 from Mr. *Fitz-Symons* 300*l.* 10*s.* and 200*l.* more in *Limerick*. He tells you, that of those Sums received, he paid again in Cash to Mr. *Hurly*, all but a little that is received from Mr. *Fitz-Symons*: He paid him in Cash but a little; and he had Forty Bullocks, and some Sheep, towards the Balance of what remained unpaid. That there was some Money paid to Mr. *Arthur*, and some to Mr. *Burton*, and more laid out other ways. He tells you, that he saw with *Daniel Hicky* a Note that was given him by Mr. *Hickman*, a Justice of Peace of the County, and by Mr. *Cusack*, then Sheriff, whereby they promised, that if he would make a true Discovery of the Robbery of *Hurly*, that they would intercede to the Government for a Pardon for him. This is the Substance of what *John Hurly* has sworn.

The Witness for the Traverfer was *Dorothy Kemp*, who was a Servant, she tells you, to Mr. *Hurly*, when this Robbery was committed. She tells you, That Seven Persons came into the House; that Five of them went up into her Master's Chamber, and Two staid in the Parlour: That there were several Shots made, and that there was no Harm done, nor no Marks or Prints of Bullets or Shot in the Wall or Ceiling: That there were Two Men without at the Window,

and being called Rapparees, they thrust their Swords through the Window: And that Mr. *Ronane* was going out, when they rushed in, and that they threw him down, and that they tied *Ronane* and *Hurly*; and to shew you there was Money, she tells you, that the Wife of Mr. *Hurly* took out of a Trunk a great Bag of Gold, and shewed it to her; and then took part of it, and put it into her Pocket: And after that, this *Dorothy Kemp* going to the Trunk for Linnen, she was strangely surprized to find the Bag there; that Mr. *Hurly* came in at the Time, and was inquisitive to know what she did there; she told him, she was looking for Linnen: That then he took the Bag out himself, and convey'd it to his Closet.

She tells you likewise, That there was one *Murough O'Brien* did endeavour to tamper with her, to persuade her to swear about the Counters, that they were to be lodged with her, or with *Daniel Hicky's* Wife; and this *Murough* promised her a great Reward, if she would let this Trick be put upon her Master; but she would not. She tells you, that this *Murough O'Brien* not only tamper'd with her, but also with *Hicky's* Wife; and that he sent Letters by his Servant to *Hicky's* Wife, and that they were delivered; and that the Contents of the Letters was, desiring her, that she would suffer those Counters to be lodged in *Hicky's* House. She tells you, that Mr. *Hurly* had a considerable Quantity of Linnen taken away from him; that she had washed Twenty Pair of Sheets her self, and that there was Ten Pair more, and that all was taken away except Five Pair; which is the Substance of what she swore.

But *Murough O'Brien* was sworn, and he deposed, That he was so far from tampering with *Dorothy Kemp*, that he did not think it safe to converse with her, because she was kind and civil to Mr. *Hurly*, and bore a Child or two by him; and to the contrary he swore he had no Communication at all with her: But as for *Hicky's* Wife, he says, she told him she would discover all, if he would bring her Husband home again; and, in pursuance of that, he writ Letters to *Hicky*, and that the Purport of them was only to satisfy him, that he might come with Safety, and treat with him. The Letters being read, they import no more.

Gentlemen, the next Witness, *Daniel Mac-Cay*, says, That he was a Servant to Mr. *Hurly* a considerable Time; that he was in the House when the Robbery was committed; and that there was only Five of the Robbers that he saw; that some of them put the Family in Terror, and others made it their Business to fall on the Master: He at first thought they were only Bailiffs come to arrest his Master; but when they came and broke open the Door that they had lock'd upon his Master, he found they were Tories: That there were several Shots made. I asked him, Was there any Hurt made by the Shots? and he said, No. Was there any Marks of the Bullets? he said, No. He said, there was some at the Window, that did thrust in their Swords. He tells you, there was one *Christopher O'Brien*, who did endeavour to tamper with him

to take off the Evidence, to whom he went with a Letter to the *Swan-Tavern*, and that Mr. *O'Brien* discoursed with him about the Counters.

He tells you, That his Master had a great deal of Money; and that when he was to go down into the Country with his Master, they were so great together, that his Master acquainted him with a great Sum of Money he had, and that he told him he intended to pay Mr. *Arthur* with it; but that *Arthur* did exact a great Sum for Exchange, and therefore he did not pay the Money in Town, but expected to get easy Terms from him in the Country; and it was because he feared to be robbed, that he did shew his Servant a great Sum of Money he had to carry down into the Country: And then he was examined by Mr. *Butler*, as Council for the King, by what Road they went at that Time to the Country, and at what Place they went over the *Shannon*? He said, it was over a Bridge, but he did not know what Bridge. And being asked, Whether they went through *Athlone*? it being a casual Question, he said, They did go through *Athlone*. And being asked, Where he lay that Night? he said, At *Balliboy*, or *Eyres-Court*. And being urged to be exact, he said, He thought it was *Balliboy*; and then he said, they laid at *Killigby*.

Gentlemen, you know the Country, and that *Balliboy* and *Killigby* are near the *King's County* on that side the *Shannon*; and *Eyres-Court* on the other side, in the County of *Gallway*.

Now, Gentlemen, because Mr. *Patrick Hurly*, in the Course of the *King's Evidence*, denied positively that he was at any Time about *Christmas* at *Loughbrea*; I asked this *Mac-Cay*, if his Master went down any other Time? he said, He did a little before *Christmas*: And then I asked, if he was at Mr. *Bargery's* House in *Loughbrea*? he said, He was; but he could not tell whether Mr. *Joseph Lynch* was there or not. And being asked, Whether he carried his Master's Portmantau to *Tiaquin*? he said, He did; and that his Master hired a Horse at *Tiaquin*, and sent him before him to *Gort*. I asked him, Whether he were sure the Money his Master produced to him in *Dublin* was Gold, or no? He said, He was sure it was Gold, it was *Louis d'Ors*, though, by Mr. *Hurly's* Information, there was more *Guineas* than *Louis d'Ors*. He tells you likewise, Gentlemen, that this *Calaghan Carty* had discovered upon his Oath, before my Lord Chief-Justice, what he had formerly sworn before a Justice of the Peace concerning this Robbery: And being asked, Who were present? he said, My Lord Chief-Justice's Clerk was there; which gave Occasion to the Court to send for the Clerk.

The next Man examined was one *Crips*. He says, That one *Halloway* did beat him, and take him by the Hair of the Head, because he would not swear against *Patrick Hurly*; and that *Neylan* offered him Six Collops grazing, if he would swear that *Hurly* contrived this Robbery himself, and that he was by when *Calaghan Carty* was sworn before my Lord Chief-Justice, *Pyne*; but he cannot tell what it was

he swore, and he does not seem to be capable of knowing it, for he does not speak *Englifo*. And then he says, Mr. *Lynch* offered him considerably to come and swear against *Hurly*; and bid him come to *Cannaught* and live with him, for *John* and *Patrick Hurly* were both ruined. Mr. *Lynch* has been examined; and he swears, he had no other Discourse with this Man, but about the Farm at *Mougna*, that the *Hurly's* held from him; that they were in ill Circumstances, and that he would be rid of the whole Family. *Neylan* tells you, That, to his Knowledge, he never saw this Man 'till this Day. *Crips* said, upon his Oath, That it was at a House, in such a Place, that *Neylan* tampered with him: And *Neylan* tells you, upon his Oath, That there was not any House at all, within his Memory, in that Place; and that he never had any Communication with this *Crips*, directly or indirectly. So when Persons swear directly one against another, You, Gentlemen of the Jury, must weigh the Evidence, and the Arguments they offer to induce your Belief.

The next Witness is *Daniel Hicky*; who tells you, He was sent to Goal and bolted there; and after he was told, that one *Daniel Carty* confessed the whole Matter, he was forced before a Justice of Peace, and there was forced to swear, by the Management of Mr. *Hickman* and Mr. *Cusack*, who told him, That if he did not swear, he must be hanged: And that, through Fear, he was compelled to give that Information, wherein he proves the Robbery was contrived by Mr. *Hurly*, and that he was one of the Actors in it: And when he was told, that he should be called before my Lord Chief-Justice *Pyne*, and he was brought into the Bar, he said, he would swear nothing but Truth before my Lord Chief-Justice: That hereupon the Goaler carried him back, and he never after could get Opportunity of giving my Lord Chief-Justice an Account of the Matter, though he sent Petitions after him. He says, That before he discovered, he was treated barbarously; but afterwards he was treated very well, and had Twelve Pence a Day; but that after they were in the Court, and said they would say nothing but the Truth before my Lord Chief-Justice, they were allowed but Nine Pence, and there was a *Mittimus* sent to confine them closer. He says, *Daniel Carty* procured Bail, and he was bail'd by some Friend of Mr. *Hurly's*. He tells you, he came to Town, and that he went to the Lord Chief-Justice *Pyne*, and there swore an Examination contrary to what he swore before, and says, that he was conscious of the Injury he had done Mr. *Hurly*; that he writ his sole Examination himself; and says, he had been tampered with, and nothing would do. That he was afterwards brought into this Court, and there did own his Examination before my Lord Chief-Justice to be Truth; but after he charged Mr. *Cusack*, the Sheriff, with having tampered with him, when Mr. *Cusack* appeared here and confronted him, he went back from what he said.

The next is *Donogh O'Brien Andrews junior*: He tells you, he was manacled and fettered in the Goal, till such time as by the Persuasion of Mr. *Neylan*, and the Threats of the Goaler and of Mr. *Cusack*, That if he did not swear, he should be severely neck-yoked; he went before a Justice of the Peace with Mr. *Butler*, who used several Insinuations to him, as he says, to procure him to swear the Robbery was contrived by *Hurly*; which, through Fear, he consented to; and says, That Mr. *Butler* put his Information into Writing; Part, says he, I told him, and Part, he says, Mr. *Butler* put down as he pleased: I did swear to it, says he, but it was against my Conscience, for I was forced to it. He says, That Mr. *Neylan* brought Coats to him in the Goal, and they would have him swear they were the Coats they robbed in, but he would not swear by any means. He says, That after they were discharged, he was so conscious to himself of the Injury done Mr. *Hurly*, that he came towards *Dublin*, that he lay in the same House with Mrs. *Hurly* and her Brother at *Kiltartan*, and, that coming nearer to Town about *Kilcock*, he met with *Crips* and *Carty*, that they lodged together in one House; and being asked, Whether he spoke any thing to his Father about this Robbery? he said, He never did.

The Father is there produced; and he tells you, though it would reflect upon his Son, yet he would perform Truth, being upon his Oath; and so swears, That hearing how his Son had been concerned in the Contrivance of this Robbery, after he had been three Weeks in Goal he went to see him, and when he came to him, check'd him; and his Son told him, as he understood him, that the Robbery was only a Contrivance of Mr. *Hurly's*. That after he was out of Goal, he spoke to him concerning the Arms, where they had them, and whether they were *Patrick Hurly's* Arms? to which he answered, Where else should he get Arms. And this *Donogh O'Brien Andrews junior*, being asked again, Whether it was so as his Father deposed? he said, It was not so. Now the Father and the Son swearing one against the other in this Matter, you must be Judges who has sworn true.

The next is Mr. *Butler*, who tells you, That in taking the Examination, he was so far from using any Threats to this *Donogh O'Brien Andrews junior*, that as soon as he came to *Ennis*, hearing he was willing to make a Discovery of the Matter, he sent for him to his Lodging; that he caused him to sit down; and that he writ every Word as he spoke; it and that there was not a Word but what came from his own Mouth: And the Examination was here read; and if you observe it, there are several Things in the Examination, that the Party owns came from himself, and several Things which could not possibly come within the Knowledge of Mr. *Butler*; so that it is impossible to be contrived by Mr. *Butler*, because they were Things wholly in the Informer's own Cognizance.

There is one Thing offered in the Close of the Evidence in behalf of the King, which does not only relate to *Mac-Cay*, but to all the rest. Mr. *Butler* and Mr. *Foster* upon their Oaths tell you, That Mr. *Hurly*, when he preferred his Petition concerning this Robbery before the Judges of the Assizes, and he did also swear, That when he went to *Tiaquin*, he left his Portmanteau with Mr. *Bargery* at *Loughbrea*, with a strict Charge to take special Care of it, for that there was something of great Consequence in it; and *Christopher O'Brien* swears, That Mr. *Hurly* told him likewise, that he left the Portmanteau at Mr. *Bargery's* when he went to *Tiaquin*, and said, He would not carry it to *Tiaquin*, because that was a loose Family; so that Mr. *Hurly* swore fully against what *Mac-Cay* swears now.

Hurly swore he was robbed but by Four Persons, and that agrees with what *Calaghan Carty* swears. One Woman swears there was Seven, another swears Nine; so that out of the Mouth of Mr. *Hurly* himself his own Witnesses are contradicted. But Mr. *Hurly* would take off the Probability of his saying thus (for he denies the saying of it). Is it likely, says he, that I should come back from *Tiaquin* to *Loughbrea*, and so go on again to *Gornishigory*? But *Mac-Cay*, his Boy, tells you, that his Master hired a Horse for him to carry the Portmanteau before him to *Gornishigory* on *Saturday*, and that his Master followed him on *Sunday*: Now, if the Portmanteau had been at *Tiaquin*, why should he send it by *Mac-Cay* before-hand to *Gort* on *Saturday*, that he was following thither on *Sunday*? And when Mr. *Hurly* was going down to the Country, what can be imagined, why he should make a Boy acquainted with his carrying so much Money with him? And that Mr. *Hurly* should leave the Key of the Trunk with Mrs. *Kemp* to take out Linnen, and so great a Sum of Money there? I do but lay the Facts before you as they stand upon the Evidence, as well for as against the Prisoner; and I hope you will do Justice both to the Prisoner and to the King. Gentlemen, if you are satisfied upon the whole Matter, that Mr. *Hurly* is guilty of the Perjury, you will find him Guilty; if not, you will acquit him.

If you think him Guilty of the Contrivance to Cheat the County, you will find him Guilty; if not, you will acquit him.

The Jury went out, and returned in Half an Hour; and brought in their Verdict, Guilty on both Indictments.

Mr. *Attorney-General*. May it please your Lordship, *Patrick Hurly* has been indicted for Perjury and a Cheat, and is found Guilty of both Indictments, I humbly pray your Lordships Judgments.

Court. How have you laid your Indictment?

Mr. Sol. Gen. At Common Law.

Court. In what Circumstance is *Mr. Hurly*?

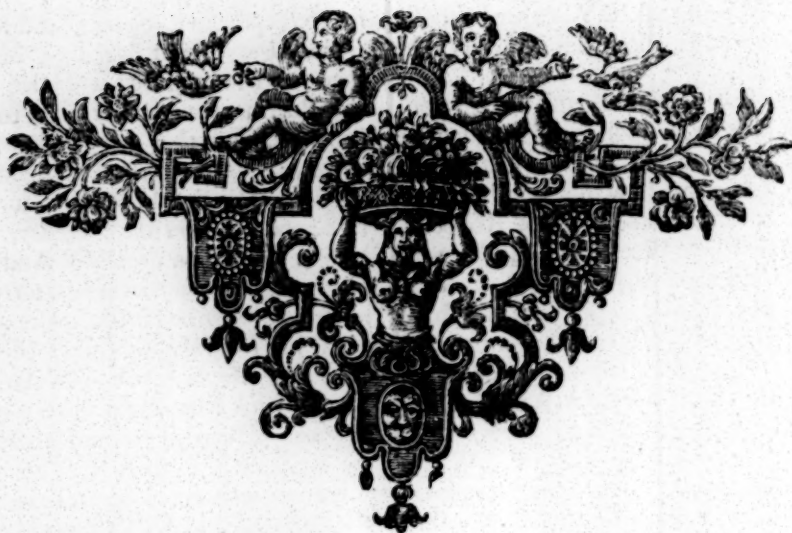
Mr. Butler. I hope, my Lord, if it is only a Fine, it can't be less than the Sum he designed to get from the County by the Perjury.

Court. As to the Perjury, the Judgment of the Court upon that Conviction is, That *Mr. Hurly* be Fined for the Perjury 100 *l.* and be Imprisoned till he pay it to the King.

Mr. Att. Gen. We will move the Court next Monday for your Judgment upon the other Indictment.

Mr. Butler. My Lord, we insist upon it, That the Pillory is the Punishment for the Cheat.

Court. We know, if *Mr. Hurly* be not able to pay the Fine, he ought to suffer Corporal Punishment.



CLXXII.

The TRIAL of
Colonel NICHOLAS BAYARD,
in the Province of New-York, for High-Treason,
Febr. the 19th, 1701-2, 14 Will. III.



On the Sixteenth of January, 1701, Captain John Nanfan, Lieutenant-Governor, and the Council, made the following Order.

At a Council held at Fort William-Henry this 16th of January, 1701, Present the Honourable John Nanfan, Esq; &c.

IT is hereby order'd, That Alderman John Hutchins do appear before this Board To-morrow Morning, and then and there produce to the Board the Address to his Majesty, the Address to the Parliament, and the Address to the Lord Cornbury, which was signed by several of the Inhabitants of this City, and Soldiers of the Garrison, in this House, about three Weeks since, on the Penalty that shall thereon ensue.

By Order of the Council,

B. COZENS.

Whereupon Mr. Hutchins appear'd; and for neglecting or refusing to deliver up the said Addresses, on the Nineteenth of January was committed to the common Goal of the City of New-York, for the signing of Libels, said to be against the Administration of the Government.

On the 20th Col. Bayard, Mr. Rip van Dam, Mr. Philip French, and Mr. Thomas Wenham address'd the Lieutenant-Governor and Council, as followeth; viz.

VOL. V.

To the Honourable John Nanfan, Esq; Lieutenant-Governor, and the Honourable Council of the Province of New-York.

The Humble Address of Nicholas Bayard, Rip van Dam, Philip French, and Thomas Wenham, on behalf of themselves, and some of the rest of the Freeholders and Inhabitants of the Province of New-York.

Humbly sheweth,

THAT whereas by a Mittimus, bearing Date the Nineteenth of January, 1701, Alderman Hutchins stands committed for signing Libels, said to be against the Administration of the Government; which pretended Libels we understand to be an Address to his Majesty, another to the Parliament, and another to my Lord Cornbury, whom we understand, by certain Advice we have received from England, to be nominated by his Majesty to succeed the late Earl of Bellamont as our Governor; Copies of which (by the said Mittimus) we find are expected from the said Hutchins, and is Part of his Charge in the Commitment, the Copies of which Originals (being in our Hands or Custodies) he cannot deliver. If there be no further Crime to be alledg'd against him, we hope to make the Legality of the said Addresses, and pray, That the said Hutchins may be releas'd from his Imprisonment, or be admitted to Bail: And your Petitioner shall ever pray.

N. B. R. v. D. P. F. T. W.

Colonel Bayard, and the other three Gentlemen, having personally deliver'd this Writing, and refusing to surrender the Copies of the said Addresses, had Time given them, on their Parole, to appear next Day. And afterwards, the

H h h 2

same

same Day, the Lieutenant-Governor did deliver the above Address to his Majesty's Attorney-General of this Province, for his Opinion in Law therein, which the said Attorney-General gave in Writing; and on the Twenty-first Day came into the Council-Chamber, and there deliver'd it to the Lieutenant-Governor; which was read, and order'd to be enter'd in the Council-Book, *in hæc Verba*.

May it please your Honour,

I Have well consider'd the humble Address of Nicholas Bayard, Rip van Dam, Philip French, and Thomas Wenham, for the Release of Alderman Hutchins from his Imprisonment, sent me by your Honour yesterday; and have also weigh'd the several Matters sworn, and otherwise taken in Council before your Honour, which do in any respect relate thereto; and, upon the whole, in Obedience to your Honour's Commands, I humbly present you with my Judgment and Opinion in Law, as follows:

First, That neither the Address or Petition it self, or any Matter therein contained, is Criminal and Illegal.

Secondly, That the Refusal of the Petitioners, at the Council-board, to produce the Copies (of certain Original Addresses mention'd in their Petition) own'd by them to be in their Custody, and by their Petition also, is not such a Contempt to the Council, or other Offence against the Law, for which the Petitioners may legally be committed.

Jan. 21.
1701.

Sa. Sh. Broughton.

And afterwards the said Persons appear'd, and continuing their Refusal to surrender, the said Copies, notwithstanding the Opinion of the Attorney-General, the said Lieutenant-Governor and Council issued the following Warrant.

By the Honourable John Nanfan, Esq; his Majesty's Governor and Commander in Chief of the Province of New-York, and Territories depending thereon in America, &c. and his Majesty's Honourable Council for this Province, To Isaac d'Reymer, Esq; High-Sheriff of the City and County of New-York, Greeting.

Whereas by an Act of General-Assembly of this Province, made in the Year 1691, Entituled, An Act for the quieting and settling the Dis-

orders that have lately happen'd within this Province, and for establishing and securing their Majesties present Government against the like Disorders for the future; It is among other Things enacted, That whatsoever Person or Persons shall, by any manner of Way, or upon any Pretence whatsoever, endeavour by Force of Arms, or other Ways, to disturb the Peace, Good, and Quiet of this their Majesties Government, as it is now establish'd, shall be deem'd and esteem'd as Rebels and Traytors unto their Majesties, and incur the Pains, Penalties and Forfeitures as the Laws of England have for such Offences made and provided: Notwithstanding which, Colonel Nicholas Bayard, as has appear'd by the Oaths of several Persons examin'd before Us in Council, by Conspiracy and Combination with John Hutchins, Esq; lately committed by Us, together with several other Persons disaffected to this his Majesty's Government, to the manifest Disturbance of the Peace of the same, by divers indirect Practices both drawn in Soldiers, and others, to sign scandalous Libels, whereby they have endeavour'd to render the past and present Administration vile and cheap in the Eyes of the People: And the said Colonel Nicholas Bayard hath incited the People to disown the present Authority, and cast off his Majesty's Government, as it is now establish'd: The Council have unanimously thought fit, and do resolve, That the said, Nicholas Bayard be committed for High-Treason. These are therefore, in his Majesty's Name, to require and command you, immediately on your receipt hereof, to take into your Custody the Body of the said Col. Nicholas Bayard, and him in the common Goal of this City in close Custody to keep and secure, until he shall be from thence delivered by due Course of Law; and for your so doing, this shall be your sufficient Warrant. Given under Our Hands and Seals at Fort William-Henry in New-York, in Council this Twenty-first of January, Anno Domini 1701, and in the Thirteenth Year of the Reign of our Sovereign Lord William III. by the Grace of God, of England, Scotland, France and Ireland King, Defender of the Faith.

John Nanfan,
A. D. Peyster,
S. Staats,
R. Walters,
T. Weaver,
W. Atwood.

True Copy, examin'd by me, I. D. Reimer, Sheriff.

Which Act of Assembly, mention'd in the Warrant of Commitment, followeth in these Words, viz.

As

An Act for the quieting and settling the Disorders that have lately happen'd in this Province, and for the establishing and securing their Majesties present Government against the like Disorders for the future.

“ **F**Orasmuch as the Good and Quiet, Ease, Profit, Benefit, and Advantage of the Inhabitants within this Province doth chiefly consist in, and altogether rely and depend upon their bearing true Faith and Allegiance unto Their Majesties Crown of England, which is, and can only be, the Support and Defence of this Province. And whereas the late hasty and inconsiderate Violation of the same, by the setting up a Power over their Majesties Subjects, without Authority from the Crown of England, hath vitiated and debauch'd the Minds of many People, &c. and hath also brought great Waste, Trouble, and Destruction upon the good People of this Province, their Majesties Loyal Subjects: For the Prevention whereof in Time to come, Be it therefore Enacted and Ordain'd by the Governor, and Council, and Representatives met in General-Assembly, and it is hereby Published, Declar'd, Enacted, and Ordain'd by the Authority of the same, That there can be no Power and Authority held and exercis'd over their Majesties Subjects in this their Province and Dominion, but what must be deriv'd from their Majesties, their Heirs and Successors. And We do hereby recognize and acknowledge, That their Majesties William and Mary are, and as of Right they ought to be by the Laws of the Realm of England, our Liege Lord and Lady, King and Queen of England, France and Ireland, and the Dominions thereunto belonging, &c. That thereby their Princely Persons are only invested with the Right to rule this their Dominion and Province; and that none ought or can have Power, upon any Pretence whatsoever, to use or exercise any Power over their Subjects in this Province, but by their immediate Authority under their Broad-Seal of their Realm of England, as now establish'd.

“ And be it further Enacted, by the Authority aforesaid, That whatsoever Person or Persons shall, by any manner of Way, or upon any Pretence whatsoever, endeavour, by Force of Arms or otherwise, to disturb the Peace, Good and Quiet of this their Majesties Government, as it is now establish'd, shall be deem'd and esteem'd as Rebels and Traytors unto their Majesties, and incur the Pains, Penalties and Forfeitures as the Laws of England have, for such Offences, made and provided.

Upon Colonel Bayard's Commitment, the City Militia were, by Beat of Drum, call'd to Arms, and a whole Company daily appointed to guard the Prison, for about a Week following, and Defaulters strictly punish'd; which was burdensome to the People, and occasion'd great Clamour; whereupon it was taken off.

The Prisoner being inform'd, That a Special Commission was order'd for their speedy Trial, petition'd the Lieutenant-Governor and Council, on the Sixth of February, in these Words:

To the Honourable John Nanfan, Esq; Governor, &c. and the Honourable Council, &c.

The Humble Petition of Nicholas Bayard and John Hutchins,

Sheweth,

THAT your Petitioners are very sensible of the Favour intended them by your Honours, in appointing a Special Court for their Trial; that, in consideration of their Age, they might not be confin'd in a Prison till the ordinary Time for meeting of the Supreme Court: But the Papers being at present out of their Hands, which they shall have Occasion for, in order to make their Innocency appear, and not being likely to get them in so short a Time as is prefix'd for the said Trial; your Petitioners humbly pray, That they may not be oblig'd to come to Trial before the usual Sitting of the Supreme Court. And your Petitioners shall ever pray, &c.

To which a Verbal Answer was given to Colonel Bayard's Son, That out of meer Grace the Court should be deferr'd for Five Days.

On the Nineteenth of February the Commissioners sat, and publish'd their Commission in these Words; viz.

“ **W**ILLIAM the Third, by the Grace of God, of England, &c. To Our loving Subjects William Atwood, Esq; Abraham d'Peyster, Esq; and Robert Walters, Esq; sendeth Greeting. Know Ye, That We have assign'd you, or any Two or more of you, whereof you the said William Atwood We will to be One, our Justices, to enquire by the Oaths of good and lawful Men of the City of New-York, and by such other Means, Ways and Methods which to you shall be the better known, by whom the Truth of the Matter may be the better known, on the 19th Day of this Instant February, of whatsoever Treasons, Misprisions of Treasons, Insurrections, Rebellions, Murders, Felonies, Manslaughters, Homicides, Rapes, Burglaries, Misprisions, Confederacies, False Reports, Trefpasses, Riots, Routs, Unlawful Assemblies, Contempts, Faults, Negligences, Concealments, Oppressions, Champarties, Deceits, Misdemeanors, and other Misdeeds, Offences, and Injuries whatsoever, committed by Nicholas Bayard and John Hutchins, and also the Accessories of them, in the Province of New-York aforesaid; and by who or by whom, to who or to whom, how, when, and in what Manner, and of other Articles and Circumstances in the Premises, either or any of them concerning; and the same Treasons, Offences, and other the Premises for this Time, to hear and determine according to the Laws and Customs of England, and of this our Province

" of *New-York in America*. And we command,
 " That on the said Day, at the City-Hall of
 " the said City, you, or any Two or more of
 " you, as is aforesaid, diligently make Enquiry
 " upon the Premises, and all and singular the
 " Premises hear and determine, and do accom-
 " plish these Things in Form aforesaid, which
 " unto Justice appertains to be done thereupon,
 " according to the Laws and Customs of our
 " Kingdom of *England*, and of our said Pro-
 " vince; saving unto Us our Amerciaments, and
 " other Things thereof unto Us belonging. Also
 " we command Our Sheriff of Our said City,
 " That on the said Day, on the said Place, he
 " cause to come before you, or any such Two
 " of you, as aforesaid, or more, such and so
 " many good and lawful Men of his Bailiwick,
 " by whom the Truth of the Matter may be the
 " better enquir'd into. *In Testimony whereof*,
 " We have caused the Great-Seal of Our Pro-
 " vince to be hereunto affix'd. Witness *John*
 " *Nanfan*, Esq; Lieutenant-Governor and Com-
 " mander in Chief of the Province of *New-*
 " *York*, &c. in Council at *Fort William-Henry*,
 " the 12th Day of *February*, in the 13th Year
 " of our Reign, *Anno 1701*.

And Proclamation being made in the usual
 Manner, the Pannel of the Grand-Jury was
 call'd over: Those who appear'd and were sworn,
 were

<i>Joban. d' Peyster</i> , Foreman,	<i>Aryen Hogelant</i> ,
<i>David Provoost</i> ,	<i>William Jackson</i> ,
<i>Martin Clock</i> ,	<i>John Corbitt</i> ,
<i>Leendert Huygen</i> ,	<i>Joban. van Cortland</i> ,
<i>Barent Reynders</i> ,	<i>Caleb Cooper</i> ,
<i>Jobannis vander Spiegel</i> ,	<i>John van Hoorn</i> ,
<i>Jobannis Outman</i> ,	<i>Burger Myndero</i> ,
<i>Hendrick Gillisen</i> ,	<i>Gerret van Hoorn</i> ,
<i>Peter van Tillburgh</i> ,	<i>Jacobus d' Key</i> ,
<i>Jobannis van Giesen</i> ,	<i>Abraham Kipp</i> ,
<i>Abraham Keteltas</i> ,	<i>Jobannis van Santa</i> .

Jacob Boelen and *Jobannis Hardenbroek* did not
 then appear.

Before the Jurors were sworn, the Council for
 the Prisoner objected against some of them, for
 declaring before several Witnesses, then ready to
 be produc'd in Court, *That if Bayard's Neck was*
made of Gold, he should be hang'd; at the same
 time boasting, that they were of the Jury; and
 pray'd, That since that Jury was summon'd
 upon that Special Matter, such might not be
 sworn. Which the Court over-ruled.

Mr. Atwood, the First Commissioner, gave a long
 Charge to the Jury, aggravating the Facts sup-
 pos'd against the Prisoner, and positively assert-
 ing, That those Facts were Treason, not only
 within the Words of this Act of Assembly, but
 also by the Common Law before the Statute of
 the 25th of *Edw. III*.

The Jurors having receiv'd the Charge, the
 Court adjourn'd till next Day.

The Court being met the 20th, the Indictment
 against Colonel *Bayard* was deliver'd by the Court
 to the Grand-Jury; and *Mr. Weaver* (appointed
 Solicitor-General for this Service) attended them
 with the Proofs, and insisted to be present with

the Grand-Jury, and that no Person should be
 sent for, but whom he should name; and, that
 no Question should be ask'd them, but such as
 he should approve of. On the other hand, *John*
Corbitt, *Caleb Cooper*, *John Cortland*, and *Jacob*
d'Key insisted, That the King's Council ought not
 to be present with them at their private Debates;
 and, that they had a Right to send for what Per-
 sons, and ask what Questions for their Inform-
 ation they should think needful. Whereupon
Mr. Weaver did threaten them, and (to use his
 own Expression) *would cause them to be troune'd*,
 taking down their Names. And the Grand-Jury
 broke up without acting.

The Court, in the Afternoon, met according
 to Adjournment; and the Grand-Jury being sent
 for, *Mr. Weaver* made Complaint, That he was
 obstructed by some of the Grand-Jury, who
 would not acquiesce to his being present at the
 Examination of the King's Evidence, and would
 have other Evidences sent for, than what were
 by him produced. And thereupon *Mr. Atwood*
 did discharge the aforesaid Four Persons from
 their further Service, and caus'd *Jacob Boelen*,
 who was absent when the others were sworn, to
 be sent for from his House, sworn, and added to
 the Grand-Jury; and the Court adjourn'd till
 Seven a-Clock that Evening, but did not meet
 till about Midnight; when sending to know if
 the Jury had found the Bill, and being inform'd
 they were separated, he adjourn'd the Court till
 next Morning at Eight a Clock; and in the Way
 from the Court, in Passion said, *If the Grand-*
Jury will not find a Bill against Col. Bayard, I will
bring an Information against him of High-Treason,
and try him upon that.

February 21. The Court met, and the Grand-
 Jury appearing in Court, the Indictment was
 brought in by the Foreman, endorsed *Billa Vera*,
 and signed with his Name. Upon which *Mr.*
Atwood immediately discharged the Jury.

Whereupon the Counsel for the Prisoner in-
 formed the Court, That the Bill was not found
 by Twelve Jurors. And upon Examination it
 appeared to the Commissioners, that of such of
 the Jurors who remained in Court, Eight of the
 Nineteen were against finding the Bill; as ap-
 pears by the Minutes of the Court entered by
 Order; viz.

<i>Jacob Boelen</i> ,	<i>Jobannis van Santa</i> ,
<i>Abraham Kipp</i> ,	<i>William Jackson</i> ,
<i>John van Hoorn</i> ,	<i>Burger Myndero</i> ,
<i>Gerret van Hoorn</i> ,	<i>Joban. vander Spiegel</i> .

Which Eight importuned the Court, That the
 Foreman might be brought upon his Oath, and
 the rest sent for to witness the Truth, that they
 only Found the Signing the Addreses, and not
 the Treason. To which *Mr. Atwood* made An-
 swer, They were no longer Jurors; they had
 presented the Bill, and the Court was possess'd
 of it; it was now a Record, and there is no
 Averment against a Record.

Ordered, The Prisoner come to Trial on *Mon-*
day next come Sevensnight; to which Day the
 Court adjourned accordingly.

On *Monday* the 2d of *March*, the Commis-
 sioners met according to Adjournment.

Mr.

Mr. Nicboll. (Counfel assigned for Col. Bayard) moved, that the Indictment might be quashed, not being found by Twelve Men: And to prove the Matter of Law, offered to produce Authorities; and to prove the Matter of Fact, offered to produce Evidences in Court, if either were insisted on, the Grand-Jury being then by *Subpœna* in Court.

Mr. Sol. Gen. What is moved in behalf of the Prisoner, is most improper; forasmuch as the Indictment is found, and signed by the Foreman *Billa Vera*, there can be no Averment allowed against a Record brought in by the Body of a Grand-Jury; and therefore I desire the Prisoner may be sent for, and arraigned.

Mr. Nicboll. This is a Matter of great Weight and Moment; and concerns not only the Life and Fortune of the Prisoner and his Posterity, but the Right of every *Englishman* in the Province: It is not only lawful, but highly reasonable, that an Indictment for High-Treason should be found by Twelve Men at least. By the Statute 13 E. 1 W. 2. c. 13. reciting, That Sheriffs feigning many times certain Persons to be indicted of Felonies and other Trespasses, take Men not culpable nor lawfully indicted, and imprison them.

"Whereas they were not lawfully indicted by Twelve Jurors, it is ordained, That Sheriffs, where they have Power to enquire of Trespases by the King's Precept, or by Office, shall cause Inquests, &c. to be taken by lawful Men, and by Twelve at least, which shall put their Seals to such Inquisitions." [Here it is observable, that there is twice *legitimo modo* in a few Lines.]

Coke Inst. 2. Part 387. says, Two Things are provided, or rather declared, by this Act:

1. *Per legales homines ad minus duodecim faciant Inquisitiones.*

Coke Inst. 1. fol 126. The Indictment is defin'd an Accusation found by an Inquest of Twelve or more upon their Oath.

Poulton de Pace, &c. An Indictment of Treason, Felony, Trespas, or any other Offence, is an Inquisition taken and made by Twelve Men at least.

Coke Inst. 3. fol. 30. No Peer of the Realm, or other Subject, shall be convicted by Verdict; but the said Offence must be found by above Four and Twenty, that is, by Twelve or above, at his Indictment, &c.

11 H. 4. 9. Inquests had been taken of Persons named to the Justices, without due Return of the Sheriff; of which some outlaw'd before the said Justices of Record, some fled to Sanctuary, &c. for Treason, some for Felony: Granted, That henceforth no Indictment be made by such Persons, but by Inquests of the King's lawful Liege People, in such Manner as was used in the Time of his Noble Progenitors; and if any Indictment be made hereafter in any Point to the contrary, that the same Indictment be also void, revoked, and for ever holden for none.

Crook Eliz. 654. *Clyncard* was indicted on the 8th of H. 6. The Record was *ad Sessionem Patris*, &c. *per Sacramentum A. B. C. D. & aliorum legalium hominum in Comitatu prædicto presentatus existit*, &c. And it appeareth not that it was per

Sacramentum duodecim; for it was presented by a lesser Number; it was clearly ill, therefore it was revers'd.

Mr. Atwood. There can be no Averment against a Record. If you can produce any Authority, that it was ever allowed to make an Averment against a Record; and speak to that Head, you shall be heard; but to go upon this Head, Whether or no the Grand-Jurors are or can be brought to reveal the Counfel which they are sworn to keep secret, cannot be allowed.

Mr. Nicboll. The Grand-Jury consisteth of Nineteen Persons, whereof Eight have openly in Court protested, that they found no Treason.

Mr. Atwood. I have by me the Oaths of Two Men, That the Bills were found by Fourteen *Billa Vera*; they are so endors'd, have been publickly read in Court, and are of Record; for which Reason I nor no Body else can enquire further of it.

Mr. Nicboll. This concerns the Subject's Life, and your Honour ought to be Counfel for the Prisoner; and if a Misunderstanding happens by the Ignorance of the Jurors, so that the Bill is returned contrary to their Intendment, the Prisoner ought to be assistid.

Mr. Soll. Gen. Pray shew us any Authority, where an Averment has been offered against a Record.

Mr. Emot. May it please your Honour, I am joined with Mr. Nicboll as Counfel for the Prisoner. The Question that now seems to lie before your Honour is, Whether there can be any Averment offered against a Record? There is an Act of Parliament of the 11th of H. 4. wherein it is enacted, That a Grand-Jury shall consist *de bonis & legalibus hominibus*: And so likewise runs the Tenor of the Writ of *Venire*; for want of such Persons, the same Statute does declare the Indictment void. So that it is a good Exception to an Indictment, to aver, that any one of the Grand-Jury was an Alien; which is Matter of Fact. How shall this Averment be made, if so be there be no Averment against a Record? And what Benefit has the Prisoner of this Act, unless an Averment be allowed against the Record of this Indictment, if it should so happen, that some of the Grand-Jury are not so qualified as the Act requires? Which seems to me sufficient Reason, that an Averment in the Case at the Bar, is good against a Record.

Mr. Atwood. The Statute gives the Particulars that may be averred, and no others can be allowed.

Mr. Emot. 'Tis very hard upon the Subject: The Court appoints the Foreman of the Grand-Jury, and he may chance to be a Person prejudiced against the Prisoner, who may sign and return the Bill *Billa Vera*, without the Consent of his Fellows, or a sufficient Number: And because it's Matter of Record, shall no Averment be allowed against the Bill!

Mr. Atwood. A Grand-Jury in a certain Case, on an Indictment for Words spoken, found *Billa Vera*; but as to the *malitiose Ignoramus*; which made the Bill void. So in this Case, if the Jury, as to the Fact in the Indictment, had found *Billa Vera*, and as to Treason *Ignoramus*, the Bill had been void, and the Court must have taken Notice

Notice of it. But to this Bill there is no Endorsement but *Billa Vera*: The Court has received and published the Verdict, and therefore will proceed.

Mr. *Emot*. But the Matter of Fact only appeared to the Jury; and when they understood the Bill to be laid treasonable, they immediately objected against it.

Mr. *Atwood*. The Bill is found, and appears to the Court, Matter of Record; so that you need not insist any further upon that Head. A Grand-Jury is an Inquest of Office; and an Inquest of Office may be found by a less Number than Twelve. Mr. Sheriff, bring your Prisoner to the Bar.

Mr. *Nicoll*. I have something else to offer.

Mr. *Atwood*. Sheriff, stay a little.

Mr. *Nicoll*. I have a Second Objection in Behalf of the Prisoner; and it is, That the Juries should have been returned by Precepts under the Hands and Seals of the Commissioners; which we understand was not.

This appears in *Hale's Pleas of the Crown*, Pag. 134. Sir *Edw. Coke's* 4th Page of the *Institutes*, Title *Oyer and Terminer*, says the same. There is a special Clause in the Writ of *Oyer and Terminer*, which says, *We have commanded our Sheriff to summons, at such Days and Places as you shall appoint, such good and lawful Men, by whom the Truth may be the better known.* How shall the Sheriff know those Days and Places, but by the Commissioners Precept? And how shall the Truth be known, if the Grand-Jury are permitted to have no other Evidence but what are brought *ex parte Regis*?

Mr. *Sol. Gen.* The Grand-Jury are only to enquire for the King, and to receive or send for no other Evidence than what are brought for the King.

Mr. *Nicoll*. You may tell that to somebody else, not to me; that is contrary to their Oath, which is, That they shall diligently enquire, and true Presentment make.

Mr. *Atwood*. All the Books speak of the King's Evidence only, and agree, that the Grand-Jury may and ought to Find upon probable Evidence, as appears in *Babbington*.

Mr. *Emot*. Sir *Edw. Coke* says, Part 4. of the *Institutes*, Title *Oyer and Terminer*, That the Juries ought to be returned by Precepts under the Hands and Seals of the Commissioners. There is no Distinction made between the Grand-Jury and the Petty-Jury; so that the *Venires*, as well for one as the other, ought to have been under the Hands and Seals of the Commissioners.

Mr. *Sol. Gen.* When you had the Government, Dr. *Staats* had a Bill found against him by Eight Men of a Jury of Fifteen.

N.B. *A private Person opposed the Assertion; but he was commanded Silence.*

Mr. *Nicoll*. I never heard of it, nor believe it to be true; but that is not to be taken for a Precedent, were it true.

Mr. *Atwood*. Gentlemen, you seem to mistake the Lord Chief-Justice *Coke*, where he says, There shall be 24 Peers upon the Arraignment of a Peer, &c. for if there be but 13 Peers, and the Major-

ity agree to it, it is understood to be found by 12 of them.

There is something in that which you offer, of the Precept being under the Hands and Seals of the Commissioners in the Return of the Petty-Jury; but this does not at all affect the Grand-Jury: For which Reason, if you see Cause to move it, Time may be granted to mend that Mistake. Is there nothing else you have to offer?

Mr. *Nicoll*. Nothing at present.

Mr. *Atwood*. Mr. Sheriff, bring the Prisoner to the Bar.

Which was done accordingly.

Clerk of the Crown. *Nicholas Bayard*, Hold up thy Hand. You stand indicted, &c.

City and County of New-York, in the Province of New-York in America, Anno Regni Regis Gulielmi Tertii, nunc Angliæ, &c. Decimo Quarto.

“THE Jurors sworn, and charg’d to enquire for our Sovereign Lord the King upon our Oaths, do Present *Nicholas Bayard*, of the City of *New-York* in *America*, Esq; for that he the said *Nicholas Bayard*, the Fear of God in his Heart not having, nor the Duty of his Allegiance weighing, but being moved and seduced by the Instigation of the Devil, as a Rebel and Traytor against the most Serene, most Illustrious, most Clement, and most Excellent Prince, our Sovereign Lord *William* the Third, by the Grace of God, of *England, Scotland, France and Ireland*; and of this Province of *New-York*, King, Defender of the Faith, &c. His, the said *Nicholas Bayard*, supreme, true, lawful, and undoubted Sovereign Lord; the cordial Love, and true and due Obedience, Fidelity and Allegiance, which every Subject of our Lord the King, that now is, towards him our said Lord the King should bear, or of Right ought to bear, withdrawing, and utterly to extinguish; intending and contriving, and with all his Strength purposing, designing, conspiring and endeavouring, with divers other Rebels and Traytors, to the Jurors unknown, the Government of this Province of *New-York*, under him our said Sovereign Lord the King, that now is of Right happily and duly established, to defame, subvert, change and alter, and to disturb the Peace, Good and Quiet of this his said Majesty’s Government of this his said Province of *New-York*, as it is now, and hath been for several Years last past established; On the Tenth of *December* last past, and in the 13th Year of the Reign of our Sovereign Lord, that now is, in the Dock-Yard of the said City and County of *New-York*, and divers other Times and Days as well before as after, at the said Ward, and elsewhere in the City and County of *New-York* aforesaid, falsely, maliciously, devilishly, rebelliously and traitorously did compass, imagine, contrive, purpose, design, intend and endeavour to defame, subvert, change and alter, and to disturb the Peace,

" Peace, Good and Quiet of this his Majesty's
 " Government of *New-York*, as it now is, and
 " hath for several Years past been established.
 " And the same most abominable, wicked and
 " devilish, rebellious, treasonous and traitorous
 " Contrivances, Intentions, Purposes and Endeavours
 " afore said, to fulfil, perfect, and bring
 " to effect, he, the said *Nicholas Bayard*, by Conspiracy
 " as afore said, afterwards, to wit, the said
 " Tenth Day of *December* last past, in the Year
 " afore said, in the said City and County of *New-York*
 " afore said, and divers other Days and
 " Times, as well before as after, falsely, maliciously,
 " advisedly, clandestinely, rebelliously,
 " and traitorously, with Force of Arms, &c.
 " did use divers indirect Practices and Endeavours,
 " to procure Mutiny and Desertion among
 " the Soldiers in Pay, belonging to his Majesty's
 " Fort and Garrison of *Fort William-Henry*, in
 " or near the said City and County of *New-York*
 " afore said, and did draw in Numbers of them,
 " the said Soldiers and others, to sign false and
 " scandalous Libels against his Majesty's said Government,
 " as it is now, and hath for several
 " Years last past been established in this Province:
 " Which said Libels, by the Procurement of the said
 " *Nicholas Bayard*, as afore said, were signed by the said
 " Soldiers and others, and were likewise signed by him
 " the said *Nicholas Bayard*; in one or more of which said
 " Libels, amongst other Things highly reflecting on the last
 " and present Administration of the Government under his
 " Majesty in this Province, it is insinuated and declared,
 " That his Majesty's Subjects within this Province, are,
 " and have been for some Years last past, by Persons
 " entrusted with the Administration of the said Government
 " under his Majesty, oppressed; and that the said Government
 " hath been, and is rendered cheap and vile in the Eyes
 " of the People, as also that the present General Assembly
 " of this Province is not a lawful Assembly. By which,
 " and divers other malicious Scandals in the said
 " Libels contained, he, the said *Nicholas Bayard*, hath
 " incited his Majesty's Subjects of this Province to
 " disown the present Authority, and Government thereof,
 " and to cast off their Obedience to his Majesty's said
 " Government, as it now is, and hath for several
 " Years last past been established, against the Duty
 " of his, the said *Nicholas Bayard*'s, Allegiance,
 " against the Peace of our said Sovereign Lord the King,
 " that now is, his Crown and Dignity, as also against
 " the Form and Effect of one Statute or Act of General
 " Assembly of this Province, enacted in the Year of our
 " Lord God, 1691, Entituled, *An Act for quieting and settling
 " the Disorders that have lately happened within this Province,
 " and for establishing and securing their Majesty's present Government
 " against the like Disorders for the future.*

Clerk. What say you, Are you Guilty, or Not Guilty of the Indictment?

Prisoner. Not Guilty: And puts himself upon God and the Country, &c.

Prisoner. I desire I may be allowed two Clerks to take the Minutes of the Trial.

Mr. Atwood. No: You have a Solicitor allowed, he may take Notes; any other will not be suffered to do it.

Prisoner. I find it was allowed my Lord *Russel*, and others, to employ Clerks to take their Trials: I pray the same Liberty.

Mr. Atwood. It was allowed my Lord *Russel*; but you would not be willing to meet with the Hardships of his Trial.

Mr. Soll. Gen. Perhaps the Counsel will not insist upon the Mistake of the *Venire*.

Mr. Nicholl. We shall not insist on that.

Mr. Atwood. But we will have it mended; and thereupon order'd a Precept to be directed to the Sheriff, under the Hands and Seals of the Commissioners, to return a Petty-Jury the Sixth Instant; to which Day the Court adjourn'd.

March 6th. The Commissioners met. The Prisoner was brought to the Bar, and the Petty-Jury being call'd, consisting of Eighty, some of them did not appear: Whereupon it was order'd, that the Defaulters of the Petty-Jury be amerced Ten Pounds each, if they did not appear in the Afternoon, or shew a reasonable Cause; and the Court adjourn'd till Three in the Afternoon, when they met again.

Mr. Soll. Gen. mov'd, That the Court might be adjourn'd till To-morrow Morning, the King's Evidence being disguis'd with Drink; which was granted.

Mr. Nicholl mov'd, That it would be a Favour to the Prisoner, to put off the Trial till Monday.

Mr. Atwood. No: I will take care to do my Duty, whatever other People do. We shall not give Mr. *Veasy* the Opportunity of another Sermon against us.

Mr. Veasy was then Minister at New-York.

Mr. Atwood. I observe Mr. *Jamison* to have Pen and Ink: Mr. *Jamison*, you are not permitted to write.

Jamison. I only take Minutes for my private Satisfaction.

Mr. Atwood. 'Tis true, an Attorney or Practitioner of the Court may take Notes for his private Use; but you are no longer an Attorney of this Court, nor shall you be permitted to practise, until you purge your self of having sign'd the Addresses. Put up your Pen and Ink.

March 7th. The Commissioners met, and the Attorney-General was call'd, but did not appear.

Mr. Atwood. Mr. Secretary, let a Minute be made, That it appears to this Court, That the Attorney-General hath neglected his Majesty's Service. 'Tis no Wonder the People here condemn his Majesty's Authority, since the Attorney-General, tho' commanded to prosecute by the Government, hath neglected to do the same, and hath given a Judgment and Opinion directly contrary to the Lieutenant-Governor and Council.

Mr. Atwood. Sheriff, fetch the Prisoner. Which was done.

Mr. Secretary. Before we proceed, read the Petition, which was given me this Morning by Colonel *Bayard*'s Son. Which was read *in hac Verba*.

To the Honourable *William Atwood*, Esq;
Abraham d'Peyster, Esq; and *Robert Wal-*
ters, Esq; Judges of this Special Court.

The Humble Petition of Nicholas Bayard;

Sheweth,

THAT your Petitioner's Council have in-
form'd him, That on Yesterday they
pray'd in the Petitioner's Behalf, the Favour
of this Court, to prove before your Honours,
by the Oaths of the major Part of the Grand-
Jury, there also *subpana'd* in Court, that the In-
dictment brought in for High-Treason against
your Petitioner by Capt. *Johannes d'Peyster* (as
being Foreman of the said Grand-Jury) was
not Found, nor Agreed to, by any Twelve of
that Jury, tho' the most Part of them (as is evi-
dently known) are your Petitioner's mortal
Enemies, for no other Cause, but on account
of the unhappy Divisions within this Province.
Which said Prayer of your Petitioner's Coun-
cil (as he is also inform'd) your Honours have
been pleas'd to over-rule, as not being practi-
cable by the common Form of the Court's Pro-
ceedings. But, *may it please your Honours*, this
being a Matter of that moment, whereof hardly
a Precedent is to be found, as that a Foreman
shall so far impose upon a whole Grand-Jury,
as to bring in an Indictment *Billa Vera*, which
the said Inquest did not Find nor Agree unto,
neither in Matter nor Form: Your Petitioner
therefore most humbly prays, That your Ho-
nours will be pleas'd to take the Premises into
your Honours serious Consideration, and to
grant your Petitioner that Favour, as to have
all the said Nineteen of that Grand-Inquest sworn
before your Honours to discover the Truth,
and to afford your Petitioner such Relief therein,
as to your Honours shall seem most just and
expedient. But if it should so happen (as your
Petitioner does not hope) that your Honours
do not think fit to grant this your Petitioner's
most humble Request, your Petitioner further
prays leave to acquaint your Honours with the
excessive and almost unparallel'd Hardships your
Petitioner, in this very Trial, labours under.
In the first place, for that the Grand-Jury, al-
tho' your Petitioner had often pray'd Mr. Sher-
riff, that he might have the Favour and Justice
of being try'd by *English* Men, and of *English*
Extraction, of the best Character for Know-
ledge, Integrity, Justice, Conscience, and Es-
tates; yet notwithstanding your Petitioner had
not one allow'd him of *English*, but all of 'em
of *Dutch* Extraction and Education, and several
of 'em ignorant to that degree, that they can
neither write nor read, nor so much as under-
stand the *English* Language, tho' sufficient
Numbers of *English* Men of very good Abili-
ty, Understanding, Integrity, Conscience, and
Estate, were to be had in the Bailiwick.

And, for a second Instance of your Petition-
er's Hardships, he finds now also a Petty-Jury
impanel'd to serve upon his Trial, all of 'em,
except Five or Six, in like manner of *Dutch*

Extraction and Education, most of 'em Handi-
craft and Labouring Men; very few that ever
were of any Juries whatsoever, and extream ig-
norant in the *English* Language.'

Your Petitioner therefore most humbly prays,
That your Honours will be pleas'd to take the
Premises into your Honours favourable and
serious Consideration, and to afford your Pe-
titioner such Relief therein as to your Ho-
nours in Justice and Equity shall seem fit.
And, as in Duty bound, &c.

N. BAYARD.

Mr. Atwood. Let a Minute be enter'd, That
the Petition was read; and, that it does appear
to the Court, that the Bill was found by more than
Twelve of the Grand-Jury.

Mr. Atwood. Colonel Bayard, the Laws do in-
dulge you with Counsel; Did you advise with
them concerning this Petition?

Bayard. No, I did not.

Mr. Atwood. 'Twere better you had; for you
have acted very indiscreetly in this Matter, to
arraign the Justice of the Grand-Jury.

The Jury being call'd, appear'd.

Timon van Burser. Prisoner accepts.

Mr. Soll. Gen. I challenge him for the King.

Mr. Emot. You are not to challenge, Mr. Solli-
citor, without Cause, by the Statute 23 Edw. I.

Mr. Soll. By the Common-Law the King could
challenge without Cause, but, by the Statute, that
was taken away; and in the late Trial of *Peter*
Cook, it is said by Lord Chief-Justice *Treby*, That
the King should shew Cause, if not enough on
the Pannel to serve, but not else.

Mr. Atwood. It is a Thing so plain, I wonder
you will insist on it.

Mr. Nicboll. We say the King should shew
Cause, but do not say when.

Gysber van Inbrough. Prisoner accepts.

Mr. Soll. challenges for the King.

Gerryt Unkle. Prisoner accepts.

Mr. Soll. challenges, &c.

William Janeway. Prisoner accepts.

Mr. Soll. challenges, &c.

Isaac Stoutenburgh. Prisoner accepts.

Mr. Soll. I don't challenge him, but desire he
may be sworn on a *Voire dire*, whether any Per-
son hath been with him on behalf of the Prison-
er, to desire him to be favourable to the Prisoner
on this Trial.

[Who was sworn upon a *Voire dire*, and
afterwards for the Trial.]

Richard Saftet. Prisoner. I make no Challenge.

Mr. Soll. I desire to know whether I may not
first have him sworn upon a *Voire dire*, and after-
wards challenge him.

Mr. Atwood. No; you must challenge peremp-
torily first.

Prisoner. I pray the Solicitor may first make
all his Challenges, and only leave me a Pannel
of Forty-eight Jurors.

Mr. Atwood. No, that must not be.

[Memor-

[Memorandum. *The rest of the Eighty Jurors in the Pannel were in like manner challeng'd by the Prisoner or Solicitor, till the Number of Twelve were sworn, viz. one of them an Alien, two no Freeholders, and all the rest Dutchmen, or of Dutch Extrañtion, born here, very ignorant of the English Language, and of mean Capacities to an extream Degree.*]

The Names of the Petty Jurors were as follows; viz.

Isaac Stoutenburgh,
Jacob vander Spieghel,
Andries Marjbalk,
Gerret Viele,
Thomas-Saunders,
Jacob Cornelisse,

}
}
}
}
}
}

Barent Kool,
Goert Olpherto,
Samuel Beckman,
Cornelis Clopper,
Conrael Teneyck,
Jacobus Goelet.

Mr. Solicitor made an Introductory Discourse and Harangue of about an Hour long, and had some Sheets of Paper in his Hand, out of which he read several scurrilous and false Reflections on the *English* Inhabitants of this Colony, with the *French*, and principal *Dutch*, having Retrospection for many Years past, only design'd to incense and enflame the Jury, charging the Prisoner to be the *Head of a Faction*, a malignant Party, who had endeavour'd to introduce *Popery* and *Slavery*, Disturbers of our *Israel*, as they had been that of Capt. *Leyster's* Government, which (he said) was now justified at Home to be *Legal*: That the said Party was a *Nest of Pirates*, *Betrayers of our Prince and his Laws*, a *Parcel of Banditti's*, who offer'd the late Earl of *Bellamont* a Reward of Ten Thousand Pounds to connive at Piracies, and One Thousand Pounds to himself to sollicite it: That some mean and broken Merchants in *London* had made Complaints in their behalf to the Lords of Trade and Plantations, and to the Parliament, against the said Earl; but that the said Earl's Proceedings were approv'd of; and used scandalous Reflections on Mr. *Veasy*, Minister of *Trinity Church*, and against Col. *Smith*, the first Member of Council, tho' nothing relating to this Trial, and own'd himself of the *Leysterian* Party, and that he would stand and fall by it, &c.

Then call'd his Witnesses; who gave their Evidences in the following Words, as they were taken in open Court, and since agreed unto by all of them respectively, as followeth.

Samuel Clows sworn, saith:

Gentlemen, when I come to speak of the Addressees, I must pray you to take notice, that I can speak positively to but very few Things that is in them: What I say is to the best of my Remembrance and Understanding, for I may be mistaken in both.

'Twas about a Fortnight or Three Weeks before Colonel *Bayard's* Commitment, that I happen'd to come to his House about some Business, not at all relating to this Matter; concerning which, as we were talking, Colonel *Bayard* ask'd me, if I had seen the Addressees? I answer'd, No. He then shew'd me three Addressees; the first was to my Lord *Cornbury*; the Persons addressing

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in it call'd themselves Inhabitants of *New-York*, and others distant from it: And because some of them could not perhaps be present at his Lordship's Arrival here, did, by way of Address, congratulate his Lordship into this Government, wishing him all Health and Prosperity here, and that the Name of *Party* might be banish'd from among us. After I had read it, Colonel *Bayard* ask'd me, if I had any thing to say against it? I answer'd, No, and then sign'd it. The other two Addressees were, one to the King, and the other to the House of Commons, or to the Parliament (I am not positive which): As I had read them, I remember I made this Observation in my self, That they contain'd nearly both the same Things; and in them, or one of them, to the best of my Remembrance, were contain'd these Things, The Persons addressing, call'd themselves *Englishmen* and others, who, tho' Foreigners, were entituled to the Privileges of *Englishmen* here. It speaks concerning the late Revolution here, of which I have but a confused Idea, and can remember nothing particular: Afterwards it speaks concerning my Lord *Bellamont's* Administration; in several Articles, of which I can remember but one, which is, That the *Hottest* and *Ignorantest* of the People were put into Places of Trust. Then it speaks concerning the late Assembly here, and tells you, That after this Assembly had chose a Speaker, some of the Representatives were inform'd that he was an *Alien*; upon which they made a Motion to the House, that that Matter might be enquir'd into; but that Motion being refused, one half of the Representatives, or Ten of 'em, left the House; notwithstanding which, the remaining Part of the Representatives, with some others they took in, did proceed to make Acts: In one of which Acts they gave a Sum of Money to the Lieutenant-Governor, to tempt him to pass these Acts; and likewise a Sum to the Chief-Justice of this Province, to find Law and Form for their Proceedings; and, that these Things tended to the rendering the Government vile and cheap in the Eyes of the People.

Mr. *Soll.* What Names do you remember you saw to the Addressees?

Clows. I saw several Names there; but whether to all Three, or Two of 'em, or only to that of my Lord *Cornbury*, I cannot say; but I did, to the best of my Remembrance, see the Names of *Rip van Dam*, *Matthew Ling*, *Charles Wooley*, *Robert Livingstone*, and Mr. *Anderson*; but I am not certain whether I saw Mr. *Jamison's* Name there or no. When I had read them, I told Colonel *Bayard*, they contain'd Things done before my Time, and I did not therefore think it proper for me to sign 'em; upon which he reply'd, Then don't sign 'em.

Mr. *Soll.* I shall read what you said before the Council.

Clows. Do so, if you please.

Mr. *Soll.* Don't you remember that it was said, that my Lord *Bellamont* had put the most ingenious and honestest Men of the Province out of all Places of Trust?

Clows. No, I can't remember that.

Mr. *Soll.* I think you said so before the Council.

I i i 2

Clows.

Clows. Perhaps I might say something like it when I was before the Council, tho' I don't believe there is any essential Difference between what I now say, and what I said to the Council; yet if there be, I hope what I then said will not be taken to my Prejudice: I was then sent for by the Governor's Letters, which seem'd to import, that he had Business with me of a far different Nature than to examine me about this Matter; so that I was then in a Surprise.

Mr. Soll. But you believe what you then spoke was true?

Clows. Without doubt; and I hope *Mr. Cofens* took care truly to write down what I then deliver'd; but, whether he did express my Meaning right or no, I know not; for I did not look over his Notes till the Day I saw them at your Chamber.

Mr. Soll. Was not the Assembly call'd an Illegal Assembly; and, that they had made Acts prejudicial to the Country?

Clows. No, I do not remember that.

Mr. Soll. Was it not said, That the Scum of the People were put into all Places of Trust?

Clows. Perhaps I might before the Council use the Word *Scum*; but I now think it was, That the *Hottest* and *Ignorantist* were put into Places of Trust.

Mr. Soll. *Mr. Clows*, pray tell us, What was the Reason you did not sign the other two Addresses?

Clows. I think I am not at this time oblig'd to tell that, being it does not at all affect the Matter.

Mr. Atwood. Yes, but it does; you must tell us.

Clows. One of the chief Reasons was, because I then thought, that the saying the Assembly had given a Gift to the Lieutenant-Governor, to tempt him to pass their Acts, was a Reflection upon the Lieutenant-Governor; but it is my Judgment now, that it was no Reflection at all upon him.

Mr. Soll. How! and don't you think so now?

Mr. Atwood. He only speaks it as his Judgment.

Mr. Soll. Don't you remember, that the Assembly was call'd *The Pretended Assembly*?

Clows. No.

Mr. Soll. Don't you remember 'twas said, *their Illegal Proceedings*? Don't you remember the Word *Illegal*?

Clows. No, I cannot remember that; and I did desire you, at your Chamber, to put that Word out of the Clerk's Notes.

Col. Bayard. Did I ever ask you to sign them?

Clows. No, you did not; you was so far from doing that, that you rather persuaded me not to sign 'em; and so did *Madam Bayard*, who was then in the Room.

Mr. Nicholl. Do you remember any thing of the Word *Oppression* in the Address?

Clows. No, I do not remember that Word.

Mr. Soll. That the King's Subjects were oppress'd here?

Mr. Nicholl. Was the Assembly call'd an *Unlawful Assembly*?

Clows. No, Gentlemen; I can speak positively to but few of these Things; what I say is, to the best of my Remembrance and Understanding.

Peter Odyre, a Frenchman, sworn; and for that he could speak no English, Mr. Briesack, Chaplain to the Garrison, was sworn to be his Interpreter.

Mr. Soll. What do you know of the Papers that were at *Col. Bayard's*? and, Did you sign them? or, Who desir'd you so to do?

Odyre. Going by *Colonel Bayard's* House, one *Mr. Bodinot* told me, I must step in to *Col. Bayard's*, and sign an Address to the King; and as I was a going in, I met *Col. Bayard* coming forth of his House; and going in, I saw the Addresses lying on the Table.

Mr. Soll. Did *Colonel Bayard* then persuade you to sign them? or, Did he tell you it was for your Good to sign them?

Odyre. *Colonel Bayard* then told me, I might sign if I would, or that I might not; and the *Colonel* also told me, it was for the Good of the Country, and, that if I was willing I might sign them; if not, I might let them alone; and then went away.

Mr. Soll. I will now prove the Addresses sign'd at the Coffee-house, and that *Colonel Bayard* attended there for that Purpose.

W. Richardson, Inhabitant and Housekeeper in the City, sworn.

Mr. Soll. What do you know, *Mr. Richardson*, concerning the signing the Papers at the Coffee-house?

Richardson. One Day drinking at one *Spencer's*, I was desir'd to go to the Coffee-house, which I did; and, when there, I saw a great many People, I believe near an Hundred; and coming above Stairs, I saw Papers on the Table, which were call'd *Addresses*, which I sign'd with others; and I saw, among others, *Colonel Bayard* there; but he seem'd to be no more acting or concern'd than any other.

Mr. Atwood. You are very forgetful of what you swore before the Governor and Council; but, to put you in mind of somewhat of it, Did no body tell you what Papers were to be sign'd?

Richardson. No body at all.

Mr. Soll. How many Papers did you sign?

Richardson. I sign'd three, but did not know what they were, but was told they were Addresses to the King, and my Lord *Cornbury*, and the Parliament, but did not read any of them; but, I think, one of them complain'd, that the People lay under some Hardships here.

Mr. Soll. You declar'd much more before the Council.

Richardson. I was then call'd suddenly before the Council, and was surpriz'd.

John Bashford sworn.

Mr. Soll. *Mr. Bashford*, tell the Court and Jury what you know concerning the Papers at the Coffee-house.

Bashford. I was at the Coffee-house, where I saw the Papers, or Addresses, but don't know what they were or contain'd; and I sign'd four or five Papers there, but did not stay half a Quar-

ter of an Hour. When I was there, I saw Colonel Bayard amongst many others in the Room, but did not see his Name, as I remember, to any of the Papers.

N.B. These five Papers were the three Addresses and the two Duplicates.

Mr. Atwood. These Witnesses are very unwilling, or very forgetful, having given a much different Account of Things upon their Oaths before the Governor and Council.

Balsford. I have now had Time to recollect myself, but was then under a Surprise, not knowing what I was sent to for.

Mr. Michael Christian sworn.

Mr. Atwood. *Mr. Christian,* What do you know concerning the Papers, or Addresses, sign'd at the Coffee-house?

Christian. I remember, some Time since, about Christmas I believe, I was at the Coffee-house, where I saw the Addresses with many other People, but can't tell how many.

Mr. Atwood. Do you believe there were more than Twenty?

Christian. No, I believe there were not. I found three Addresses there, and sign'd 'em all, but the Substance thereof I cannot now remember; 'tis a good while since, and therefore I cannot speak positively to it. I remember, a Question was ask'd me at the Council, Whether there was any Complaints in the Addresses that the Soldiers wanted their Pay? I believe I might then answer something about it, but I do not know any such thing in the Addresses, either of the Soldiers or their Pay. I remember, that Colonel Bayard was then at the Coffee-house when I sign'd the Addresses, but don't remember that any body desir'd me to sign.

Mr. Atwood. How many Hands, *Mr. Christian,* did you see to the Addresses?

Christian. I cannot tell how many, but remember Colonel Bayard amongst others was there; but he never ask'd me to sign either of the Addresses; nor can I remember, that there was any Thing concerning either the Soldiers or their Pay in the Addresses.

Mr. Atwood. Certainly these Gentlemen are very unwilling Evidences: *Mr. Christian* is a Gentleman of good Learning, and it's strange that he should be so forgetful, that he cannot remember what was given in on his Oath before the Governor and Council: He has either a weak or treacherous Memory.

Mr. Hugh Gray sworn.

Mr. Sol. *Mr. Gray,* What do you know concerning the signing of those Papers at the Coffee-house?

Gray. About December last, being at the Coffee-house, I met there one *Mr. Scot,* who ask'd me to go up into the Upper-Room, which I accordingly did; and when there, I saw on a Table some Papers, which afterwards I understood were Addresses to the King, Parliament, and Lord Corn-

bury. Some body ask'd me to sign 'em, which I did accordingly, but don't know who it was. I remember Col. Bayard was there amongst others, smoking a Pipe of Tobacco: I believe there might then be about ten Hands to the Papers, and about five in the Room; that I read all the Addresses, but cannot now remember the Contents of 'em.

Mr. Atwood. *Mr. Gray,* Do you remember there was any Complaints against the Government in those Addresses?

Gray. No.

Mrs. Hannah Hutchins sworn.

Mr. Sol. Now, may it please your Honours, I will prove the Papers sign'd at another Place.

Mr. Atwood. *Mrs. Hutchins,* What do you know concerning these Papers brought to your House?

Mrs. Hutchins. About Christmas last Col. Bayard brought some Papers to my House, and left 'em with me, but did not stay at all, but bid me shew them to my Husband, who was then at Church. These Papers remain'd at my House about three Days, and then I deliver'd 'em to a Negro, who was sent for them, but do not remember whose Negro it was: Col. Bayard was not at our House while the Papers lay there.

Mr. Sol. Now I shall proceed to prove what sort of People were drawn in to sign these Papers.

John Read sworn.

Mr. Atwood. What do you remember concerning any Addresses or Papers at the House of Alderman Hutchins?

Read. Being on the 26th of December at *Mr. Hutchins's* House, I there saw some Papers, which one *Mr. Burroughs,* then present, ask'd me to sign, telling me, they were Addresses to the King, Parliament, and Lord Cornbury, made for the good of the Country, and which were lying on the Bed there; and thereupon I sign'd them, but did not read 'em: I did not see Col. Bayard there, but believe I saw his Name to the Papers. I saw a great number of Names subscrib'd to the Papers, as near as I can judge, about Two hundred.

Mr. Sol. Of what Age are you?

Read. About Seventeen Years of Age.

Edward Marshal sworn.

Mr. Atwood. Where did you see these Papers? and, What do you know of them?

Marshal. Going one Day, about Christmas, to the House of *Mr. Hutchins,* to get a Witness to a Letter of Attorney, I saw there five Addresses, which I sign'd; one was to the King, another to the Parliament, and another to the Lord Cornbury, congratulating his Arrival: I read some of them, but found nothing in any of 'em that reflected upon the Governor: There was some Complaint of the Speaker of the Assembly being an Alien. Looking on the Names of the Subscribers, I saw the Name of *Edward Marshal* before I had sign'd, but I don't know but there may be more *Edward Marshals* than one in the Province. I did not see Col. Bayard at the House, nor his Name to the Papers.

John

John Buckley sworn.

Mr. Atwood. What do you know concerning any Papers at the House of Mr. Hutchins?

Buckly. Coming home from the Fort, and passing by Mr. Hutchins's House, I was ask'd to walk in by Mr. Hutchins, which I did; and being come into the Upper-Room, I saw some Papers there, which were call'd *Addresses*; but I did not read any of 'em, but that to my Lord Cornbury, which, as I understood, was a Compliment and Congratulation to him at his Arrival here. Mr. Hutchins then ask'd me to sign it, but I refused, because being a Lieutenant in the Garrison, I was unwilling to do any such thing before any of my elder Officers had done it. But I did not see Col. Bayard, nor his Name there.

Francis Cherman sworn.

Mr. Atwood. Give an Account what you know concerning any Papers or *Addresses* at the House of Alderman Hutchins.

Cherman. Coming a while ago to Mr. Hutchins's House, and going up Stairs, I saw certain Papers there, and some People: Mr. Hutchins ask'd me to sign those Papers, telling me they were *Addresses* to the King and my Lord Cornbury; that they were for the good of the Country and the *English*; and I expected by it to be made Free of the City, and sign'd therefore; but did not see Col. Bayard there, nor don't remember the Contents of the Papers.

One Button sworn.

Mr. Atwood. What do you know concerning the Papers, &c.?

Button. Hearing by some of my Fellow-Soldiers that there were some Papers or *Addresses* at Capt. Hutchins's, I was willing to go and see what they were; and coming to the House, there I found

Five Papers, and sign'd them all Five, but do not remember to whom they were directed. Capt. Hutchins was there, but said nothing at all to me about the Papers, or signing them; nor can I remember whether they were in Paper or Parchment. I believe there were then about thirty Names subscrib'd, but saw neither Colonel Bayard nor his Name there.

Robert Crannel sworn.

Mr. Atwood. What do you know, &c.?

Crannel. Some Time since I came to Mr. Hutchins's, and there found Five *Addresses*: I read that to my Lord Cornbury, and some of the two others to the King and Parliament: In one of 'em, to the best of my Remembrance, was contained a Complaint, That the People of this Province lay under more Hardships than formerly, and that the Speaker of the Assembly of this Province was an Alien. I saw Col. Bayard's Name to that to my Lord Cornbury, but am not acquainted with his Hand-writing at all. After I had read some Part, and been told what the rest of the Papers were, I signed them all Five, but no body desired or persuaded me to do it.

Mr. Atwood. Your Evidence is not so full as when you gave in your Information on Oath before the Council.

Crannel. But it is, and I know nothing more.

One Griggs sworn.

Mr. Atwood. What do you know, &c.

Griggs. I was desired by one Bovell, a Soldier in the Garrison, to go to Mr. Hutchins's House, and sign some Papers: I was told, and believed, it was to make me Free of the City: Thereupon I went to Mr. Hutchins's, and there signed them, but did not see Col. Bayard there.

One Garnet sworn.

Mr. Atwood. Tell the Court what you know, &c.

Garnet. A great many of the Soldiers of the Garrison signed, and they expected thereby to be made Free of the City, many of them being Tradesmen.

One Fleming sworn.

Mr. Atwood. What do you know, &c.?

Fleming. Coming some time since to the House of Mr. Hutchins's, I there saw some Rolls opened, with a great many Names thereto, but did not see any other Writing: To this I put my Name, and also then put down two or three Names for others, at their Request, they having first put their Marks. I and the others expected by this to be made Free of the City. I believe out of 160 Men now belonging to the Fort, or thereabouts, there may be about 30 that signed.

After the Addresses were full, they signed on the Backside.

One Bovell sworn.

Mr. Atwood. What do you know, &c.?

Bovell. Coming to Capt. Hutchins's, I was shewn some Papers, which I was told were *Addresses*, to which I put my Mark, without being desired by any body; I cannot write nor read. When I had set my Mark, Mr. Hutchins told me, That if any of my Fellow-Soldiers would come and sign also, they might; if not, they might let it alone. By this signing I expected to be made Free of the City, but not from being a Soldier; but never heard Capt. Hutchins say so.

Mr. Sol. Gen. I have now no more Witnesses against the Prisoner. Here is a Paper signed by him; I desire the Clerk of the Council may be sworn to prove the same.

Mr. Cofens, the Clerk of the Council, sworn.

Col. Bayard. I own that Paper: It is a Petition to the Lieut. Governor and Council in Behalf of Ald. Hutchins then in Prison; owning, with Mr. French, Mr. Wenham, and Mr. Van Dam, that the Copies of three *Addresses* to the King, the Parliament, and the Lord Cornbury, were in our Hands.

Then the Petition was read, and was the same as is entered in Pag. 419.

After this, the Act of Assembly, on which the *Mittimus* is grounded, was read; and after that, the Commission to the Lord Bellamont at large, and the Lieut. Governor's Commission.

Mr. Sol. Gen. I desire Mr. Emot may be sworn, Whether he did not give Advice to a certain Person about that Clause in the Address to the Lieut. Governor in Favour of Ald. Hutchins; viz. *That the Lord Cornbury succeeded the Earl of Bellamont as Governor in New-York?*

Mr. Emot was commanded by Mr. Atwood to be sworn; and being sworn, said, I told Mr. French these Words in the said Address did not run current, and might give ground of Exception to some who would be apt to strain every Word to the Prisoner's Disadvantage. To which Mr. French replied, They had drawn the Addressees themselves, and believed it was well enough.

Mr. Sol. Gen. I have now prov'd by the Witnesses those false and scandalous Libels set forth in the Indictment, whereby the Good, Peace and Quiet of the Government has been disturbed, which by this Act of Assembly is High-Treason. I have likewise proved, that the Soldiers were drawn in to sign those scandalous Libels, and that some did sign blank Rolls, which was lifting of Soldiers, and is Treason. By these Words in the Petition to Lieut. Governor and Council, viz. [*Who we understand, by certain Advice we have received from England, to be nominated by his Majesty to succeed the late Earl of Bellamont as our Governor*] is a disowning and casting off the present Authority, and his Majesty's Government.

Mr. Nicholl. Your Honour and the Jury will please to take Notice, that the Indictment consists of divers Heads; as, That the Prisoner did compass, imagine, contrive, propose and design to defame, subvert, &c. the Peace, Good and Quiet of this his Majesty's Government.

That he used divers indirect Practices and Endeavours to procure Mutiny and Sedition amongst the Soldiers.

That he drew in Numbers of them, the said Soldiers and others, to sign false and scandalous Libels; and that he had signed them himself.

That in these Libels it is declared, That the Subjects in this Province are and have been for many Years last past, by those entrusted in the Administration of the Government, oppress'd; and that the Government hath been, and is rendered cheap and vile in the Eyes of the People; as also, that the General Assembly of this Province is not a lawful Assembly: By which means, &c. he hath incited his Majesty's Subjects to cast off their Obedience to his Majesty's said Government.

The Prisoner is not directly charged here with any Fact, except his own signing the said Libels, but for Endeavours; the rest are forc'd Conclusions and strain'd Inferences drawn from thence. It is not alledg'd, that the Peace of the Government hath been disturb'd, or that any Mutiny or Sedition hath been amongst the Soldiers, or that any one of his Majesty's Subjects hath cast off his Obedience to his Majesty's said Government. By the Course of the Evidence, it appears there was an Address to the King, an Address to the House of Commons, and an Address to my Lord Cornbury, and a Petition or Address to the Lieut. Governor and Council; but

all the Evidence is very lame and weak, as to the three first, if we should admit the making or signing of them to be any Fault or Crime, more especially if the same should amount to Treason: For by none of the Evidence it does appear, that those Addressees signed at the Coffee-house were the same Addressees which were at Col. Bayard's, or that the Addressees at Ald. Hutchins's were the same which were at the Coffee-house, or the same which were at Col. Bayard's: There is no Proof that the Prisoner signed these Addressees: Here is not so much as the Likeness or Comparison of Hands produced, alledged, or proved; tho' if it were, that would not do. In the great Trial of the Bishops, Mr. Pollexfen there affirms, p. 60. *That Comparison of Hands is not good in a criminal Case*; and offers the Lady Car's Case in *Siderfin's Reports*, p. 418, 419. where it is so adjudged.

But I shall not dwell upon the Evidence; it is certainly the Right of the Subject to petition the King, whenever he conceives himself aggrieved. In the Bishops Trial, p. 160. Mr. Pollexfen says, *I never thought it, nor hath it since been thought by any body else, to be a Crime to petition the King.* Pag. 121. Serj. Levinz affirms, *The Subjects have a Right of petitioning the King in all their Grievances.* So say all our Books of Law; so says the Statute of the 13th of Charles II. *They may petition.* P. 126. Sir Thomas Powys, then Attorney-General, acknowledges Access to the King by Petition is open to every body; the most Inferior Person is allowed to petition the King. Pag. 135. Mr. Justice Holloway says, *It's the Birthright of the Subject to petition the King.* If it's the Birthright of the Subject to petition the King, to procure or draw in Men to do what it's their Birthright to do, can never amount to a Crime.

Mr. Atwood, I do not say petitioning the King is a Crime, but it may be to petition the House of Commons in the Plantations, where the King governs by Prerogative.

Mr. Nicholl. I cannot think it is a Crime for the Subjects of the Plantations to petition the House of Commons; it's every Day's Practice: Consult the Votes in every Sessions, you'll find many Addressees, Petitions, and Complaints from the Subjects of the Plantations: It seems to be the Right of the Subjects to petition the House of Commons. The Statute of the 13th of Charles the II. c. 5. restrains the Common-Law; by that it plainly appears to be the Right of the Subject to petition the House of Commons, or the King. The Proviso in that Act says, *That neither that Act, nor any thing therein contained, shall be construed to extend or binder any Person or Persons, not exceeding the Number of Ten, to present any publick or private Grievance or Complaint to any Member of the House of Commons after his Election, or to the King's Majesty.* The Act of Recognition of *primo William and Mary*, declaring the Rights and Liberties of the Subjects, and settling the Succession of the Crown, thereby it is enacted amongst other Things, *That it is the Right of the Subject to petition the King; and all Commitments and Prosecutions for such Petitioning are illegal.* And they do claim, demand, and insist upon all and singular the Premises, as their undoubted Rights and Liberties; and that no Declaration, Judgment, Doings or Proceedings to the Prejudice of the People, in any the said Premises, ought in any wise

wife hereafter to be drawn into Consequence or Example. Here is no Grant of any new Privilege, but a Claim and Acknowledgment of an Ancient Right; and Petitions to the Parliament are as ancient as Parliaments themselves. If the Subjects of the Plantations may not petition and complain to their Prince, they are in a worse Condition than Slaves. The Cries of the Oppressions in the Plantations have gone up to Heaven, and are again come down upon the Earth, and have inspired and moved the King and Parliament of *England*, to make a Law to check the exorbitant Actions of Governors in the Plantations, and make them accountable in *England* for their Miscarriages abroad; which can never be discovered to the King but by Petition. The Statute is in these Words.

An Act to punish Governors of Plantations in this Kingdom, for Crimes by them committed in the Plantations.

‘**W**HEREAS a due Punishment is not provided for several Crimes and Offences committed out of this his Majesty’s Realm of *England*, whereof divers Governors, Lieutenant-Governors, Deputy-Governors, or Commanders in Chief of Plantations, and Colonels within his Majesty’s Dominions beyond the Seas, have taken Advantage, and have not been deterred from oppressing his Majesty’s Subjects within their respective Governments and Commands, nor from committing several other great Crimes and Offences, not deeming themselves punishable for the same here, nor accountable for such their Crimes and Offences, to any Person within their respective Governments and Commands: For Remedy whereof, *Be it enacted by the King’s most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal and Commons in Parliament assembled, and by Authority of the same*, That if any Governor or Commander in Chief of any Plantation or Colony within his Majesty’s Dominions beyond the Seas, shall, after the First Day of *August*, 1700, be guilty of oppressing any of his Majesty’s Subjects beyond the Seas, within their respective Governments or Commands, or shall be guilty of any other Crime or Offence, contrary to the Laws of this Realm, or in force within their respective Governments and Commands, shall be enquired of, heard and determined in his Majesty’s Court of *King’s-Bench* here in *England*, or before such Commissioners, and in such County of this Realm, as shall be assigned by his Majesty’s Commission, and by Good and Lawful Men of the same County; and that such Punishments shall be inflicted on such Offenders, as are usually inflicted for Offences of the like Nature committed here in *England*.

This Prosecution seems to be made to frustrate and evade this Act of Parliament. The Subject is oppress’d, or conceives himself to be so, and complains of this Oppression; this Complaining is made TREASON! Here is a strange and fatal Dilemma on the Subjects of the Plantations; They must either suffer their Oppressions, or be hang’d for Traitors if they complain!

What relates to the Act of Assembly of this Country, it can by no natural or legal Construction be extended to make the Prisoner culpable. It is plain by the whole Purport of the Act, that it has made no new Treason; it only recognizes the King and Queen; and enacts, That those who shall do any thing destructive to that Establishment, by Force of Arms or otherwise, shall be *Rebels and Traitors*; which they would be without this Act. If this Address and Petition had been to the *French* King, the Thing had been of another Nature. By the same Construction, every petty Battery, or other little Trespas, may be a Treason.

The Petition of *Col. Bayard*, and the other three, is so far from disowning the Government, that it is a direct Acknowledging of the same. The Direction of the Petition is, *To the Lieutenant-Governor, and the Council*: The Expression [*That they have Advice that the Lord Cornbury is to succeed the Earl of Bellamont*] can with no Justice or common Sense be construed to be a disowning and casting off of the Government. I think it will hardly be affirmed, That the Council succeeded the Earl of *Bellamont*, and *Capt. Nansan* the Council; if so, after the Earl of *Bellamont*, who was Captain-General? We had Seven Captains-General; which is an Absurdity, I suppose, none will alledge.

Some time after the Earl of Bellamont’s Death, Capt. Nansan, the Lieut. Governor, was at Barbados.

A familiar Example will demonstrate the Weakness and Falsity of this Construction. If a Captain of a Company be killed or absent, the Lieutenant or next Officer has the full Command of the Company, as the Captain had, or could have; but I think no Man will say he succeeds the Captain, or that when another Captain is appointed, he succeeds that Lieutenant or other Officer. So that I cannot think there is any Fact or Crime alledged or proved against the Prisoner, to charge him with this high Crime of Treason, or indeed with any other Crime whatsoever.

Mr. Enot. By your Honours Permission, I am of Council for *Col. Bayard* the Prisoner at the Bar: But by reason I am unwilling to spend too much of your Time, this Trial already having been very long; and *Mr. Nicoll*, who is also of Council of the same Side, having amongst other things made it very evident, that for the Subject to petition his Majesty, is their ancient and undubitable Right; I shall therefore make it my Business only, as near as I can, to demonstrate to this Court and Jury, That had the King’s Council made ample Proof of all the Matters of Fact alledged in the Indictment, as the signing the Addresses, and other Things therein contained, to have been true; yet, in point of Law, they cannot amount to that grand Crime of High-Treason.

In order to this, I shall, with as much Brevity as I can, examine into, and put your Honours in mind, and withal inform the Gentlemen of the Jury, what the Law of *England* (by which we are or ought to be govern’d here) hath been, for near the Space of Four hundred Years last past, relating to this grand Crime of High-Treason; whereby it will manifestly appear, how cautious the Parliaments of *England* have been in making and increasing the Laws to take away Mens Lives, and particularly for High-Treason. And I shall begin with the Statute of the 25th of *Edw. 3.* a Statute

to which the greatest regard has been paid of any Act of Parliament whatsoever, unless *Magna Charta*, as hereafter I shall briefly shew.

I must also observe to your Honours, That before the making of this Act of Parliament of the 25th of *Edw. III.* which was in *Anno* 1350, and which was the very first Act relating to Treasons; so many Things were charged as High-Treason by the Common-Law, and there were so many Ambiguities and Diversities of Opinions, that both History and our Books of the Law sufficiently inform us, scarce any Man knew how to behave himself. But now, by this Statute, the Particulars and Species of this grand Crime are reckon'd up, and all others excluded, till declared by Parliament. For tho' nothing can concern the King, his Crown and Dignity, more immediately than High-Treason, which our Law calls *Crimen læsæ Majestatis*, a Crime wronging Majesty; yet this good King *Edward III.* at the Request of the Lords and Commons of *England*, in a Parliamentary Way, and to make all After-ages happy, makes a plain Declaration of such Offences as should for the future be deem'd for High-Treason, and none other, unless declared by Parliament.

This Act of Parliament is branch'd out by Sir *Edward Coke*, in the Third Part of his *Institutes*, into Six Classes or Heads; which I shall the rather take notice of, for that Trials of this nature are very rare in the Plantations; and they are these:

1. The Compassing or Imagining the Death of the King, *Queen* or *Prince*, and declaring the same by some Overt-Act.

The Killing or Murdering of the *Chancellor*, *Treasurer*, *Justices*, &c. in their Place doing their Office, &c.

2. To violate, or carnally to know the King's Consort or *Queen*, the King's Eldest Daughter unmarried, or *Prince's Wife*.

3. Levying of War against the King.

4. Adhering to the King's Enemies, and declaring the same by some Overt-Act; and this must not be *Inimicus*, sed *Hostis*.

5. Counterfeiting of the *Great-Seal*, *Privy-Seal*, or *King's Coin*, &c.

6. And lastly, Bringing into the Realm, *Counterfeit-Money*, to the Likeness of the King's Coin, &c.

Now, if there is any other Offence which was not comprehended within one of these Classes, the same was thereby declared to be no Treason.

In a Clause of which Act of Parliament we find these Words; which I shall rather read, because I apprehend it will very much concern this ensuing Trial.

"And because that many other like Cases may happen in Time to come, which a Man cannot think or declare at this present Time, it is ordained, That if any other Case; supposed Treason, which is not above specify'd, do happen before any Justices, the Justices shall tarry, without any going to Judgment of the Treason, till the Cause be shewed and declared, before the King and his Parliament, whether it be judged Treason or other Felony."

By this we may easily perceive, and it's very obvious, that this Clause was made to prevent the Judges from taking upon them to declare any things to be High-Treason, but such as are particularly express'd by this Statute of the 25th of *Edw. III.* or by some other subsequent Act.

Again, in the Reign of *Richard II.* we find sundry other Things were declared by Parliament to be High-Treason, which were not comprehended within the Statute of 25th *Edw. III.* But yet upon the coming in of *Hen. IV.* it was again enacted and declared, That nothing should for the future be adjudged High-Treason, but what was so ordained by the aforesaid Statute 25 *Edw. III.* The Words are these:

1 *H. IV. c. 10.* "That whereas in Parliament, in the 21st Year of the late King *Richard*, divers Pains of Treason were ordained by Statute, inasmuch as there was no Man who knew how he ought to behave himself, to do, speak or say, for doubt of such Pains; it's accorded and assented by the King, Lords and Commons, That in no Time to come, any Treason be adjudged otherwise than it was ordained by the Statute, in the Time of his Noble Grandfather King *Edw. III.*

Now this Statute, I am humbly of Opinion, is directly in the Negative, which says, That for the future nothing shall be adjudged Treason, otherwise than it was ordained by the aforesaid Statute of the 25th of *Edw. III.*

Yet, nevertheless, this Indictment is grounded upon an Act of Assembly of this Province; which is, I am humbly of Opinion, not only contrary, but directly repugnant to the aforesaid Statute (which appeareth to me to limit all new Species of Treason to be declared by Parliament, and not elsewhere) which, if it should admit of such a Construction as is now intended, I think I may modestly say, it will introduce Five Hundred several new Species of Treason: So that his Majesty's good Subjects of this Province would fall under much greater Hardships than whatever the People of *England* were sensible of before the making of this Act (which I cannot too often mention) of the 25th of *Edw. III.*

If we look further downward, upon the coming in of *Edw. VI.* which was in the Year 1546, sundry new Species of Treason having been again introduced by Act of Parliament, it was in the very First Year of his Reign enacted, That no Offence, made Treason by any Statute, should be so deemed and adjudged for the future, but such as were made Treason by the aforesaid Statute of 25 *Edw. III.* other than such as were by that present Statute ordained and declared.

But yet in *Queen Mary's* Time, in the 1st Year of her Reign, this grand Crime was brought to its ancient Standard; and it was then declared in Parliament, That no Act or Offence whatsoever should be deemed Treason or Misprision of Treason, but such as were declared by the Statute 25 *Edw. III.* And the Substance of the Preamble is this, That the State and Safety of the King standeth more assuredly by the Love of his Subjects, than Fear of his Laws.

So that upon Examination, we find how careful and cautious the People and Parliament of *England* have been in introducing and increasing of Sanguinary Laws, and that thro' the Revolution of many Ages. And hereby it's very remarkable, what a great regard has been in all Ages paid to this venerable Statute of 25 *Edw. III.* which with great Care has been continued down to us to this very Time, and is now in its full Force. Sir *Edward Coke*, treating thereof, tells us, That the Parliament, in which this Act was made, for many Years after was called, *Benedictum Parliamentum*, the Blessed Parliament.

If we look but into the Bill of Attainder of *Thomas Earl of Strafford*, in the Year 1640 and 41, even in those Times, what regard was paid to this Statute, which I have so often mentioned, wherein it was provided, That the Judgment against the said Earl should never be drawn into Precedent: And the Words are these, "Provided, That no Judge or Judges, Justice or Justices whatsoever, shall adjudge or interpret any Act or Thing to be Treason, nor hear or determine any Treason in any other Manner, than he or they should or ought to have done before the making of this Act."

Now, if we do but reflect upon the great Concern and Care that has been taken thro' all Ages, by the wise People of *England*, in preventing the Judges from interpreting any Act or Thing whatsoever to be Treason, but such only as are enumerated in the Statute of *Edw. 3.*

And at the same time give our selves leave to think, how industriously we labour to introduce an Act of Assembly of this Province, to make, as I said before, even Five hundred new and never heard of Species of Treason: I say, if we do but consider this, 'tis Matter of great Amazement, and more especially in such an Age as this, and in so happy a Reign, where no Man ever questioned, or at least doubted of the true Enjoyment of our Laws and Liberties, tho' never so remote from the Fountain Head.

I am afraid, I have already trespassed upon your Honours Patience: I shall therefore conclude with some Observations upon the Act of Assembly, upon which this Indictment is laid.

Now both the Title, Preamble and Words of this Act of Assembly, and the Cause of making thereof, is very obvious (however the same may be now interpreted) which were these Two:

1st, For the future, to prevent the setting up a Power over his Majesty's Subjects in this Province, without Authority from the Crown of *England*; which was found to be of fatal Consequence in the late unhappy Disorders in this Province.

2^{dly}, To express the Love, Loyalty and hearty Affection of the People to their Majesties King *William* and Queen *Mary*; and, as far as in them lay, to recognize them their Sovereign Leige Lord and Lady. I doubt not but your Honours will see Cause to recommend the same to the Jury, in delivering the Charge: And that no strain'd Construction of this Act of Assembly can ever affect the Prisoner, *Col. Bayard*, or in the least blast his long-experienc'd Loyalty to the Crown of *England*, and in a special manner to his present Majesty King *William*.

I had almost forgot to beg Leave of the Court to apply my self to the Gentlemen of the Jury, to obviate some Objections, or rather a vulgar Error, that usually hath crept in amongst them upon Trials, and particularly upon Indictments; which is, they do believe,

That if the Matters of Fact alledged in the Indictment be but proved, they are to have no regard to Matter of Law: Which I take to be a very great and dangerous Error in them.

For tho' it be true, and must be granted, that Matters of Fact are the most common and proper Objects of a Jury's Determination, and Matters of Law that of the Judges; yet as Law ariseth out of, and is interwoven and complicated with Fact, it cannot but fall under the Jury's Consideration: For, should it be otherwise, if a Person should be in-

dicted for doing any common, innocent or lawful Act, if it be but cloathed and disguised in the Indictment with the Name of Treason, or some other high Crime, and proved by Witnesses to be done, then the Jury would lie under a Necessity of finding the Prisoner Guilty. No:

Do we not find in most general Issues, upon *Not Guilty* pleaded, as upon Indictments of Trespasses, Breach of the Peace, Felony, and even in Cases of High-Treason; yet the Jury do not find the Fact of the Case by it self, leaving the Law to the Court, but find the Party *Guilty*, or *Not Guilty*.

And this will more evidently appear upon Indictments of Murder, that the Jury are Judges as well of Matter of Law as of Fact. For is it not every Day's Practice, where Persons are indicted of Murder; the Jury doth not only find them *Guilty* or *Not Guilty*, but many times, upon hearing and weighing of Circumstances, the Jury brings in the Prisoner not only *Guilty* or *Not Guilty* in general, but brings them in either *Guilty of Murder* or *Manslaughter*, by *Misadventure* or *Se Defendendo*? &c.

So the Jury being well apprized of the true Matter of Fact, of which they are sole Judges, can better apply the Matter of Law; for, says my Lord *Coke*, *It's by fitly applying Matters of Fact and Law together, that the Jury brings forth their Verdict*; which, I hope, you Gentlemen of the Jury will carefully do.

Prisoner. I desire some of my Evidences may be called, to give an Account of my Life and Conversation. Which was granted.

Mr. Veasy, Minister of *Trinity Church*, being sworn, said, I have been for Six Years personally acquainted with *Col. Bayard*; during which Time his Life and Conversation recommended him in the World as an Exemplary *Christian*: And the frequent Expressions of his Zeal and Affection to his Majesty's Person and Government, convinced me, that he was a good Subject.

Pris. Call *Capt. John Kipp*. Who being called, was absent.

Call *Capt. Tudor*.

Tudor sworn, said, I have known *Col. Bayard* 26 Years, a moderate, civil, good Man, has been employed in almost all Offices of the greatest Trust in the Government, never disaffected, but stood up for the *Protestant Religion* and King *William*.

Pris. To prove that I have upon sundry Emergencies, during the late War, advanced of my private Fortune upon Loan without Interest, several considerable Sums of Money, for the Preservation of his Majesty's Interest and Government in *New-York*, of which upwards of 200*l.* Money in Specie lent, is still unpaid; I desire *Mr. Jamison*, who was then Clerk of the Council, may be sworn.

Jamison being called, appeared.

Mr. Atwood. *Mr. Jamison* has refused to purge himself of signing those Addresses, and is *Particeps Criminis*, for which Reason he cannot be allowed to be an Evidence.

The Evidence being sworn and examined, the Solicitor-General, without answering the Authorities offered by the Prisoner's Council, relating to the Treason, summ'd up the Evidence, as to Matter of Fact.

Mr. Atwood gave the Charge to the Jury, in a long Discourse; and among other Things insisted, That the Indictment was not laid upon the Act of 25 *E. 3.* nor any Act of Parliament, but upon an Act of Assembly of this Province, confirmed by

by his Majesty, which had Power to make Acts for High-Treason, as well as the Parliaments of England; and that the said Statute was confined to England, because by the same Statute it is enacted, That if any Doubt should arise, the same be adjourned unto Parliament; which must be understood of the Parliament of England.

That it is High-Treason, by the Act of Assembly, by any Manner of Ways, or upon any Pretence whatsoever, by Force of Arms, or otherwise, to disturb the Peace, Good and Quiet of the Government, as it is now established; which he said was proved by Overt-Acts laid in the Indictment; which were, by signing of Libels against the Government, and thereby enticing the People to cast off and disown the same; and chiefly, by the Soldiers signing Complaints against their chief Officers; which tended to Mutiny, and was Treason by the Common-Law.

That by bringing the Papers to *Hutchins's* House, the Prisoner had made himself guilty of all that was done there, by the Soldiers and others signing those Papers.

That the Right of petitioning the King was not in Dispute, but the Manner of doing it made it criminal.

That it was plain the Address of the Prisoner and his Three Fellows, was a disowning of the present Authority, and casting off his Majesty's Government as it was then establish'd; for Capt. *Nanfan* succeeded the Lord *Bellamont* (as by the Commission appeared) and not my Lord *Cornbury*; which was a plain Overt-Act of Treason, by the Meaning and Words of the Act of Assembly.

That it appeared undeniable, that the Prisoner and his Son were always by the Papers, and that it was done with a great Number of People to affront the Government.

That the drawing in Soldiers to sign Petitions, is Mutiny and Sedition by the Law; and drawing of them in, on false Pretences, in hopes of Freedom in the City, and subscribing their Names on blank Lists, is lifting of Soldiers, and may be applied to invite in any Foreign Power: And thereupon strenuously insisted on the Validity of the Evidence, That the Facts laid in the Indictment were undeniably proved, and that those Facts did amount to High-Treason, within the Words and Meaning of this Act of Assembly; and that therefore the Jury could not do otherwise than bring in the Prisoner Guilty.

The Constable being sworn to keep the Jury, the Court adjourned till Nine a-Clock at Night: And the Jury then not being agreed, the Court did adjourn till Monday Nine a Clock, the 9th of March.

On Monday the 9th, the Prisoner was brought to the Bar, and the Jury sent for: They were asked, If they were agreed in their Verdict? They answered, they were not agreed, but desired some Direction of the Court. *Jacob Goelet* appeared as Foreman of the Jury, and read some Notes of what he said the Witnesses had sworn: Which were denied to have been sworn by the Council for the Prisoner, who prayed Mr. *Atwood* to satisfy the Jury of the Truth of the Evidence.

To this he answered, That he could not do it after the Charge given; but affirmed, it was no new Thing (as some pretended) after Charge given, to satisfy the Jury in some Matters of Law; and told, that he had received Letters from the Jury, and answered them; which Answers

were only his private Opinion. That if they were under any Difficulty, whether the Matters of Fact alledged in the Indictment, and which were proved to them, were Treason or no, they might find the Prisoner Guilty; who had his Advantage in moving in Arrest of Judgment, and might be relieved as to Matter of Law.

Mr. *Emot*. This is not fair, to give the Jury a Handle to find the Prisoner Guilty in Expectation of Relief in Arrest of Judgment; for they are Judges both of Law and Fact, as the Case is now circumstanced: If they will enslave themselves and their Posterity, and debar themselves of all Access to their Prince, they will be worse than Negroes.

Mr. *Atwood*. This is not to be suffered, to offer these Things to the Jury after they have received their Charge; therefore be silent. Then proceeding, he renewed his Charge to the Jury, aggravating the supposed Crimes for the Space of about half an Hour.

Mr. *Emot*. I pray your Honour to be heard one Word. (*Which he often repeated, and at last was granted him.*) The Facts laid in the Indictment were not proved, as to the disowning and casting off the Government, encouraging of Mutiny in the Soldiers, or disquieting the Peace of the Government. Addressing the King is the undoubted Right of the Subject, both by Common-Law and Acts of Parliament. If the Subject for Complaints of Grievances, set forth by Petition, shall be attainted of High-Treason, we are in a worse Condition than Slaves.

Mr. *Atwood* check'd him, and commanded Silence.

Mr. *Nicholl*. The Act of Parliament to punish Governors in the Plantations for oppressing the Subject, is rendered useless and of no Effect, if the Subjects are depriv'd of this Liberty to complain, and set forth their Grievances, by Petition to their King.

Prisoner. I crave that *Jacobus Goelet* may read over his Paper concerning the Evidence given, and Liberty to controul the Mistakes. *This was denied.*

Pris. I crave that Col. *DePeyster* and Capt. *Walters*, who are joined in the Commission, will declare their Opinions singly, if they have agreed that to be Treason which Mr. *Atwood* has declared to be so, either by the Common-Law, or Act of Assembly, if the Facts laid in the Indictment should be admitted to be proved, as indeed they are not.

To this he received no Answer.

After this the Jury were sent out, and the Court adjourned till Three a-Clock in the Afternoon.

At which Time the Commissioners meeting, the Prisoner was brought to the Bar; the Jury were sent for: And being come, were asked, If they were agreed of their Verdict? Which they answered in the Affirmative, and that they found the Prisoner Guilty.

Council. We pray Time to offer Reasons in Arrest of Judgment.

Mr. *Atwood*. Let these Reasons be offered Tomorrow Morning.

Court adjourned till Eleven a-Clock next Morning.

March 10th. The Commissioners met, and the Prisoner being brought to the Bar, he offered the following Reasons in Arrest of Judgment, in these Words, viz.

Bayard. That no Overt-Act, alledged in the Indictment, is prov'd by the Oaths and Testimonies of Two lawful Witnesses, as by the Statute of 7 W. 3. is directed

That if the Overt-Act, as alledged in the Indictment, should be admitted to be so proved, yet neither by the Law of *England*, or by any legal genuine Construction of the Act of Assembly of this Country, on which the Indictment is grounded, any of the said Overt-Acts can amount to High-Treason.

Mr. *Atwood*. Tho' the Reasons offered by the Prisoner's Council, are properly and learnedly offered, I could off-hand answer and controul them all; yet I will not do it; let them be left with the Solicitor-General. And adjourn'd the Court until Ten a-Clock the next Morning; which accordingly was done.

March 11. The Commissioners met, and the Prisoner brought to the Bar.

Mr. *Nicholl*. It does not appear, that any one Overt-Act, alledged in the Indictment, has been proved by the Oaths of Two lawful Witnesses, as by the Statute of 7 W. 3. ought to be done.

Mr. *Atwood*. The Jury are the sole Judges of the Evidence; and if there has been any Omission in that, it is now help'd by the Verdict.

Mr. *Nicholl*. 'Tho' 'tis very plain to me, and I suppose to the Court, that what I have affirmed in this Matter is Truth, yet I shall not much insist upon it, because if the Acts themselves should be admitted to be true, they do not fall under any of the Heads or Species of Treason so made by the *English* Laws, or by any natural and reasonable Construction of the Act of Assembly of this Government; which being wholly Matter of Law, I shall leave to your Honours Consideration.

Mr. *Emot*. I very well remember, that the Court was pleased to tell the Jury, after they had been together some Days, and not being agreed upon the Verdict, *That if they were under any Difficulty, whether the Overt-Acts laid in the Indictment, if proved, were Treason; if they found the Prisoner guilty, he had his Remedy, by moving the Matter of Law in Arrest of Judgment.*

I therefore humbly offer in Arrest of Judgment, That if the Overt-Acts laid in the Indictment were admitted to be proved, yet in Point of Law they cannot amount to High-Treason, within the Meaning of the Act of Assembly upon which the Indictment was laid.

For I take it, that all Acts of Parliament, and consequently Acts of Assembly, are to be understood and taken by reasonable Construction, to be gathered and collected out of the Words of the Act only, and that according to the natural, grammatical, plain and legal Sense thereof, without any forced Interpretation.

Then if so, this Act of Assembly, both by the Title, Preamble, and the enacting Part thereof, plainly demonstrates the Meaning of the Law-makers, and what was thereby designed for the future to prevent. The Title of this Act is in these Words: *An Act for the quieting and settling the Disorders that have lately happened within this Province, and for establishing and securing their Majesty's present Government against the like Disorders for the future.* Now what these Disorders were, we have great cause to remember; and they are very well known to this Court to have been occasioned by some Persons setting up an Arbitrary Power over the King's Subjects without Authority from the Crown of *England*, as appears from the Preamble of the said Act, Part whereof is in these Words: *And whereas the late and inconsiderate Violation of the Good and Quiet of this Province,*

by the setting up a Power over their Majesties Subjects, without Authority from the Crown of England, hath vitiated and debauched the Minds of many People, &c. For the Prevention whereof in Time to come, be it enacted, &c. That whatsoever Person or Persons shall by any manner of Ways, or upon any Pretence whatsoever, endeavour, by Force of Arms, or otherwise, to disturb the Peace, Good and Quiet of this their Majesties Government, as it is now established, shall be deemed and esteemed as Rebels and Traitors, &c.

From hence it plainly appears, that the Intention of the Law-makers was only to declare such Person or Persons Rebels and Traytors, as should for the future set up a Power over his Majesty's Subjects in this Province, without Authority from the Crown of *England*; which undoubtedly is Treason within the Statute of 25 E. 3.

But it can never be understood (without offering the greatest Violence to the reasonable Construction of the said Act of Assembly, and the plain Intention of the Makers thereof) to be construed to extend to the signing the Addresses mentioned in the Indictment, which is the only Thing the Prisoner is positively charged withal; for all the rest are only presumptive, constructive, and accumulative Crimes, drawn from thence.

But, says Mr. *Solicitor*, the Words of this Act of Assembly are in Generals; *That if any Persons shall endeavour, by Force of Arms, or otherwise, to disturb the Peace, Good and Quiet of the Government, shall be deemed and esteemed Rebels and Traitors.*

Now from the Word [*Otherwise*] Mr. *Solicitor* would fain insinuate, that the Prisoner is within the Meaning of the Act of Assembly: A very fine Explanation! For by such a Construction as this, every Breach of the Peace, sudden Quarrel, or small Battery, shall be deemed Treason. I shall not further add upon this Head, but only offer my humble Opinion, That here, in the Plantations, we are not capable in our Assemblies to make and declare any new Species of Treason, but such as are comprehended in the Statute of 25 E. 3. or some other subsequent Statute.

Tho' what already has been offered, I hope will be sufficient to stay and arrest Judgment, yet I have several other Things in behalf of the Prisoner (by your Honours Permission) to move in Arrest of Judgment, and which are not mentioned in the Reasons which were assigned in Writing; and I pray Liberty to offer them *Ore Tenus*.

Mr. *Atwood*. Mr. *Emot*, you have Liberty granted you: Go on.

Mr. *Emot*. I thank your Honour. And the Reasons that I shall now further assign, why Judgment ought not to pass against the Prisoner, according to the Verdict of the Jury, are these Three:

1st. That *Andries Marjbank*, one of the Petty-Jury, is an *Alien*, and of foreign Birth, born in *Zealand*, and came over into this Province in the Year 1684; and that *Jacobus Goellet*, the Foreman of the Jury, is also an *Alien*, and hath lately sent to *England*, for to procure a Denization.

2^{dly}. That the *Vifne*, or *Venire*, in the Precept to summon the Petty-Jury, under the Hands of the Commissioners, is wrong awarded, or rather not awarded at all.

3^{dly}. That the said Precept is not returned by the Sheriff, or any Endorsement thereupon, and signed by him, against the known Laws of *England*, and more particularly the Statute of 12 E. 2. Cap. V. called, *The Statute of York*.

Mr. *Atwood*

Mr. *Atwood* in a long Speech said, What the Solicitor has offer'd, is sufficient to over-rule the Reasons exhibited in Arrest of Judgment; for 'tis evidently proved, that the Prisoner has disturbed the Peace, Good and Quiet of the Government, as it is now established; viz.

1st. By enticing the People to sign scandalous Libels against the Government, at the Coffee-House, and at his own House, by the Oath of *Peter Odyre*, telling him, it was for the Good of the Country; and his bringing them to Alderman *Hutchins's*, makes him equally guilty to the Soldiers signing Complaints against their chief Officers, thereby enticing them for Mutiny; which Soldiers are part of the Seven thousand Men raised by Act of Parliament for the Defence of the Kingdom; which is High-Treason by the Common-Law, as well as by Act of Assembly.

2^{dly}. By the Prisoner's disowning the Assembly to be lawful.

3^{dly}. By charging the Lieut. Governor to be brib'd to pass their Acts of Assembly.

4^{bly}. By charging the Government to be in the Hands of hot and ignorant Men.

5^{bly}. By the Address to the Lieut. Governor, disowning and casting off the present Authority, declaring the Lord *Cornbury* to succeed the late Earl of *Bellamont* in the Government.

I hope the Prisoner by this Time is convinc'd of his Crime, as well as that Clergy-man who spoke so much in his Vindication; and that the Prisoner will now be duly penitent, and make a true Confession of it.

Col. *Bayard*. May it please your Honour, I ever abhor'd that heinous and abominable Crime of High-Treason, as much as Death it self. I call God and my own Conscience to witness, That I am as innocent of it as the Child unborn: I never spoke to any of the Soldiers to make any Complaint, or sign any Addressees, or other Paper whatsoever. I own I was present at the Coffee-House, at the signing of an Address to the King, another to the Parliament, and another to the Lord *Cornbury*; and I own the Two first contained some Complaints of Grievances we supposed to lie under, and the latter a Congratulation.

I had the best Council I could get for so doing, and that it was the Subjects Right to Petition the King, by the Act of the First of *W & M.* and I think the Subjects should be worse than Slaves, if they shall be arraigned for High-Treason for complaining to their Prince.

I must further beg leave to say, Your Honour was much mistaken in summing up just now what the Witnesses had sworn; and the Jury (by that Paper the Foreman read in Court) had likewise a wrong Notion of it; which I desired then I might controul; but your Honour over-ruled, as not to be allowed after the Charge was given. It was not proved by any of the Witnesses, that the Peace of the Government had been disturbed; none of 'em said I had enticed any Person whatsoever to sign the Addressees; nor that I was present at the Soldiers signing at *Hutchins's*, much less that I enticed them to Mutiny. I knew nothing of their signing; I was not at the House all that Time. Mr. *Solicitor* had Mrs. *Hutchins* sworn, who said the same. None of 'em say, that in the said Address the Assembly was called *Unlawful*, but only, that the Speaker was an *Alien*; nor that the Lieut. Governor was bribed, but tempted; nor that the Government was in the Hands of *hot and ignorant Men*, but that *hot*

and ignorant Men were put in Offices; and that thereby the Government was like to be rendred Cheap and Vile. And as for the Address to the Lieut. Governor, it was only said, *We had received Advice from England, that the Lord Cornbury was to succeed the Earl of Bellamont as our Governor*; which by no Colour can be construed to be a casting off, or disowning of, the present Authority. And tho' all had been proved, as it is not, what your Honour, as above, has been pleas'd to say, I humbly conceive it cannot amount to a Misdemeanor, and much less to that heinous Crime of *High-Treason*.

Mr. *Atwood*. The Right of Petitioning the King is not in Dispute, but the Manner of doing it makes it *Criminal*; neither does that Liberty extend to the Parliament.

Mr. *Emot*. I humbly move, that we may have Liberty to offer other Reasons *Ore Tenus*. (Which the Court granted.)

Mr. *Atwood*. Adjourn the Court till Friday Morning, the 13th Instant. (Adjourned accordingly.)

On the 12th in the Morning, the Prisoner wrote a Letter to Col. *De Peyster*; some of the Contents whereof were by Mr. *Atwood* retorted upon the Prisoner in open Court, at the Time he pass'd Sentence against him; for which Reason the Prisoner has permitted it to be published; and it is as followeth:

Col. *De Peyster*; Sir,

I Take leave to acquaint you, That tho' it has pleas'd God to suffer your self, and some of your Relations to be the likely chief Instruments of the total Destruction both of my self and all my Family and Posterity; that yet, notwithstanding I have that Peace with my self (and I can but only thank God for his all-sufficient Grace in strengthening me in it) that I am reconciled to all Mankind whatsoever, and that I hope one of my last Prayers will be, That God, out of his infinite Mercy, will graciously pardon all those who have had a Hand to cut me off. Sir, Believe me, as you may give Credit to the Words of a dying Man (since I find the Jobb is to be done, and that it is now past your Power to stop the Current) that I shall also die with a clear and good Conscience, and as free of that horrid Crime laid to my Charge, as the Child yet unborn. And therefore hope God's merciful Hand, who has never left nor forsaken me, will continue to support me to the very last, and that I may look Death in the Face, as a good Christian ought to do; humbly submitting my All to his most Wise, most Just, and most Merciful Dispensations: For I am sensible there is no more than one Death for me, and that, in all Probability, considering my Age, it might have been very soon, tho' this Tribulation had not befallen me. I shall only add, That I hope in God's Mercy for the Pardon of all my manifold Sins and Transgressions, thro' the only Merits of my Saviour Jesus Christ; and that when I shall be no more, he will continue his Grace to my dear Wife, and my Posterity. And, lastly, That my Blood, which is struck at (by your Brother's own Expressions to my self, and your Brother-in-Law's to others, both not long since) may be the last to be spilt on Account of our dismal and unhappy Divisions; tho' I fear out of my Alms such further Calamities may arise to this poor bleeding Province, that Posterity will have Cause long to lament: For it is not to be expected

expected, that all the Plots, Contrivances and Intrigues used in this Matter (many of which I assure you are already discovered) will have their Exit with my self: It had been more pardonable to have stabb'd me in my Sleep, or with *Joab's* Hand, under a Pretence of Friendship, than to do it with *Abab*, under a Colour and Cloak of Justice; and of the Two, I leave others to consider, if this latter exceeds not the former; since it's not to be suppos'd, that *Abab's* was so much out of Malice; but the Vineyard being denied him on his offering the Worth of it in Money, occasioned the Innocent to be arraigned and slain for a pretended Crime of *Blasphemy* and *Higb-Treason*.

Sir, These above Lines are the Sincerity of my Thoughts this Morning; assuring you, that I never had a Thought before late last Night to write to your self one Word about this Subject, so altogether unknown to all Mankind whatsoever, nor don't intend them any further; wherefore I desire you'll make such Use of them, for your own Consideration, as God may direct you. I am, Sir,

Your humble Servant,

N. BAYARD.

March 13. The Court being met according to Adjournment, the Prisoner being brought up, moved, That forasmuch as Mr. *Nicholl* was out of Town, by reason of the Indisposition of his Family, another Council might be assigned in his stead. Which was granted, and the Court adjourned till *Monday* the 16th Instant, at Nine a-Clock.

March 16. Before the sitting of the Court, the Prisoner sent a Petition to Mr. *Atwood*, and the rest of the Commissioners; viz.

To the Honourable William Atwood, Esq;
Abraham De Peyser, Esq; and Robert Walters, Esq; Judges of this Special Court.

The Humble Petition of Nicholas Bayard, sheweth,

THAT your Petitioner being altogether unacquainted what is practicable and allowable in Law to be offered in Arrest of Judgment; yet since your Petitioner's Life, and all what is near and dear unto him is concerned, he humbly craves Leave (besides the Reasons already offer'd by your Petitioner's Council in Arrest of Judgment) to lay before your Honours, and to pray your Honours favourable Consideration thereupon.

First, That the Verdict of the Grand-Inquest was not sufficiently found by any Twelve of that Inquest, as in his former Petition is set forth.

Secondly, That the Petty-Jury (in a manner forc'd upon your Petitioner) were all of them Parties concerned against your Petitioner in the very Matter he was tried for, on Account of the unhappy Divisions within this Province; all of 'em extream ignorant of the *English* Language, to that degree, that scarcely one of them is able to say the *Lord's Prayer* in the *English Tongue*, and much less to comprehend the Matters of Law, and what has been offered in behalf of your Petitioner at his Trial.

Thirdly, That all what has been sworn against your Petitioner, was, First, That the Petitioner's Name was seen to the Addresse to the Lord

Cornbury, but that they knew not whether it was his Hand-Writing. Secondly, That the Petitioner had been present at the Coffee-House, and at his own House, when the Addresses to the King, another to the Parliament, and another to the Lord *Cornbury*, were signed by several of the Freeholders, Freemen, and Inhabitants of this City; but that he had desired none of them to sign the same. Thirdly, That the Petitioner had brought some Papers, supposed to be the said Addresses, to the House of Alderman *Hutchins*. Fourthly, That the Addresses to the Lord *Cornbury* contain'd only a Congratulation at his safe Arrival, and a hearty Desire, that with it all our Divisions might be healed, and that the very Name of *Party* and *Faction* might vanish, and be extinguish'd; and that in the two former, or in one of them, either to the King or Parliament, some Complaints were made of Grievances, without remembering the Particulars: Only Mr. *Cloves* swore, That to his best Remembrance, in both, or in one, of the Addresses to the King or the Parliament, mention was made, That some of the hottest and ignorantest of the People were put in Offices: That the Speaker of the Assembly was challenged to be an Alien: That the said Assembly had given a Gift to the Lieutenant-Governor, to tempt him to pass their Acts, and another to the Judge; and that thereby his Majesty's Government was like to be render'd *Vile* and *Cheap* in the Eyes of the People: And swore further, That in none of them any Reflections were made (as he conceived) to the Prejudice of the Lieutenant-Governor; and that in none of them, the Words *Unlawful* or *Oppression* were mentioned.

Fourthly, That all the rest of the Evidences swore nothing, against your Petitioner, but that they had signed the Addresses at Alderman *Hutchins's*; that two or three of the Soldiers had a Glass of Wine given them, but not for signing, it being *Christmas-Time*; and that some of them expected to be made Free of the City, but not of the Garrison.

May it please your Honours, Your Petitioner finds, by the Notes himself has taken at his Trial, that nothing more has been sworn against him: Whereupon the Jury, being ignorant People, found him guilty, because some Part of the Indictment was proved, as to the signing of the said Addresses, and what the Contents of them were, only by the Oath of one Witness.

Your Petitioner therefore humbly prays, That your Honours will be pleased to take the Premises into your serious Consideration, Whether by the Laws of England, or this Province, it can amount to the Crime of *Higb-Treason*, what has been sworn against him, as above expressed? And if not, that your Honours will favourably order an Arrest of Judgment for the Reasons above-mentioned, &c. and what has been already offered to your Honour by the Petitioner's Council. And as in Duty bound, &c.

N. BAYARD.

The Court being met, the Prisoner was brought to the Bar, and the Petition last mentioned read.

Mr. *Atwood*. Mr. *Emot*, we are ready to hear the Arguments you have to offer, for the last three Reasons you have assigned in Arrest of Judgment.

Mr. *Emot*. I am ready; 1st, *Andries Marshall*, one of the Petty-Jury, is an Alien; we have two Evidences to prove the same. And—

Mr. *Atwood*.

Mr. *Atwood*. We cannot admit you any such Proof; for tho' this might have been a good Exception for Cause before he or they had been sworn, but now it's too late; therefore go on to the next.

Mr. *Emot*. This seems very hard; for we ought to have been tried by the King's lawful Liege People, and we apprehend these are not such; but we came not to the Knowledge of this till after the Trial.

Mr. *Atwood*. Pray, Mr. *Emot*, delay the Court no longer; but proceed to the second Reason assigned.

Mr. *Emot*. The 2d Reason is, That the *Vifne*, or *Venue*, in the Precept to summon the Petty-Jury, is wrong awarded, or rather not awarded at all. Our happy Constitution of Government is, That all Trials of this Nature must be by the Verdict of Twelve Men, and that, as near as may be, of the Neighbourhood where the Fact ariseth, or is alledg'd to arise in the Indictment. Yet, nevertheless, the Precept to summon the Jury, we find is directed to the Sheriff, to return Eighty Men of his Bailiwick; whereas he is Sheriff as well of the County of *New-York*, as of the City; and at the same time, the Matters of Fact alledged in the Indictment are said to be committed in the *Dock*, and *Eastward* of this City. So that this is a Mis-Trial, upon which no Judgment can be given: And of this we have a multitude of Authorities in our Books: And first, in *Arundel's Case*, *Coke's Rep. Part 6. fol. 14. b.* It was for the Murder of one *Parker*; and the Case was thus: The Murder was alledged to be done at the City of *Westminster*, in a certain Street there, called *King-street*, in the Parish of *St. Margaret's*. For the Trial of the Issue a Jury was return'd, *De vicinitate Civitatis Westm.* *Arundel* being found guilty, moves in Arrest of Judgment; assigning for Cause, That the Jury ought to have been out of the Parish of *St. Margaret's*, and not in general out of the Neighbourhood of the City of *Westminster*; and it was adjudged a Mis-Trial, and the Verdict was set aside: And this I find was done upon a Special Consult of the Judges at *Serjeants-Inn*.

So that we see how cautious the Laws of *England* are, and the Judges thereof, that all Trials of this Nature shall follow the *Venue*, and that the Jury shall be summoned from the Neighbourhood where the Fact ariseth. And the Reason thereof is grounded upon this Supposition and Presumption, That the Neighbourhood are the best and most proper Judges of Matters of Fact; for indeed it's the Rule in the Law, That *Vicinus facta vicini presumitur scire*.

But let me observe to your Honours, That our Case at the Bar is much more uncertain, as to the awarding of the *Venire facias*, or Precept to summon the Jury; for the Fact is alledged to be done at the *Dock*, and *Eastward* of this City, and Issue joined thereupon: Yet the Precept is directed to the Sheriff, to summon the Jury of his Bailiwick, which, as I said before, contains both the City and County of *New-York*, and without mentioning any Neighbourhood, and therefore may come out of the County, as well as from the City; and therefore of Necessity must be esteemed a Mis-Trial.

To this it may be objected by such as are ignorant of our Laws, That notwithstanding the Jury was summoned from the Neighbourhood of the City of *New-York*, and not from the County, for that they know the Persons to be such. But this not appearing to be so upon Record, avails nothing; for the Rule of the Law is, *What appears not, is not: Existens & non apparentibus eadem est ratio*.

Crook's Rep. In *London*, the Parish and Ward is mentioned; and therefore it was adjudged, That it was not good to alledge any thing done generally in *London*; but it must be laid to be done in some Parish, from which a *Venue* may be awarded.

In *Crook's Jac. p. 399.* *Tycos* against *Westcome*. In this Case, a *Venire fac* was awarded from *T.* and not *de Viceneto de T.* Resolved to be ill, and not amendable: Yet in this Precept the *Vifne* is not so much as of a Ward of the City of *New-York*, nor of any other Neighbourhood whatsoever, but in general from his Bailiwick. So that I humbly pray, that for this Reason the Jury's Verdict may be set aside, this being a Mis-Trial, upon which no Judgment can be entered: And shall proceed to the Third Reason assigned.

3. That the Precept to summon the Jury is not returned by the Sheriff, or any Endorsement thereupon, and signed by him, against the known Laws of *England*, and more particularly the Stat. of 12 *Edw. II. c. 5.* This Statute enjoins, That the Sheriff shall put his Name to every Return made by him, so that the Court may know of whom they took such Return, if need be: And I shall endeavour to prove, from sundry adjudged Cases since the making of this Statute, that this Precept to summons the Jury not being endorsed by the Sheriff, the Trial is ill, and not amendable.

The Case of *Holdsworth* against *Sir Stephen Proctor*, in *Crook's Rep. Part 2. p. 188.* *Sir Stephen Proctor* moved in Arrest of Judgment, for that the Name of the Sheriff was not endorsed upon the Writ of *Distringas* with *Nisi prius*; and it was ruled, That the Trial was ill, and not amendable by any the Statutes of *Jeofails*: For, says the Judges, it's all one with the Case of a *Venire facias*, where the Name of the Sheriff is not thereto; which hath been frequently over-ruled, as being no Return, nor helped by any Statute of *Jeofails*. For the Statute of 18 *Eliz.* as I shall shew hereafter, from adjudged Cases, and from the best Authorities in Law, doth only help imperfect and insufficient Returns, and that only in Cases Civil, between Party and Party; but here is no Return at all.

In *Rowland's Case*, in *Lord Coke's Rep. Book 5. p. 41.* in Ejectment upon a Verdict for the Plaintiff, the Defendant moved in Arrest of Judgment; for the *Venire facias* was not returned or endorsed by the Sheriff, tho' the *Poslea* made mention that the Jury was returned *per Mandatum Justiciorum*: Yet in this Case it was ruled, That that would not help it; for the Judges said, That where there is no Return, it cannot be help'd by the Statute of 18 *Eliz.* or any other of the Statutes of *Jeofails*; for that Statute only helps imperfect and insufficient Returns, and such as want Form, and not such as are not return'd at all.

Again, in *Sir Arthur Blackmore's Case*, in *Coke's 8th Rep. fol. 156.* in this Case it was adjudg'd, That the Statute of 18 *Eliz.* doth not help a Trial, where no Return is made upon the Writ of *Venire fac*; as was formerly, say they, adjudged in *Rowland's Case* before-cited. And our Books are full of Authorities of this Nature, but shall not give you the Trouble to mention any more.

Mr. *Solicitor*. Mr. *Emot*, these Authorities, which you have here cited, it's true, are grounded upon the Statute which you have mentioned of 12 *Ed. II.* but this Statute has only relation to Writs; and in this Case the Sheriff summoned the Jury, not by Virtue of a Writ, but a Precept under the Hands of the Commissioners; which differs the Case.

Mr.

Mr. *Emot*. Mr. *Sollicitor*, then you say, that the Case at the Bar is not within the Words of this Statute of 12 *Edw.* II. for that this is a Precept to summon the Jury, and not a Writ, and so consequently the Sheriff not obliged to sign and return the same. A very wise Distinction!

However, I shall endeavour to shew, that this Precept is within the Reason and Equity of the Statute, and that the same ought to be returned and signed by the Sheriff. In order thereto, I shall put this Court in mind, how Statutes have from Time to Time been taken by Equity in divers Manners; that those Things which are alike in Reason, are alike in Law; and that where an Act of Parliament hath been made to remedy some Mischiefs, that the same hath been extended to other Things, in like Degree, and that even in Penal Laws. As for Example:

Stat. of Gloucest. c. 5. By this Statute, an Action of Waste is given against one who holds for Years; yet by the Equity of this Statute, a Man shall have an Action against him who holds but for half an Year, notwithstanding the Act be Penal.

Westm. 2. c. 3. This Statute gives an Action of *cui in Vita*, after the Coverture dissolved by Death: Yet if the Coverture be dissolved by Divorce, the Wife shall have, by the Equity of this Statute, a Writ of *cui ante Divortium*.

And lastly, the *Stat. 25 Edw. 3. de proditionibus*. This Statute expressly says, That no Case shall be taken by Equity, unless it be adjudged in Parliament; and yet by the Equity of the Words of that Statute, which are, *If the Servant kill the Master*, it is taken, *If the Maid kill the Mistress*, that this is Petit-Treason.

So that from hence I am humbly of Opinion, That we are fairly within the Equity of the *Stat. 12 Edw. 2.* Besides, a Writ and Precept in this Case are only synonymous Terms, and signify one and the same Thing.

These Reasons were over-ruled.

And the Court ordered the Sheriff to make a Return upon the Precept to summon the Jury, conform to the above *Stat. 12 Edw. 2.* which the Court said they had Power to do, and to help that Defect.

Mr. *Emot*. I find your Honour has over-ruled all the Reasons that we have offered in Arrest of Judgment, in Behalf of the Prisoner Col. *Bayard*, why Judgment ought not to pass against him, according to the Verdict of the Jury; but have not as yet observed, that either Col. *D' Peyster* or Captain *Walters* have given their Opinion to all, or any of the Reasons we have offered. I humbly therefore

pray, that we may have their Opinion, so that we may know by what Hands we fall.

Mr. *Atwood*. Mr. *Emot*, you which have been assigned Council for the Prisoner, have hitherto, in all the Course of the Trial, carried yourselves like Men of your own Profession; you must not now therefore begin to menace the Court. You shall have the Opinion of the rest of the Commissioners.

Whereupon Mr. *Atwood* turning himself to them, and whispering them, they severally did declare, That they were of Opinion with Justice *Atwood*, in that the Reasons offered were not sufficient to arrest the Judgment.

Mr. *Atwood*. Col. *Bayard*, have you any thing to say, why Sentence should not pass against you?

Prisoner. I have nothing more to offer, than what my Council have offered, and what is contained in my last Petition.

Mr. *Atwood*. I am sorry to find you so impenitent of your Crime, which is so heinous and abominable in the Sight of God and Man. You have lately made Reflections upon the Proceedings of this Court against you, as if it had been a Design to do the Job; comparing your Case to that of *Naboth's Vineyard*: But I hope God will open your Eyes, that you may be convinced, and repent of the Crime.

Then he pronounced Sentence in these Words:

It is considered by the Court here, that you be carried to the Place from whence you came; that from thence you be drawn upon a Hurdle to the Place of Execution; that there you be hanged by the Neck; and being alive you be cut down upon the Earth, and that your Bowels be taken out of your Belly, and your Privy-Members be cut off, and you being alive, they be burnt before your Face; and that your Head be cut off, and that your Body be divided into Four Quarters; and that your Head and Quarters be placed where our Lord the King shall assign. And the Lord have Mercy upon your Soul.

Prisoner. I desire to know, whether I may have leave to answer to your Honour's Speech made before Sentence.

Mr. *Atwood*. No.

Prisoner. Then God's Will be done.

The Prisoner was remanded.

Alderman *Hutchins* of *New-York* was Tried, Convicted and Condemned of High-Treason, for the same Facts with which Col. *Bayard* was charg'd, and had the same Usage both before, in, and after his Trial.

CLXXIII. *The Trial of WILLIAM FULLER at the Guild-Hall of London, for a Cheat and Impostor, May 20. 1702. 1 Ann.*

Proclamation was made for all Persons concerned to attend.



HEN the Gentlemen that were of the Jury were Sworn.

Peter White,	}	Acton,
Ab. Burnet,		Proctor,
John Cooper,		S. Stone,
Edw. Pinfold,		Troughblon,
James Dod,		Jo. Watson,
Boden,		Dan. Carpenter,

The Queen against *William Fuller*, upon an Information for Libels.

Mr. *Montague*. May it please your Lordship, and you Gentlemen of the Jury, The Information sets forth — “ That the Defendant being an Impostor, and a common Lyar, and a Person of an ill Name and Reputation, falsely, maliciously, wickedly and seditiously contriving, practising, and intending the late King *William* and his Subjects, falsely and unlawfully to delude and deceive, and Discords between the said late King and the Peers, and the Noblemen of this Kingdom, and the great Officers and Ministers intrusted by the said late King, in Business relating to the Government of this Kingdom of *England*, and other Subjects of the said Kingdom, to move, excite, and stir up; and also to bring the Noblemen and Peers, and the great Officers and Ministers aforesaid, and other faithful Subjects, into Hatred and Contempt with the said late King; and to get and obtain several great Sums of Money fraudulently and deceitfully from the said late King; He, the said *William Fuller*, the first Day of *January* last at *London*, &c. (to perfect and bring to effect his said wicked Practices and Intentions, and of and concerning a Correspondency between divers Officers and Subjects of the said late King and the late King *James*, while he resided at *St. Germain* in *France*, falsely pretended to be had, and of divers Sums of Money by the said late King *James* distributed amongst the Subjects of the late King *William*, falsely pretended to be sent here into *England*;) did falsely, wickedly, maliciously, and scandalously write and print, and cause to be printed, a false, scandalous, and defamatory Libel, entituled, “ *Original Letters of the late King’s* (meaning the late King *James*) *and others, to his greatest Friends in England, with the Depositions of Thomas Jones and Thomas Widdrington, Esqrs; proving the Corruption lately practised to ruin this Nation.* In which false, feigned, and scandalous Libel, among other Things, are contained as follows: [1st Page.]

Thomas Jones, Esq; deposeth, That he being at *St. Germain*, the Court of the late King *James* in *France*, in *January*, 1692, the said late King being in his Closet, sent for this Deponent, and there commanded the said Deponent to begin his Journey for *England*, in Company with Colonel *Tho. Dallaval*, and Mr. *George Hayes*; and the said late King did then, and there deliver to this Deponent several Letters and Papers, to divers Noblemen and others in *England*, to whom this Deponent had several times before and since brought Letters from the late King and his Queen, and pretended Secretaries of State, delivered according to Order. This Deponent further saith, by the Oath he hath taken, That the late King *James*, at the time aforesaid, in his Closet at *St. Germain*, did deliver to this Deponent a Paper, being an Order for this Deponent to receive Six Thousand Pounds; which Sum this Deponent was to pay to several Persons in Places in Trust then in *England*, to engage them more firmly to endeavour the invalidating the Evidence of *William Fuller* (who, as the said late King expressed, had been by him, his Queen, and chief Servants, intrusted and employed in their most secret and weighty Concerns, for a considerable time after the late King and Queen’s coming to *France*). [P. 7.] And this Deponent saith, He informed Mr. *Fuller* that *Dallaval* and *Hayes* were come to Town, and lodged at an Apothecary’s in *Holborn*, which House *Hayes* formerly lodged at; but that *Dallaval* not being well, they could not come to him; therefore this Deponent said to *Fuller*, that they desired him to come to them; but he urged his Condition rendered him unfit, begging of the Deponent, to intreat them not to fail to attend the House of Commons at the time appointed. All which this Deponent imparted the same Day to Col. *Dallaval* and Mr. *Hayes*, and with them went the same Evening to three Gentlemen that were then Members of Parliament; and this Deponent had a Letter from one of those three Gentlemen, (that was a Member of Parliament) directed to one of the Secretaries to the then Secretary of State, which this Deponent was to carry to him the next Morning; which accordingly he did by Seven of the Clock. And this Deponent saith, He paid the said Under-Secretary 500 Guineas. And this Deponent saith, That when he left the Secretary, he went directly to the *Sun-Tavern* in *King-street Westminster*, where he found the three Members with *Dallaval* and *Hayes*, and an eminent Banker of the City of *London*: Then this Deponent desired the Banker to give his Bill to pay each of those three Gentlemen that had been Members, 1000 Pounds payable on Sight; which being done, the said Banker delivered also to one of them his Bill for 1500 *l.* to be paid on Demand, for the Use of a considerable Person, whose Station would not permit him to be present. And this Deponent saith,

* See *State Trials*, Vol. 8. p. 78.

by the Oath he has taken, That the several Sums of Money beforementioned, with several lesser Parcels, were so disposed of by him, according to the late King's especial Directions. And this Deponent faith, He has now by him the Receipts of each Person for the respective Bills and Moneys he disposed of, with the true Copies of his Original Bills, delivered to him by the late King's own Hand. This Deponent faith, He delivered to the late King a Letter he had for him, from the three Gentlemen that were Members, and also several others he brought from *England*. And forasmuch as this Deponent faith, As he hath formerly been employed to bring Letters, and Bills, and Orders, from the late King *James* and the *French* King and their Ministers; this Deponent faith, That he has kept a Journal of the same, and is ready to lay it before either or both Houses of Parliament when required. And this Deponent faith also, by the Oath he hath taken, That he can produce his original Orders, that he received from the late King's, and the *French* King's own Hands, for the distributing more than One Hundred Four-score Thousand Pounds *Sterling* for their Use, to Persons that were in Places of Trust. And this Deponent faith, He can produce the Receipt of each Person to whom the Money was paid, and also the Persons from whom this Deponent received the said Sum or Sums by the Order aforesaid.

Tho. Jones.

(2d Book.) "The Information further sets forth, That the Defendant, the Day and Year aforesaid, (to perfect and bring to effect his furthest wicked Practices and Intentions against divers Officers, and other Subjects of the late King *William*, upon a feigned and pretended Correspondence between them and the late King *James*, whilst he resided in *France*, and of several Sums of Money sent by the said King *James* out of *France* into *England*, to be distributed amongst the Subjects of the late King *William*) another most false and scandalous Libel [Title Page] entitled, *Twenty Six Depositions of Persons of Quality and Worth* falsely, wickedly, and most deceitfully, did write, print, and cause to be printed; in which said false and scandalous Libel, amongst other Things, are contained, viz. [5th Page.] "Mr. Jones has also made Oath, That he paid 5000 l. more, by the late King's Order, to several Persons in Places of Trust, that they might compleat my Ruin, and invalidate me for ever. Nor is this all; for the same Mr. Jones will prove, by undeniable Witness and Demonstration, that he has distributed more than One Hundred Four-score Thousand Pounds in Eight Years last past, by the French King's Order, to Persons in publick Trust in this Kingdom."

W. Fuller.

"And the said Defendant *Fuller* afterwards, the said Day, &c. falsely, unlawfully, and wickedly did publish, utter, and for Truth affirm, the said several false and scandalous Libels, without any lawful Authority. Whereas, in Truth, the said *Thomas Jones* did not depose upon his Oath, as is contained in the said false and scandalous Libel; but that the said scandalous Libels were and are false and feigned, and altogether contrary to Truth, to the great Scandal and Abuse of the late King *William*, and his great Officers and Ministers, and other the faithful Subjects of the said late King, to the evil Example of others,

"and against the Peace of the said late King, his Crown and Dignity."

He pleaded Not Guilty, and Issue joined thereupon.

The Case. "The Defendant *Fuller* is so notorious a Cheat, and his Practices so publickly known to all Men, that there need not much to be said here to aggravate his Offences; for in the Year 1691, he was censured by the House of Commons, prosecuted, convicted and punished for those very Crimes he now stands to be tried; and notwithstanding that Sentence and Punishment, he still persists in his villainous Practices and Designs."

"About two Years since, he applied himself to the chief Ministers at Court, and insinuated what Discoveries he could make relating to the Cheat of the Birth of the pretended Prince of *Wales*, and of great Sums of Money received by several Persons of Quality here, from the late King *James* and the *French* King, and of several Correspondences had between them, and the great Officers of State here in *England*; but not meeting with that Encouragement he expected, he then undertakes to write and publish the two scandalous Libels mentioned in the Information, and caused great Numbers of them to be printed and sold about the Town; and then petitions the House of Peers to be heard, to make out the Truth of what he wrote and published. The House of Peers, by his Importunity, appointed a Day for him to produce those Persons he mentioned, to make good his Accusations and Charge, which he undertook to do; but failing from time to time, their Lordships ordered him to be committed, and prosecuted for an Impostor; but the Defendant being an harden'd Rogue, was no way humbled at this Order, but immediately thereon applies himself by Letters to the Speaker of the House of Commons, alledging the same Matters, as he had done before to the House of Lords. The House of Commons ordered him to be brought to their Bar, where he only desired Ten Days Time to produce those Persons mention'd in his Libels; and that House, (to leave him no Excuse) granted him a Fortnight; but having trifled with the House of Commons, as he had done before with the House of Lords, they voted him an incorrigible Rogue, and ordered him to be prosecuted. What the Reasons were for this unparallel'd Impudence, whether for the sake of Gain, or Malice to those Gentlemen he hints at in his Libels, are yet Secrets."

*Mr. *Att. Gen.* My Lord, the Charge *Sir Edward* has been very fully opened, and I need not say much. His Crime is his publishing these two Books (mention'd in the Information.)

He has been some Time setting up for an Evidence, pretending to discover a secret Correspondence between the late King *James*, and several Persons here in *England*. He made an Offer of some such Discovery about Ten Years ago, and he then applied himself to the House of Commons, and they gave him Time to produce his Witnesses; but after all, he could produce none, and the House ordered him to be prosecuted as a Cheat and Impostor; and he was prosecuted accordingly, convicted —, and set in the Pillory. Now some Time last Winter, he did apply himself to some of the late King's Ministers, and pretended he would produce *Thomas Jones*, and *Tho. Witherington*, to make considerable

siderable Discoveries. They heard him, but he could never produce these Men before them. And afterwards having no Encouragement from them, he took on him to publish these two Books, mention'd in the Information, whereof he stands now accused. And after he was before the Parliament, he first applied himself to the House of Lords, and they heard what he had to say, and gave him Time to produce his Witnesses; but he could not do it, and thereupon the Lords were pleas'd to direct this Prosecution. Then he applied himself to the House of Commons, and they gave him Time likewise to produce his Witnesses; but he could produce none; whereupon they voted him a Cheat, a false Accuser, and an incorrigible Rogue. My Lord, these Books were published with a very malicious Design, and no doubt, he had other People, who do not now appear, to support him in it; and I doubt not but he would have set up Witnesses to have sworn whatever he would have them, if he had met with any Encouragement. He has the Impudence to put in the Frontispiece of his Books, *Published by Command*; but being asked in the House of Peers, by whose Command? He said, it was by his own Command. And he has publish'd in the Books, that he would produce Witnesses to prove the distributing of an Hundred and eighty thousand Pounds to Persons in Places of Trust, and to produce Receipts for the same, and he had an Opportunity now of doing it. We will prove the Charge upon him.

+ Sir John + Mr. Soll. Gen. My Lord, the Matter of the Information has been fully opened; but we are to consider the ill Consequences of it. This is a new Practice for a Man to publish Things of this Nature, and not be able to prove any thing: But he pretends to set up a second Witness to make out what he has said; that is, *Jones*, as if *Jones* were to relieve him. Now if that were true, it would be a great Thing to corroborate what he did say; but he has never produced this *Jones*, but only has printed something that he calls *Jones's*. If it were only what depended on his private Knowledge, the Case were otherwise; but when he pretends to bring *Jones* to prove it, and does not produce him, he makes himself guilty of the Scandal; and it is very necessary that this Man should be brought to Punishment. I will not trouble your Lordship further, but call our Witnesses.

Mr. Serj. Darnel. The Matter has been opened so fully, that there is no need for me to say any thing; we will now call our Witnesses.

Mr. Att. Gen. My Lord, we will prove that *Fuller* carried this Book to the Press, and not Mr. *Jones*, therefore we may well presume it was his own.

Mr. Coniers. He could never produce *Jones*, but he could frame Depositions for him.

Then Fuller's Book was produced.

Mr. Serj. Darnel. Call Mr. *Buck* [who appeared, and was sworn]. Mr. *Buck*, Who caused that Book to be published?

Mr. *Buck*. Mr. *Fuller*.

Mr. Serj. Darnel. How do you know that?

Mr. *Buck*. He brought it to me in Manuscript, and he said he took these Depositions out of the Secretaries-Office.

Mr. Serj. Darnel. But what did he desire you to do?

Mr. *Buck*. He desired me to print it: And he said, Because it was not done sooner, it had done the King Ten thousand Pounds Damage.

Mr. Coniers. Did he make any Alteration in them afterwards?

Mr. *Buck*. No, only alter'd the Mistakes of the Press.

Mr. Att. Gen. Was that Book printed by his Order?

Mr. *Buck*. Yes.

W. *Fuller*. My Lord, I will not give these Gentlemen the Trouble to prove it; I own it was writ by me.

Mr. Att. Gen. Do you own the other Book too? Mr. *Buck*, look on that Book [then the other Book was shewn him]. By whose Order was that printed?

Mr. *Buck*. By Mr. *Fuller's* Order.

Mr. *Fuller*. My Lord, if it be the Book I publish'd, I will own it. [Then it was shewn him.] Yes, my Lord, it was printed by my Order.

L. C. J. Holt. Read the Title.

Clerk. *Original Letters from the late King James, &c. Published by Command.*

L. C. J. Holt. By whose Command was it publish'd?

Mr. Att. Gen. By *Fuller's*.

L. C. J. Holt. His Order is a Command, it seems.

Then some Paragraphs were read.

Mr. Att. Gen. If Mr. *Fuller* will produce this *Jones*, to make good what he says, he will do a great Piece of Service; otherwise, he deserves to be severely censured.

L. C. J. Holt. Read the other Part.

Then the Clerk read the Title.

William *Fuller*. Pray read the whole Title.

L. C. J. Holt. He is in Love with it.

Clerk. [Reads the Title] *Twenty six Depositions of Persons of Quality and Worth, with Letters of the late Queen, Father Corker, and Mrs. Mary Grey, &c. Publish'd by Command.*

Mr. Att. Gen. Read the rest.

Clerk. *Mr. Fuller's Answer to the chief Objections made against him, &c. — Mr. Jones made Oath, that he has paid 5000 l. more to several Persons by the late King's Order, that he might compleat my Ruin, and invalidate my Evidence for ever, &c.*

Mr. Att. Gen. My Lord, we have proved his publishing of these Books. We will now hear what he can say for himself.

W. *Fuller*. My Lord, I humbly beg you will hear what I have to say.

L. C. J. Holt. Yes, yes, Have you any Council?

W. *Fuller*. No my Lord, I have none; I have no Money to procure Council. I have put my Thoughts in Writing, and I beg leave to read it.

L. C. J. Holt. But you must speak to the Purpose. What do you say concerning the publishing these Books?

W. *Fuller*. That is what I have to offer.

L. C. J. Holt. But can you make it appear that they are true?

W. *Fuller*. My Lord, I hope I shall.

L. C. J. Holt. Have you any Witnesses?

W. *Fuller*. I have none here at present. But if your Lordship will please to hear the Terms upon which

which the Witnesses would have come in, I can produce them : If your Lordship will grant your Warrant for *Jones*, I will forfeit my Life if he appear not.

L. C. J. Holt. You might have had *Subpœna's* for your Witnesses against this Day.

W. Fuller. My Lord, I did endeavour it ; but I had not Money to bear their Charges.

L. C. J. Holt. You made the same Excuse before the House of Lords and Commons.

W. Fuller. If it can be made appear that I had any Assistance from the House of Lords, or the House of Commons, I own I am in the wrong.

L. C. J. Holt. What Assistance would you have had from them ? Or what would you have from me ?

W. Fuller. The House of Lords summoned me before them ; and I desired—

L. C. J. Holt. If you take on you to write such Things as you are charged with, it lies upon you to prove it at your Peril.

Mr. Att. Gen. My Lord, he did appeal to the Lords : and they gave him from Time to Time to produce his Witnesses, and he could not do it.

L. C. J. Holt. If you have any Witnesses, I will hear them ; but to hear you make a Speech, it is to no Purpose.

W. Fuller. My Lord, I hope you will believe it to be to the Purpose, if you please to hear me.

Mr. Coniers. What signifies your Belief ?

W. Fuller. Why am I not to be believ'd ?

L. C. J. Holt. What ? Because you have stood in the Pillory for an Impostor heretofore.

Mr. Serj. Darnel. The whole Nation do not believe you ; for the Lords and Commons did not, who represent the whole Nation.

W. Fuller. The Lords did not think fit to put it to the Trial. These Gentlemen charge me to have abused several Persons : I would be glad to know who these Persons are.

Mr. Att. Gen. I cannot tell who they are ; your Book promises to make that appear.

W. Fuller. If a Man of an ill Character abuse the Nation, I hope I shall not suffer for that.

L. C. J. Holt. How came you to write these Books, that are not true ?

W. Fuller. My Lord, I believe they are all true.

Mr. Att. Gen. Produce the Original Affidavits made by *Jones*, which you caused to be printed.

Mr. Serj. Darnel. Produce the Receipts for the Money, which you say you have ; and then you will do something.

W. Fuller. Do I say it ?

Mr. Serj. Darnel. Yes, if that Print be yours.

W. Fuller. I wonder a Man of your Gravity should assert such an Untruth in the Court.

L. C. J. Holt. If you have any Witnesses, produce them.

W. Fuller. My Lord, I presume you cannot but remember, that in *Crone's* Case I behaved my self honourably, and was owned to have done the Nation good Service.

L. C. J. Holt. That was formerly, and signifies nothing to what you do now.

W. Fuller. I ventur'd several times into *France*, and back again : Shew me a Man that ever did so besides ?

Mr. Att. Gen. If you had made out the Discovery you pretended to make, I should have commended you.

W. Fuller. After I had made that Discovery, the Court at *St. Germain's* did what they could to

ruin me. There have been a great many Books lately printed, to prove the Legitimacy of the Prince of *Wales*, and none of them taken notice of.

L. C. J. Holt. You charge a great many Persons with corresponding with *France*, and cannot prove it.

W. Fuller. I charge none, my Lord.

L. C. J. Holt. You charge all that are intimated in the Books. The same Mr. *Jones* will prove by undeniable Demonstration, that he distributed more than 180000*l.* by the *French* King's Order to several Persons employed under the Government. Now these Persons are scandalized ; for you produce no Proof of what you charge them with : And you say, I had the Original of this from Mr. *Jones*, &c. Where are they ?

W. Fuller. If your Lordship will please to grant me your Warrant, I will produce them.

L. C. J. Holt. If you take on you to make good these Things, you cannot in Justice require my Warrant to fetch in others to prove what you say ; you must prove it.

W. Fuller. By his own Confession, he has been guilty of High-Treason ; and therefore will not appear without a Warrant.

L. C. J. Holt. You cannot pretend to have a Right to any Warrant.

W. Fuller. If your Lordship please to give me Leave to say something in my Defence—

L. C. J. Holt. Yes, if it be to any Purpose.

W. Fuller. I am unacquainted with the Laws, and have not—

L. C. J. Holt. What is that to the Purpose ; You are not to make Libels, nor traduce Ministers of State. What have you to say to that ?

W. Fuller. When I had printed this Book, I was summoned before the Lords ; and after that was committed to the *Fleet*. My Friends were all called before the Lords ; and by my Lord *Jeffreys* and other Lords, there were such Questions asked, as I believe were never asked before—

L. C. J. Holt. This is not to be endured ; you do but aggravate your Crime.

W. Fuller. This is not what I would offer.

L. C. J. Holt. If you can offer any Matter to prove what you have writ, let us hear it.

W. Fuller. Mr. *Jones* has confess'd himself guilty of High-Treason, and therefore cannot appear.

L. C. J. Holt. Where is he ? Where did he make this Confession ?

W. Fuller. In the Country.

L. C. J. Holt. Before whom ?

W. Fuller. I do not know that ; I was not with him when he did it.

L. C. J. Holt. Where is the Man ?

W. Fuller. If your Lordship will please to give me your Warrant, I will produce him.

L. C. J. Holt. Shall I make a Bargain with you ? Why have you not produc'd him all this while, before the House of Lords, and the House of Commons ?

W. Fuller. Mr. Attorney did say I appealed to the Lords. I was called before them ; I made no Application to them, but was called by the Order of the House.

Mr. Att. Gen. But you was there.

W. Fuller. I was there ; and there were Three Letters read of mine in the House, and I desire they may be read here.

L. C. J. Holt. What is that to the Purpose ? Can you produce your Witnesses ?

W. Fuller. Mr. *Jones* is now in *Hampshire*.

L. C. J.

L. C. J. Holt. Have you not had Time enough to procure him ?

W. Fuller. My Lord, I cannot force him. I was with the Secretary of State, and told him, *Jones* will not come in voluntarily ; if the Lords will grant a Warrant, he may be brought. I offer'd this to the House of Commons too, but it was not granted. I could not force him.

Mr. Serj. Darnel. The Secretary of State sent one or two for him.

W. Fuller. He sent no body.

L. C. J. Holt. Gentlemen of the Jury, you hear what the Purpose of this Information is, and you hear how it is proved ; and you hear the Witness say, He brought these two scandalous Books to the Press, and that he corrected them ; and he owns, he was the Publisher of them : And if you believe he did so, you are to find him Guilty.

The Jury brought him in Guilty, without going from the Bar.

CLXXIV. *The Tryals of Colonel RICHARD KIRKBY, Captain JOHN CONSTABLE, Captain COOPER WADE, Captain SAMUEL VINCENT, and Captain CHRISTOPHER FOGG, at a Court-Martial in Jamaica, for Offences against the Articles of War, Octob. 8, 9, 10, 12. 1702. 1 Ann.*

AT a Court-Martial held on Board her Majesty's Ship the *Bredab*, in Port-Royal Harbour in Jamaica in America, the 8th, 9th, 10th and 12th, Days of October, 1702. Present,

The Honourable *William Whiston*, Esq; Rear-Admiral of Her Majesty's Ships for the *West-India* Squadron, President,

*Samuel Vincent,
John Hartnoll,
Christopher Fogg,
John Smith,
John Redman,
George Walton,*

*William Ruffel,
Barrow Harris,
Hercules Mitchell,
Philip Boyce,
Charles Smith.*

Arnold Browne, Esq; Judge-Advocate.

Who being all duly sworn, pursuant to the Act of Parliament, proceeded to the Trial of *John Arthur*, Gunner of the *Defiance*, on a Complaint exhibited by *Francis Knighton*, Third Lieutenant of the *Defiance*, and *George Foster*, Gunner of the said Ship, for hiding and concealing Forty three Barrels of Powder in the Wadding-Room, and covering them with Wadding and Coins, &c. when a Survey of Her Majesty's Stores of Ammunition after an Engagement was ordered ; and denying to the Surveyors, that there was any more Powder on Board, than was in the Powder-Room and Gun-Room, viz. One Hundred ; which, upon a second Survey, were discovered. It was proved also, That he had Two Keys to the Powder-Room ; and that having lost or mislaid his own, he, without making any Application to the Commanding Officer then on Board, who kept the other Key, prevailed with *William Baker*, Carpenter of the said Ship, to break open the Door.

In Mitigation of his Offence, he alledged, That examining into the Powder-Room, he found Three Barrels that had received wet, which caused his removal of the Forty Three Barrels ; but had little to say for his concealing them from the Surveyors. Whereupon the Court adjudged, That the said Of-

fence falling under the 33d Article of War, the said *John Arthur* should be carried from Ship to Ship in a Boat with a Halter about his Neck, the Provost-Marshal declaring his Crimes ; and all his Pay, as Gunner, to be mulct'd and forfeited to the Chest at *Chatham* ; and be render'd incapable of serving Her Majesty in any other Employment.

Colonel *Richard Kirkby*, Commander of the *Defiance*, was tried before the aforesaid Court, (except Captain *Samuel Vincent*, and Captain *Christopher Fogg*, who appeared as Witnesses for the Queen,) on a Complaint exhibited by the Judge-Advocate on the Behalf of Her Majesty, of Cowardice, Neglect of Duty, Breach of Orders, and other Crimes committed by him at a Fight at Sea, commenced the 19th of August, 1702, off *St. Martha*, in the Latitude of Ten Degrees North, near the main Land of America, between the Honourable *John Benbow*, Esq; Vice-Admiral of the Blue Squadron of Her Majesty's Fleet, and Admiral and Commander in Chief, &c. on Board Her Majesty's Ship *Bredab*, *Christopher Fogg*, Commander, and Six other of Her Majesty's Ships, viz. the *Defiance*, *Richard Kirkby* Commander ; the *Falmouth*, *Samuel Vincent* Commander ; *Windsor*, *John Constable*, Commander ; *Greenwich*, *Cooper Wade*, Commander ; *Ruby*, *George Walton*, Commander ; and the *Pendennis*, *Thomas Hudson*, Commander : And Monsieur *Du Casse* with Four French Ships of War : Which continued until the 24th of August inclusive.

The Witnesses that were sworn in Behalf of the Queen ; viz.

The Honourable John Benbow, Esq; Admiral.

2 Captains.

8 Lieutenants.

5 Masters.

5 Inferior Officers.

Who deposed, That the said Colonel *Richard Kirkby*, the Van in the Line of Battle, the 19th of August,

August, about Three in the Afternoon, the Signal of Battle being out, the Admiral was forc'd to send his Boat on Board of *Kirkby*, and command his making more Sail, and get a-breast of the Enemy's Van, for that he was resolv'd to fight them. About Four the Fight began; but the said *Kirkby* did not fire above Three Broadfides, then luff'd up out of the Line, and out of Gunshot, leaving the Admiral engaged with Two *French* Ships till dark, and the said *Kirkby* receiving no Damage: That his Behaviour caus'd great Fear of his Desertion. At Night the said *Kirkby* fell a-stern, leaving the Admiral to pursue the Enemy.

That the 20th, at Day-light, the Admiral and *Ruby* were within Shot of all the Enemy's Ships; but Colonel *Kirkby* was near Three or Four Miles a-stern. The Admiral then made a new Line of Battle, and took the Van himself, and sent to each Ship, with a Command to the said *Kirkby* to keep his Line and Station; which he promised to do, but did not; keeping Two or Three Miles a-stern, tho' the Signal for Battle was out all Night. The *French* making a running Fight, the Admiral and *Ruby* plied the Enemy with their Chase-Guns till Night. That the 21st Day, at Light, the Admiral was on the Quarter of the Second Ship of the Enemy's Rear, and the *Ruby* on the Board-side, very near, who plied him warmly, and met the same Return; by which he was so much disabled, tho' the Admiral came in to his Assistance, that he was forc'd to be towed off: And this prevented the Admiral's Design of cutting off the Enemy's Sternmost Ship. This Action lasted Two Hours; during which Time the said *Kirkby* lay a Broadside of the Sternmost Ship; as did also the *Windsor*, *John Constable* Commander. The Admiral then commanded the said *Kirkby* to ply his Broadfides on him. But this having no Effect, the second Time he commanded the same; but he fir'd not a Gun: Nay, his own Boatswain and Seamen repeated the Admiral's Command to him; but were severely us'd, and threaten'd that he would run his Sword thro' the Boatswain. And had the said *Kirkby* done his Duty, and Captain *Constable* his, they must have taken or destroyed the said *French* Ships. The Admiral, tho' he receiv'd much Damage in his Sails, Rigging, Yards, &c. yet continued the Chase all Night. That the 22d in the Morning at Day-light, the *Greenwich* was Three Leagues a-stern; and the *Defiance*, Colonel *Kirkby*, with the rest of the Snips, Three or Four Miles, the *Falmouth* excepted, whose Station was in the Rear: That the said Captain *Samuel Vincent*, seeing the Behaviour of the said *Kirkby*, and the rest, came up with the Admiral, and sent his Lieutenant on Board, desiring Leave to assist him, which was accepted: The said *Kirkby* never coming up; and by his Example the rest did the same, as if they had a Design to sacrifice the Admiral and *Falmouth* to the Enemy, or desert. The Enemy were now about a Mile and an half a-head, standing into the Shore with a small Breeze at *W.* fetch'd within *Sambeys*, the Admiral firing at the Sternmost till Night, and continued the Pursuit; and a *Flemish* Ship that was in Monsieur *Du Cassé's* Company, on Board of which was all the *French* and *Spanish* new Governors and other Officers, made her Escape. That the 23d, in the Morning, at Day-light, the Enemy bore *North-West*, distant about Four or Five Miles, the Admiral and *Falmouth* pursuing; but the said Colonel *Kirkby*, with the rest of the Ships, being Three or Four Miles a-stern; (tho' there

was not a Ship but, before and after the Battle, fail'd better than the Admiral.) About Seven in the Evening, it having been some time calm, a Gale of Wind sprung up, the Admiral and *Falmouth* were about Two Miles from the Enemy; and at Eight, the said *Kirkby* and his separate Squadron was fair up with the Admiral: And this Day the Admiral sent away the disabled *Ruby*, *George Walton* Commander, to *Port-Royal*; and under his Convoys the *Anna Galley*, retaken from the *French*.

That the 24th, in the Morning, about Two of the Clock, the Admiral came up with the Sternmost of the Enemy within Call, and the *Falmouth* pretty near; but the said Colonel *Kirkby*, with the rest of the Ships, according to Custom, were Three or Four Miles a-stern. The Admiral and *Falmouth* engaged the said Ship; and at Three the Admiral was wounded, his Right Leg being broke, but commanded the Fight to be vigorously maintained; and at Day-light the Enemy's Ship appeared like a Wreck, her Mizen-Mast shot by the Board, her Main-yard in Three or Four Pieces, her Foretop-sail-yard the same, her Stays and Rigging all shot to Pieces. Soon after Day, the said *Kirkby*, with the rest of the Ships, being to Windward of the said disabled Ship, he the said *Kirkby*, with the rest of his separate Squadron, fired about Twelve Guns at the said Ship; and fearing a smart Return from her, he lower'd his Mizen-Yard, his Topfais on the Caps, set his Spritsail, Spritsail Topfail, and Foretopfail Stayfail, and having waired his Ship, set his Sail, and run away before the Wind from the poor disabled Ship, the rest following his said Example; tho' they had but Eight Men kill'd on Board them all (except the Admiral). The other Three *French* Men of War were at this Time of Action about Four Miles distant from their maimed Ship; whereupon the Enemy seeing the Cowardice of the said Colonel *Kirkby*, and the rest of the *English* Ships, in a Squale bore down upon the Admiral, who lay close by the disabled Ship; and having got in their Spritsail Yard, gave him all their Fire; and running between him and the disabled Ship, remann'd her and took her in. The Admiral's Rigging being very much shatter'd, was oblig'd to lie and refit till Ten a-Clock, and then continued the Pursuit; and the rest of the Fleet following in the greatest Disorder imaginable, the Admiral commanded Capt. *Fogg* to stand a-breast of the Enemies Van, and then to attack him, and having then a fine steady Gale, the like not happening during the whole Engagement; and further ordered that he should send to all the Captains to keep the Line of Battle, and behave themselves like *Englishmen*; and this Message was sent by Captain *Wade* then on Board the *Bredab*. That the said Colonel *Kirkby* on the Receipt of this Message, and seeing the Admiral's Resolution to engage, came on Board him, who then lay wounded in a Cradle; and without common Respect of enquiring after his Health, he the said *Kirkby* express'd these Words following, *That he wonder'd that the Admiral should offer to engage the French again, it being not necessary, safe, nor convenient, having had Six Days Trial of their Strength; and then magnified that of the French, and lessened that of the English.* But the Admiral being surprized at his Speech, said it was but one Man's Opinion, and that he would have the rest of the Captains; and accordingly ordered the Signal to be made for all the Captains to come on Board; and at this Time the Admiral and the rest of the Ships

Ships were to Windward, and within Shot of the Enemy, and had the fairest Opportunity that in six Days presented, to chase, engage, and destroy the Enemy.

That the said Colonel Kirkby had endeavoured to poison the rest of the Captains; forming a Writing under his own Hand, which was cowardly and erroneous: The Substance of which was, Not to engage the Enemy any more. He the said Colonel Kirkby brought it to the Admiral, who reproved him for it, saying it would be the Ruin of all: Upon which he the said Colonel Kirkby went away, but writ another in the following Words.

At a Consultation held on board her Majesty's Ship Bre-dah, the 24th of August, 1702. off of Carthagena, on the main Continent of America.

It is the Opinion of us whose Names are under-written.

1. Of the great Want of Men in Number, Quality, and the Weaknesses of those they have.

2. The general Want of Ammunition of most forts.

3. Each Ship's Masts, Yards, Sails and Rigging, being all in a great Measure disabled.

4. The Winds are so small and variable, that the Ships can't be governed by any Strength: Each Ship

5. Having experienced the Enemy in Six Days Battle, following the Squadron consisting of Five Men of War and a Fireship, under the Command of Monsieur Du Casse; their Equipage consisting in Guns from 60 to 80, and having a great Number of Seamen and Soldiers on Board for the Service of Spain.

For which Reasons above-mentioned, we think it not fit to engage the Enemy at this Time, but to keep them Company this Night, and observe their Motion; and if a fair Opportunity shall happen of Wind and Weather, once more to try our Strength with them.

Richard Kirkby, Samuel Vincent, John Constable, Christopher Fogg, Cooper Wade, and Thomas Hudson.

That during the Six Days Engagement, he never encouraged his Men; but by his own Example of dodging behind the Mizen-Mast, and falling down upon the Deck on the Noise of Shot, and denying them the Provisions of the Ship, the said Men were under great Discouragement. That he amended the Master of the Ship's Journal of the Transactions of the Fight, according to his own Inclination.

All which being proved aforesaid:

The said Colonel Richard Kirkby denied the whole, excepting the pretended written Consultation: Which being shewn to him, he own'd his own Hand and Name too. He brought several of his Men to give an Account of his Behaviour during the Fight; but their Testimonies were insignificant; and his Behaviour to the Court and Witnesses most unbecoming a Gentleman. And being particularly ask'd by the Court, why he did not fire at the Enemies Sternmost Ship, which lay point-blank with him the 21st of August? He replied, Because they did not fire at him, for that they had a Respect for him: Which Words upon several Occasions, during the Trial, he repeated Three several Times.

Where, upon due Consideration of the Premises, of great Advantages the *English* had in Number, being Seven to Four, of Guns 122 more than the other; with his Acts and Behaviour as aforesaid, and more particularly his ill-timed Paper or Consultation as afore-recited, which obliged the Admiral for the Preservation of her Majesty's Fleet, to give over the Chase and Fight, to the irreparable Dishonour of the Queen, her Crown and Dignity, and come to *Port-Royal, Jamaica*: For which Reasons the Court was of Opinion, That he fell under the 11th, 12th, 14th, and 20th Articles of War; and adjudged accordingly, That he be shot to Death: But further decreed, That the Execution of Col. Kirkby be deferred till Her Majesty's Pleasure be known therein; but be continued a close Prisoner till that Time.

Captain John Constable, Commander of the *Windfor*, was Tried before the aforesaid Court, on a Complaint exhibited by the Judge Advocate on the Behalf of the Queen, for Breach of Orders, Neglect of Duty, and other ill Practices committed during a Fight commenced the 19th of August, 1702, as aforesaid. (*Refer to Colonel Kirkby's Trial.*)

The Witnesses sworn on the Behalf of the Queen were,

2 Captains,

7 Lieutenants,

5 Masters,

2 Other Officers.

The Honourable John Benbow, Esq;
Admiral.

17 Witnesses.

Who deposed, That Captain John Constable never kept his first nor second Line of Battle, but acted in all Things as Colonel Kirkby had done. That the Admiral had fired Two Guns to command him into the second Line of Battle. That he did set more sail in order to come into the Line, and his Station; but upon Colonel Kirkby's calling to him to keep his Line, he accordingly did. That the Admiral sent his Lieutenant Landgridge to command him the said Constable to keep his Line of Battle within half a Cables Length of the Ship before him, which was twice verbally delivered. And that he signed the Paper, Consultation, as is in Colonel Kirkby's Trial aforesaid; tending to the Hindrance and Disservice of Her Majesty, &c. and was drunk during the Fight, &c.

All which being fully proved as aforesaid; the said Captain John Constable, denied his Breach of Orders, or Neglect of Duty; but owned the signing the Paper, or Consultation prepared by Colonel Kirkby, and did it at his Request, and for that he had received Damage in his Masts and Rigging; and own'd no other Article to be true, but that he had sign'd to. He called several Witnesses to his Behaviour during the Fight; who all declared he kept the Quarter-Deck during the Engagement, and encouraged his Men to fight; and that sometimes he gave them Drums of Rum; and that Verbal Message delivered by Lieutenant Landgridge, was delivered him in some Heat and Passion, and was understood to be, to keep the Line within half a Cable's Length, and to follow Kirkby, which he did. That he so understood it him-

himself, and several of his Men: He prayed the Mercy of the Court, and so concluded, &c.

Where upon due Consideration of the Premises, the Court were of Opinion, that the said *John Constable*, Captain, fell under the 12th, 14th, and 20th Articles of War; and adjudged the said Captain *John Constable* to be immediately cashier'd, and render'd incapable of serving Her Majesty, and be imprisoned during Her Majesty's Pleasure, and sent home to *England* a Prisoner in the first Ship the Admiral shall think fit; and be confined a Prisoner till then.

Oct. 10, 12. **C**aptain *Cooper Wade*, Commander of the *Greenwich*, was Tried before the aforesaid Court; on a Complaint exhibited by the Judge Advocate, on the Behalf of the Queen, of high Crimes and Misdemeanors, of Cowardice, Breach of Orders, and Neglect of Duty, and other ill Practices, committed during a Fight, commenc'd the 19th of *August*, 1702, as aforesaid. (Refer to that Part of Colonel *Kirkby's Trial*.)

The Witnesses sworn on Behalf of the Queen.

The Honourable John Benbow, Esq; Admiral,

9 Lieutenants,

3 Masters,

3 Inferior Officers.

16 Witnesses.

Who deposed, That during the Six Days Engagement, he never kept the Line of Battle, fired all his Shot in vain, not reaching half way to the Enemy; That he was often told the same by his Lieutenants and other Officers; but notwithstanding, he commanded them to fire, saying they must do so, or the Admiral would not believe they fought if they did not continue the Fire. That during the whole Fight the Admiral was engaged in, the said Capt. *Wade* received but one Shot from the Enemy; That he was in Drink the greatest Part of the Time of Action; And that he signed the Paper or Consultation drawn up by Colonel *Kirkby*, as aforesaid; and in the Time of Fight arraigned the honourable Courage and Conduct of the Admiral.

All which being fully proved as aforesaid:

That the said Captain *Cooper Wade* denied the Arraignment of the honourable Courage and Conduct of the Admiral, during the whole six Days Engagement; declaring the Bravery and good Management of the Admiral in this Time of Action, and that no Man living could do more or better, for the Honour of the Queen and Nation. He called some Persons to justify his Behaviour, who said little in his Favour. He begged the Mercy of the Court, and so concluded. Whereupon the Court was of Opinion, That the said *Cooper Wade*

fell under the 11th, 12th, 14th and 20th Articles of War; and accordingly adjudged the said *Cooper Wade* to be shot to Death: But it was farther declared by the Court, That the Execution of the said *Cooper Wade* be deferred till Her Majesty's Pleasure be known therein, but be continued a close Prisoner till that Time.


October 12. **C**aptain *Samuel Vincent*, Commander of the *Falmouth*, and Capt. *Christopher Fogg*, Commander of the *Bredab*, were tried before the aforesaid Court, on a Complaint exhibited by the Judge-Advocate, for high Crimes and Misdemeanors, and ill Practices in time of Admiral *Benbow's* Fight with Monsieur *Du Casse* as aforesaid, in signing a Paper called a Consultation and Opinion held on Board the *Bredab*, the 24th of *August*, 1702. (Which is Verbatim recited in Colonel *Kirkby's Trial*, to which refer.) It tending to the great Hindrance and Disservice of Her Majesty's Fleet then in Fight: And the said Paper so written, being shewed to each of them, they severally owned their Hands to the same, But the said Captain *Vincent* and Captain *Fogg*, for reason of signing the same, alledged, That being deserted during each Days Engagement by Colonel *Richard Kirkby* in the *Defiance*, Captain *John Constable* in the *Windsor*, Capt. *Cooper Wade* in the *Greenwich*, and Capt. *Thomas Hudson* in the *Pendennis*, and left as a Prey to Monsieur *Du Casse*, they had great reason to believe they should be Captives to the Enemy. And the Honourable *John Benbow, Esq; Admiral, &c.* coming into Court, declared, That during the Six Days Fight the said Captain *Fogg* behaved himself with great Courage, Bravery, and Conduct, like a true *Englishman*, and Lover of his Queen and Country: And that the said Captain *Samuel Vincent* valiantly and courageously behaved himself during the said Action, and desired Leave to come into his the said Admiral's Assistance, then engaged with the Enemy, and deserted by all the rest of the aforesaid Ships; which he did, to the Relief of the said Admiral, who otherwise had fallen into the Hands of Monsieur *Du Casse*.

Whereupon the Court being of Opinion, That the signing of the aforesaid Paper brought them under the Censure of the 20th Article of War, accordingly adjudged Captain *Samuel Vincent*, and Captain *Christopher Fogg*, to be suspended: But the Execution thereof is hereby respited, till his Royal Highness Prince *George of Denmark*, Lord High Admiral of *England*, &c. his further Pleasure be known therein.

Capt. *Thomas Hudson*, Commander of the *Pendennis*, died on Board his said Ship, in the Harbour of *Port-Royal*, at *Jamaica*, the

At Five a-Clock the 12th Day of *October*, 1702. the President, &c. having finished all the Business before the Court, dissolved the same.

CLXXV. *The Trial of Haagen Swendsen, at the Queen's Bench, for forceably taking away and marrying Mrs. Pleasant Rawlins, Nov. 25. 1702. Mich. 1 Ann.*

N Wednesday the 18th of November, the Grand Jury of Westminster found the Bill of Indictment against the Defendants. On that Day an Habeas Corpus was moved for, and left at Newgate, and the Keeper refused to bring up the Prisoner on Thursday, but brought him on Friday Morning; and then he was Arraigned, and pleaded not Guilty; and the Court then appointed the Trial to be on Wednesday the 25th, that being the last Day that he could be tried, to have Sentence given against Convicted Persons in that Term.

Mr. Swendsen moved for a longer Time, alledging, That a German, a material Witness for him, was gone into Yorkshire. The Court then told him, that if any Person would Swear that any of his Witnesses could not be at the Trial on Wednesday, the Court would put off the Trial; but no Oath thereof being made, the Trial came on upon the Day appointed.

The Court being sat, at which were present the Right Honourable the Lord Chief Justice Holt, Sir John Powell, Sir Littleton Powis, and Sir Henry Gould:

Haagen Swendsen being brought to the Bar, Proclamation was made for Silence; and he being a Foreigner, claimed as his Right, the Benefit of a Party Jury; which was allowed him, and Leave to Challenge whom he would. He Challenged some; and the Gentlemen sworn were, viz.

George Ford, Esq;	Francis Chapman,	} Gent.
Enoch Roope, Gent.	Erasmus Johnson,	
Timothy Thornbury, Esq;	Robert Bampton,	
Abraham Faulcon, Gent.	Matthew Boddin,	
John Pack, Esq;	Thomas Pitts,	
James Boyneth, Gent.	Henry Henderson.	

Cler. of Arr. Haagen Swendsen hold up thy Hand. Which he did.

Cl. of Arr. Gentlemen of the Jury look upon the Prisoner at the Bar. He stands indicted by the Name of Haagen Swendsen, late of the Parish of St. Giles in the Fields, in the County of Middlesex, Yeoman; for that on the Sixth of November 1702, one Pleasant Rawlins, Gentlewoman, and a Virgin, and Unmarried, Grand-daughter and Heir of William Rawlins, Sen. then deceased, and Daughter and Heir of William Rawlins, Jun. before then also deceased, was above the Age of Sixteen, and under the Age of Eighteen, and then had Substance and Estate in Moveables and in Lands and Tenements, viz. in Money, Goods and Chattels, to the Value of 2000 l. and in Lands and Tenements to the Value of 20 l. per Annum, to Her and the Heirs of her Body.

And that the several Persons, Swendsen, Baynton, Hartwell, Spurr and Tho. Holt, the said 6th

Day of November, with Force and Arms, the said Pleasant Rawlins, as aforesaid, being Unmarried, and Heir, and having Substance and Estate at the Parish of St. Giles in the Fields, in this County, for the Lucre of such Estate and Substance of the said Pleasant Rawlins, did unlawfully, feloniously, violently, and against the Will of the said Pleasant Rawlins, take, carry, and lead away, with Intent to cause and procure the said Pleasant Rawlins, against her Will, in Matrimony to the said Haagen Swendsen to be joined, and to him to be Wedded and Married; and that the said Haagen Swendsen being a Man of a dishonest Conversation, and of none, or very little Estate or Substance, then, and there, by the Help and Procurement of the other Defendants, did feloniously marry the said Pleasant Rawlins, and was joined to her in Matrimony; and then, and there, her did carnally know; to the great Displeasure of God, against the Laws of the Queen, to the Disgrace and Disparagement of the said Pleasant Rawlins, and to the great Grief and Disconsolation of all her Friends, to the evil Example of all others, against the Form of the Statute, and against the Queen's Peace, her Crown and Dignity. And that the said Tho. Holt, after the said Pleasant Rawlins had been so unlawfully, violently, and feloniously taken, carried, and led away, and to the said Haagen Swendsen Married and Wedded as aforesaid; well knowing the said Pleasant Rawlins to have been so taken and lead away against her Will, and to the said Haagen Swendsen to be Wedded and Married, afterwards, viz. the said Sixth Day of November, in the said first Year of the Reign of this Queen, at the Parish aforesaid, the same Pleasant Rawlins, and also the said Haagen Swendsen, did wilfully, knowingly and feloniously receive, abet, comfort, conceal and assist, the said Haagen Swendsen, with the said Pleasant Rawlins to lye, and her carnally to know, then and there did feloniously incite, abet, help, cause and procure, against the Form of the said Statute, and against the Queen's Peace, her Crown and Dignity.

Cler. of Arr. Upon which Indictment he hath been arraign'd, and pleaded not Guilty, put himself upon God and you the Jury at the Bar, being half Foreigners and half Natives.

Cryer. O yes! If any one will give Evidence on Behalf of our Sovereign Lady the Queen, against the Prisoner at the Bar, let them come forth, and they shall be heard; the Prisoner stands at the Bar for his Deliverance.

Mr. Swends. Pray, my Lord, let me have Pen and Ink, I am not allowed Council; (which his Lordship granted.) My Lord, I would beg the Favour of your Lordship, that the Evidence may be examined apart.

* Mr. Soll. Gen. Is it not your Lordship's Pleasure to call the other Jury, the Facts are so twisted together, and have such a Dependence one upon another, that there will be an Inconvenience to us, if it be otherwise?

* Sir Simon Hartcourt.

M m m

Mr.

Mr. *Serj. Darnel*. They may stand at the Bar by themselves.

Mr. *Montague*. Or else it will break our Evidence: They may stand on the other side.

L. C. J. *Holt*. He must be tried single.

Mr. *Soll. Gen.* May it please your Lordship, and Gentlemen of the Jury, I am of Council for the Queen: It was formerly reckon'd a less Crime to steal a Fortune of 10000 *l.* than to steal 12 *d.* of her Money or Goods; but in the Third Year of the Reign of King *Henry VII.* to cure this Defect in the Law, an Act of Parliament was made, whereby the taking away a Woman, having Goods or Lands, or being an Heir apparent, contrary to her Will, and afterwards Marrying her, is made Felony, and upon this Law the present Indictment is grounded.

Pleasant Rawlins was the Daughter of Mr. *William Rawlins*; he having left her a considerable Estate, appointed *George Bright* and *William Busby* to be her Guardians. Mr. *Bright* being dead, the other Guardian Mr. *Busby*, for the better Education of Mrs. *Rawlins*, placed her under the Care of his Sister *Sabina Busby*. Mrs. *Busby* and Mrs. *Rawlins* have lodged about Three Years last at the House of the Widow *Nightingale*. *Haagen Swendsen*, with Mrs. *Baynton*, lodged at Mrs. *Blake's* in *Holbourn*, and there they first projected and contriv'd how they might make a Prey of this young Gentlewoman. The first Step they took towards executing this Design, was to get Lodgings at Mrs. *Nightingale's* House for Mrs. *Baynton*; for which Purpose she was to pass for a Country Gentlewoman of a plentiful Fortune. One Mrs. *St. John* was sent to Mrs. *Nightingale* to take Lodgings for Mrs. *Baynton*, commending her to be a very good Woman; and that having the Misfortune of a Law-suit, and being obliged for that Reason to attend it in Town, 'twas her greatest Care to lodge in so reputable a House as Mrs. *Nightingale's* was. Under this Pretence, Lodgings were there taken for her. At her first coming, she was forced to put on a Disguise; she seem'd to live a virtuous Life, that she might ingratiate herself into the Favour of the Family, as often as she had an Opportunity of conversing with any of them: She pretended she had a Brother of a good Estate, one of the best Men in the World; and she hop'd he would shortly come to Town, that she might see him. In a little time after came this *Swendsen* (being nothing related to her) and appeared as her Brother, and frequently visited her under Pretence of that Relation. But Mrs. *Baynton* was too well known in Town to continue long undiscover'd; Notice was soon given to Mrs. *Busby* of the vicious Life Mrs. *Baynton* had led, and that she was not fit to be in the same House with her. Mrs. *Baynton* having discovered this, and finding she had no Time to bring about her Designs by Frauds and Wiles, and that no other Ways was left but open Force, the Prisoner at the Bar and she took Measures accordingly; and in order thereto 'twas agreed, that a Writ should be taken out against Mrs. *Rawlins*. Mrs. *Baynton* contrives to get Mrs. *Rawlins* and Mrs. *Busby* into a Coach, and at a Place appointed a Signal was given, and the Writ executed; and Mrs. *Busby*, Mrs. *Rawlins*, and Mrs. *Baynton*, were all carried in the Coach to the *Star and Garter* Tavern in *Drury-Lane*, where particular Care was taken to separate Mrs. *Busby* and Mrs. *Rawlins*, because unless they did that, they could not hope to accomplish their Designs. Mrs. *Busby* was by Force kept at that Tavern, without any Process against her till the Marriage was over; but Mrs. *Rawlins* was forcibly carried to

Hartwell's the Bailiff's House. Mrs. *Baynton* pretended to be much concern'd for Mrs. *Rawlins*, and went in all Haste to call some of her Friends to be Bail for her. Some Time after Mrs. *Rawlins* was got to *Hartwell's*, in comes Mrs. *Baynton*, pretending that by mere Accident she had discover'd her being there, hearing her Name as she was passing by the Door; that she had been in Search, but could find no Help; and that her last Hopes was her dear Brother *Swendsen*, and she doubted not but he would Bail her: He by Agreement had been plac'd near the Bailiff's, and so was soon found, and brought thither, and was very ready to assist her. In order to her Discharge, the Prisoner, the Bailiff, and Mrs. *Baynton*, carry'd Mrs. *Rawlins* to another Tavern, where they had a Parson ready for the Purpose, and there this young Gentlewoman, thro' divers Artifices, of which you shall have a full Account, was constrain'd to Marry. These are the principal Circumstances, and they shall be plainly proved to you.

Mr. *Serj. Darnel*. My Lord, I think it necessary to open a little the Manner of getting this young Lady away, and the Contrivance of getting her into the Coach; for your Lordship knows, that if any are taken away without their Consent, tho' they do afterwards consent to be Married to such Taker, yet he is guilty within this Statute. They were resolv'd to take this Woman by Force, when they found they could not otherwise accomplish their End. And Mrs. *Baynton* knowing Mrs. *Busby* and Mrs. *Rawlins* were used every Friday Morning to go to a Chapel called *Oxendon Chapel*, Mrs. *Baynton* said, I am going to *Golden-Square*, and if you are going to the Chapel, I'll set you down if you please: They, glad of such a Convenience, thought no Harm, but went in the Coach. They had gone no further than *Dartmouth-Street*, but these Bailiffs come. *Hartwell* opens the Coach, and goes into it; they cry out to the People for Help; *Hartwell* pluck'd up the Glasses, and those Bailiffs about the Coach cry'd, It is an Arrest of a Cheat that owes Money to Tradesmen. By this Means they carried her to the *Star and Garter* in *Drury-Lane*. When they had them there, the next Thing was to get her away from her Friend *Busby*, for unless that were done, they despair'd of getting her to marry *Swendsen*. Mrs. *Baynton* pretended to go find out Mrs. *Rawlins's* Friends to Bail her; but that was to meet with *Swendsen*: As soon as Mrs. *Baynton* was gone, the Bailiffs forced Mrs. *Rawlins* from Mrs. *Busby*, and Mrs. *Busby* was kept there by Force till Five a-Clock, till all was over. The Bailiffs, as they carried Mrs. *Rawlins* away, called her Jade and Slut, and bid her pay her Debts; and said, Put on your Mask you Jade, for we will have no Mob to rescue you; she put on her Mask, and the rest of the Bailiffs followed her, and said, She was a Cheat and was arrested. Then it was Time to open the Scene. *Hartwell* carried her to his House, and Mrs. *Baynton* pretending to be coming by and hearing of her Name, open'd the Door, and by an extraordinary Manner burst into the House, and told her, Madam, I went to all your Friends, but could find none at home; but I have been with my dear Brother *Swendsen*, who will come with another to Bail you, and 'twill not be long before they come; for they were placed at the *Five Bells* very near *Hartwell's* House: Upon this she went out again, and brought in *Swendsen*, and one *Holt* who keeps the *Mitre* Tavern in *King-Street, Westminster*. And truly when they were there, and talked of being Bail, then they would all go in a Coach to the *Vine* Tavern, the Place where they designed the Marriage;

Marriage; and they had got Two proper Instruments ready there for the Business, the Chaplain and the Clerk of the Fleet. When they had her there, my Lord, the Bailiff asked if she had any Bail? Mrs. Baynton said, that Mr. Swendsen and Mr. Holt would be her Bail; the Bailiff said, *I will not take Swendsen's Bail, he is a Man I know not, but Mr. Holt I know, I will take his.* The poor Woman begged upon her Knees, for Christ's Sake let me send for my Friends; and they pretended to send for abundance of them, but none came. Then she was threatned with Newgate, for that often came out; *If you cannot get Bail, to Newgate you must go, and there must lie.* This was often said by Hartwell. Then Mrs. Baynton cry'd (as she could do at command) *O how I pity you, Mrs. Rawlins, Is there no way in the Law to help you? I believe if you were married that would put an End to the Action.* Then speaking to the Bailiff said, *If this Gentlewoman were married, would it not put an End to it?* The Bailiff said, *I can't tell but it might, if such a Thing were.* Well, now her rich Brother Swendsen is propos'd, she must be married to him; the Bailiffs threatning her severely, that to Newgate she must go if she did not. Immediately they brought in the Chaplain and Clerk of the Fleet, and read the Form of Marriage, and after carried her to several Places, left they might be followed and prevented, Beds being provided for the Purpose at those Places, as your Lordship shall hear. And, my Lord, this taking of this Woman thus away against her Will, is an Offence against the Act of 3 Henry VII. and my Lord, we desire that the Statute may be read.

L. C. J. Holt. It shall be explain'd.

Mr. Broderick. My Lord, there was a whole Night compleated before the Prisoner was seiz'd.

Then Mr. W. Busby is called for, and sworn.

He is asked, Do you know Mrs. Pleasant Rawlins?

Mr. Serj. Darnel. Give an Account of her.

Mr. Busby. She is the Daughter of William Rawlins deceased, who left his Estate to Dr. Bright and my self, to be sold for Payment of his Debts and Legacies, and left the Surplufage to his Daughter, which is about 2000 l.

Mr. Serj. Darnel. What Lands has she?

Mr. Busby. She has 20 l. a Year.

Mr. Serj. Darnel. What Age is she of?

Mr. Busby. She is near Eighteen.

Mr. Montague. Was she ever married, or no?

Mr. Busby. She was unmarried.

Then Mrs. Sabina Busby was called and sworn, as also Mrs. Nightingale.

Mr. Swendsen. My Lord, I beg the favour that only one Witness be heard at a Time.

Mr. Soll. Gen. Mrs. Nightingale, Do you know Mrs. Pleasant Rawlins, and Mrs. Busby?

Mrs. Nightingale. Yes, I do.

Mr. Soll. Gen. Have they lodged at your House?

Mrs. Nightingale. Yes.

Mr. Soll. Gen. How long?

Mrs. Nightingale. Above Three Years.

Mr. Soll. Gen. Have you any Knowledge of Mrs. Baynton?

Mrs. Nightingale. Yes.

Mr. Soll. Gen. How came you acquainted with her?

Mrs. Nightingale. One Mrs. St. John came to me to know whether I took Boarders? I said, I had taken some, but would take no more, unless it were the same Ladies again.

L. C. J. Holt. Who was it came to you?

Mrs. Nightingale. One Mrs. St. John.

Mr. Soll. Gen. Mrs. Nightingale, speak out, that my Lord may hear you.

L. C. J. Holt. Did Mrs. Busby lodge with you?

Mrs. Nightingale. Yes, my Lord, we were very intimate before; and since it pleased God to take away her Husband, I was pleas'd with her, and very willing to take her into my House.

Mr. Soll. Gen. Acquaint his Lordship how Mrs. St. John came to you.

Mrs. Nightingale. Yes, my Lord, as near as I can. She came to me, and ask'd me, if I took Boarders? I told her, No, I would take none, except it were those Ladies I had before: She told me, she had an Acquaintance that was a Widow Lady that came out of Wiltshire, about a Suit of Law, and would be in a very sober Family near a Church. But however, I denied her Lodgings, and did expect to hear no more of her. But about three Weeks or a Month after, she came to me again, and asked me whether I had altered my Resolution.

L. C. J. Holt. Go on.

Mrs. Nightingale. My Lord, Mrs. St. John said, that the Lady was come to Town on the Saturday Night before, very much indispos'd in her Journey. I asked her whether she knew this Baynton or no? Mrs. St. John said, Yes; she was very intimate in the Family, and she said a great deal more of her, which I cannot remember. She said also, that she would have Boarded her her self, and would have been glad of her Company, if she had had Conveniences for her. Then she asked me, whether she should come her self and give her own Character? We thought no harm, she being a Woman, and not a Man. She further said, that Mrs. Baynton had seen a Maid whom I knew, and she believed she would take her. I enquired of another who lived in the Mews, if he knew Mrs. Baynton; he said, Yes, and that she came of a good Family. At length she came, and made a very modest Appearance in her Behaviour and Garb. She said to me, that I was very curious in taking in Boarders, and for that she liked me the better. I consented she should come. She asked me what I would have a Week? I told her Twelve Shillings for her self, and Ten Shillings for her Maid. She concluded to come on the Wednesday following; which she did with her Maid, a modest Girl, and a Neighbour, which gave me the more Encouragement. She carried her self very well till Michaelmas-Day at Night, when we heard of her new Brother; she seem'd elevated at the News, and fell into Convulsion-Fits, which I believ'd were real Fits. She said she had a dear Brother, a good Christian, and he would come on the Morrow. When he came, he brought two Gentlemen with him, very modest, which I never saw before, nor since. Mrs. Baynton made a Pot of Coffee, and sent for a Bottle of Wine, and she told her Brother before me, what good Lodgings she had, and said she wish'd he would come and lodge near them, for she knew he had but a puny Stomach, and believed he would like her Victuals. He said it was not convenient for him, because his Business called him every Day to the Change. She said also, there was a Bowling-Green near them, where he might divert himself. But all would not do. She asked me what I would have a Meal if her Brother should come at any Time: I said, when I had other Ladies, if any of their Friends came, I had Twelve-Pence a Meal of them. On Friday he came; I went to Church,

Church, and left them together at Cribbage, as I found them at my Return.

L. C. J. Holt. What Day of the Week was this?

Mrs. Nightingale. The Friday before the Sacrament. *Mrs. Baynton* said to *Mr. Swendsen*, before *Mrs. Busby*, You have an extraordinary Hand at making Punch; so they agreed to make a Bowl the Monday following; but *Mrs. Rawlins* hardly drank any, she not liking any strong Liquors. After this, she told me, her Brother was very ill of his Journey, being lately come out of the Country, tho' I don't understand he was in't. The Monday before Michaelmas-Day, we were at Dinner with two more than our Family, when *Mrs. Baynton* said, she had an Interest in a Norway Ship, and invited us all aboard; But he, viz. *Mr. Swendsen*, did not come to our House till Four Days after; but on Friday we concluded to go on Saturday; there were Eight of us in Company in all, *Mrs. Rawlins*, *Mrs. Busby*, I and my Daughter, and *Mr. Ball* another Lodger, belonging to the Exchequer. We went, and had much Discourse; after having drank a Glass of Wine, the Cloth was laid, and the Master offered a Bowl of Punch; says *Mr. Swendsen*, Ladies, I would please you all, and leave you all to your Liberties to drink what you please.

L. C. J. Holt. Is this Person *Mrs. Baynton's* Brother?

Mrs. Nightingale. This is he that went for her Brother.

L. C. J. Holt. Whereabouts is your House?

Mrs. Nightingale. Near Tuttle-fields.

Mr. Soll. Gen. This *Mrs. Baynton* came to you under the Character of a Country Lady on a Law-Suit; do you understand that she was so?

Mrs. Nightingale. My Lord, She said she came from the Bath.

Mr. Soll. Gen. You misapprehend the Question; Do you understand that her Pretence was true or not?

Mrs. Nightingale. I enquired of several Persons, who acquainted me that the *Bayntons* lived in *Wiltshire*; but it was not long before we began to suspect her, for there seemed to be an extraordinary Love between her and *Swendsen*, more than is usual between Brother and Sister. I said, Madam, I wonder you don't marry your Brother. She said, she thought that 'twas not lawful. I said there was such a Thing done in *Westminster*, of a Man's marrying Two Sisters.

Mr. Soll. Gen. Pray call to mind what Time it was that you first gave Notice to her that she should not continue in your Lodgings.

Mrs. Nightingale. When I first mistrusted her, I gave Notice of it in my Family. But we being all Women, and fearful of her, thought not fit to give her Warning till her Month was up. But before that, she came to me, and told me, and said *Mrs. Nightingale*, I have received a Letter from my Sister *Baynton* in the Country, which informs me, that the Trustees will agree, and so I design to return when my Month is up, for this Town is very chargeable. Very well said I, for I expect some Ladies very shortly. I went down to my Family and express'd my Joy to them, and said, I was very glad *Mrs. Baynton* had prevented me, for if she had not given me Warning, I would have given her Warning, for I resolved she should not stay.

Mr. Soll. Gen. *Mrs. Nightingale*, it seems you had Notice of *Mrs. Baynton's* ill Carriage; did you take any Notice of it to her self?

Mrs. Nightingale. No; I did not, but I gave the Maid Notice as soon as I suspected any thing.

Mr. Soll. Gen. Do you know whether the Maid had told any Thing to her or not.

Mrs. Nightingale. The Maid said to her, Madam, don't you see a Strangeness in the Family? Yes, said she, I can see and bear a great deal; but when I am roused, I'll be like a Lion.

Mr. Soll. Gen. How long was this before *Mrs. Rawlins* was taken away?

Mrs. Nightingale. I can't prefix the Time, but it was before she gave me Warning.

L. C. J. Holt. Was she gone from your House before this Thing happen'd.

Mrs. Nightingale. No, my Lord she told me on Wednesday that her Time was out; but said, There is a Fellow in Town that I fear will cheat me, and I am taking out a Statute of Bankruptcy against him, which I think will cause me to stay in Town a Week longer; she also told me, she had taken a Place in the Coach to go on Thursday, but must lose her Earnest, for this Business would detain her a Week longer.

Mr. Raymond. Did you ever observe they were together in private?

Mrs. Nightingale. No, my Lord, we never had any Suspicion of *Mr. Swendsen*, but of the Woman; for she could put on all Manner of Disguises.

Mrs. Busby being called, she is sworn.

Mr. Soll. Gen. *Mrs. Busby*, pray do you know *Mrs. Rawlins*?

Mrs. Busby. Yes, I do.

Mr. Soll. Gen. How came you first acquainted with her?

Mrs. Busby. My Brother *Busby* was one of her Guardians, and put her under the Care of my Husband, while he was living, which was four Years ago this Christmas. She came to us by the Consent of her Guardian.

Mr. Soll. Gen. At what Place did you lodge?

Mrs. Busby. We lived in *Stretton-Grounds*, but since my Husband died, which is Three Years last July, I left House-keeping, and then we went and lodged at *Mrs. Nightingale's*.

Mr. Soll. Gen. How long have you continued at *Mrs. Nightingale's*?

Mrs. Busby. We have continued there ever since.

Mr. Soll. Gen. Do you know *Mrs. Baynton*?

Mrs. Busby. Yes, I do, she lodged at *Mrs. Nightingale's*.

Mr. Soll. Gen. Was there any body who used to come to her there?

Mrs. Busby. None except a Change-Woman.

Coun. Do you know any Thing of *Mr. Swendsen*?

Mrs. Busby. Sir, The first of his coming to *Mrs. Nightingale's*, was the Day after Michaelmas-Day. *Mrs. Baynton* said, that she had a Brother that was to come to Town, which he did the Day after, with Two Gentlewomen, which I never saw, either before or since; but *Mr. Swendsen* after this came several Times to her as her Brother, her Sister's Husband; and she desired that he might dine with her sometimes; for which she agreed with *Mrs. Nightingale* at 12 d. per Meal.

Mr. Soll. Gen. Was this *Mrs. Rawlins* at any Time in private with *Swendsen*?

Mrs. Busby. Never that I know of in all my Life; we were always in Company together when he dined there, and the Times that he dined there we computed to be 9 or 10; he was there sometimes when we were not at home.

Mr. Soll.

Mr. Soll. Gen. How did Mrs. Baynton behave her self when she was at Mrs. Nightingale's?

Mrs. Busby. We thought very well of her, till at last we discerned too much Freedom between Mr. Swendsen and her self; we suspected her Virtue, and thought she would Drink; and were informed she would Swear: She said she must stay in Town about a Month or Six Weeks about a Suit of Law. Her Maid told her of the Strangeness of the Family; she said they had best be Civil, or else she would stay and plague them. She told Mrs. Nightingale at length, the Town was chargeable, and her Business done, and that she would return into the Country.

Mr. Soll. Gen. What do you know concerning Mrs. Rawlins being taken away?

Mrs. Busby. Mrs. Baynton knowing it was our Custom to go to Oxendon Chapel every Friday Morning, she came and told us she had occasion to go to Golden-Square; and that being in the Way, she invited us to go with her in the Coach, and she would set us down at or near the Chapel. When we came to Dartmouth-street, somebody bid the Coachman stop: I expected she should set us down as she promised. On that side where I sat, there were old Buildings, and as I was looking out, I heard Mrs. Baynton cry out to the Coachman, Drive on; and all of a sudden I saw a Man in the Coach, which was Hartwell the Bailiff. Mrs. Rawlins and I were in a very great Fright, knowing nothing. I said for God's sake let's come out, we are not concerned. Hartwell said we were the Persons that he came for. I begg'd of him to let us come out: Hartwell had his Arms about Mrs. Rawlins's Side, and said, 'tis this Lady and you that I am concerned about. I ask'd him what it was. Said he, let you and I have two or three Words together, and all will be well enough. I said, you don't think I will say any thing to you, unless I have my Friends by me; Mrs. Baynton in the Coach, said, No, Madam, be sure you don't. I could not tell what he would do with us; at length he carried us all to the Star and Garter Tavern in Drury-Lane. I press'd him to let us go to Fleet-street, for I had Friends there. Hartwell was very angry, and would hear nothing of it. When we came to Drury-Lane, Mrs. Baynton would have had us put on our Masks; I said I had done nothing amiss, and I would not. When we were in the Room at the Tavern, Mrs. Baynton hastned out of the Room as fast as she could, pretending to go for my Friends. Mrs. Rawlins and I were in a great Consternation, wondering what they would do with us: I took hold of her Arm, and told her I would live and die with her. The Bailiffs came in, and said she was their Prisoner, and took her by Violence from me: They told me she must go with them, for they said she was arrested by a Writ out of one Court, and I by one out of another. When she was going, I put my Head out of the Window, and cry'd Murder, Murder, several times: When I pull'd in my Head again, Spurr said, What have you got by your Bawling? And said they were better known there than I. They brought a Man to me, who said he had Orders to keep me, and that he had only a Crown for his Pains; but he would not suffer me to send for any body. The Gentlewoman of the House came up, and said I had done a Diskindness to her House by crying out Murder: She said to me, Look and see whether your Name be spelt right, for it may be a false Arrest, &c. Wakeman that went away with Mrs. Rawlins, came back again, and said, the young Woman was well, and that he left her eating Fowl and

Bacon; I said, I wish she was well. The Gentlewoman of the House bid the Bailiff shew me the Writ: He said he could not read well; but there was the Name of Sabina Busby, at the Suit of one Jones: But when he heard my Complaints a considerable while, he said he would go to my Friends, and would go as cheap as a Porter, and as soon. I sent him to Mr. Thornton and Mr. Nash: He pretended to go, but return'd no more till Night.

Mr. Soll. Gen. You say you cry'd out Murder, how did Mrs. Rawlins behave her self then?

Mrs. Busby. It was her great Fright and Crying that made me endeavour her Rescue; when we said we wou'd die together, then it was when they forc'd her from me; the Surprise was so great that made me cry out after that manner that I did: Upon which some Neighbours came in, but they told them it was an Arrest, and therefore they would not meddle in it.

Mr. Soll. Gen. Mrs. Busby, they kept you till Night, you say; did they take or require Bail for you before you was discharged?

Mrs. Busby. I'll tell you, Sir, if you please: I did not know what I was arrested for, it might be Murder or Treason, for aught I knew. There was a little Boy by, said, Madam, I know Mr. Unkle, your Friend in Newmarket, and I'll go for him: He went, but when he return'd again, he said he was not at home; which I thought was a Lye. There was a poor Man, a Labourer, working in the Chimney, he gave me a Wink, and said, Madam, I'll go for him; but I said to him, Pray don't leave me; I began to be afraid, for I did not know how my Life might be concern'd. Said the little Boy, I'll go any where for you. I sent him for Two Gentlemen, who came: The Bailiffs said they had an Action of 200 l. against me; the Gentlemen told the Bailiffs they were come to bail me: The Bailiffs were very impudent, but shuff'd about a-while, and left me, and took no further notice.

L. C. J. Holt. Did they take any Bail for you?

Mrs. Busby. No, they left me with these Gentlemen.

Mr. Mountague. When you went out in the Morning, did you design to go any where else but to Chapel.

Mrs. Busby. No where else.

Mr. Mountague. Was it your Invitation to Mrs. Baynton, or her Invitation to you to go in the Coach?

Mrs. Busby. It was Mrs. Baynton's Invitation to me; I had not a very good Opinion of Mrs. Baynton, for we suspected her Virtue in the Family, by reason of her too familiar Carriage to her Brother; but being to go shortly away, I apprehended no harm.

Mr. Mountague. Did Mrs. Rawlins go with you?

Mrs. Busby. She did.

Mr. Mountague. Mrs. Busby, do you know the Prisoner? Is this the Man that came to Mrs. Nightingale's House?

Mrs. Busby. Yes, Sir.

Judge Powell. How long was it from the Time that you were parted after Arresting, that you saw Mrs. Rawlins again.

Mrs. Busby. The first time after was on Saturday, when they were before the Recorder.

L. C. J. Holt. When did you find her?

Mrs. Busby. On Saturday in the Afternoon.

L. C. J. Holt. Was you at the finding?

Mrs. Busby. No, my Lord.

L. C. J. Holt. What Time was it?

Mrs. Busby. About Noon, I believe.

Mr. Moun-

Mr. Mountague. When you saw her put into the Coach, did you hear her cry out?

Mrs. Busby. No, Sir; it was I that cry'd out.

Mr. Mountague. Did Mr. Swendsen make any Entertainments, or no;

Mrs. Busby. But one, as I know of.

Prisoner speaks to Mrs. Busby, and said, Have you done?

Mrs. Busby. I think so.

Prisoner. If you have, I'll ask you a Question; Did you know of any Love between Mrs. Rawlins and me?

L. C. J. Holt. Did you know any thing of Love between Mrs. Rawlins and the Prisoner, or no?

Mrs. Busby. No, my Lord.

Mrs. Baynton's Maid call'd and sworn.

Mr. Soll. Gen. Pray, did you know Mrs. Baynton?

Maid. Yes.

Mr. Soll. Gen. Was you her Servant?

Maid. Yes, Sir.

Mr. Soll. Gen. Who recommended you to her?

Maid. Mrs. St. John.

Mr. Soll. Gen. Do you know one Mr. Swendsen?

Maid. Yes, my Lord; there he is; pointing to him.

Mr. Soll. Gen. Did you ever see him before you were hired to your Mistress.

Maid. No, my Lord; I never saw him before?

Mr. Soll. Gen. Did you see him when you was with your Mistress?

Maid. Yes, my Lord.

Mr. Soll. Gen. Do you know whether there was any Relation between them?

Maid. Yes, my Lord; they went for Brother and Sister.

Mr. Soll. Gen. How long was you with her?

Maid. About a Month.

Mr. Soll. Gen. How did she behave her self?

Maid. Till the last of her Time, very well; but the Family had a Mistrust of her long before she went away.

Mr. Soll. Gen. Do you know the Reason why they mistrusted her?

Maid. I do not know, my Lord.

Mr. Soll. Gen. Do you know what was the Cause the Family mistrusted her?

Maid. They thought her a loose sort of a Woman, and therefore they mistrusted her.

L. C. J. Holt. Did they discern any Familiarity betwixt them?

Maid. No more than as Brother and Sister.

Mr. Soll. Gen. After this Suspicion, do you know whether the Family express'd any Repentment?

Maid. No, my Lord.

Mr. Soll. Gen. Did you live with her when Mrs. Rawlins was taken away?

Maid. Yes, my Lord; but I went away the next Day.

Mrs. Berkley Sworn.

Mr. Soll. Gen. Mrs. Berkley, pray was you present when the Prisoner was taken up; and do you know whether he and Mrs. Baynton were Brother and Sister;

Mrs. Berkley. I went to Mr. Swendsen himself, and said, Is this wicked Woman your Sister? Says he, I cannot say she is; but I have made her my Tool, and she has done my Business, and I would get rid of her To-morrow, but that being Sunday I will not; but on Monday I'll give her a Reward for what she has done, and then I'll discharge her, and never see her more.

Mr. Mountague. Relate what Discourse you had with him to the Gentlemen of the Jury.

Mrs. Berkley. I asked Mr. Swendsen, Whether Mrs. Baynton was his Sister? He said, No, she is not my Sister; but I have gained my End, in making her a Tool to my dear Wife: I'll gratify her for what she has done, and put her away on Monday and never see her more.

Council. I think you lodged in the House with her?

Mrs. Berkley. No; but I was a Neighbour, and was very frequently there.

Council. Did you see any thing to cause you to mistrust that there was any thing more than ordinary betwixt them?

Mrs. Berkley. No Cause at all, that I know of.

Mr. Blake and his Wife sworn.

Mr. Soll. Gen. Mr. Blake, pray do you know Mrs. Baynton?

Mr. Blake. Yes, Sir.

Mr. Soll. Gen. How long have you known her?

Mr. Blake. About Twelve Years.

Mr. Soll. Gen. Pray is she a Country Lady that has got a good Jointure?

Mr. Blake. I know nothing but that she works for her Living.

Mr. Soll. Gen. Hath she any Estate in the Country?

Mr. Blake. None, as I know of.

Council. Do you know the Prisoner at the Bar?

Mr. Blake. Yes, Sir.

Council. Where did he lodge at any Time?

Mr. Blake. He lodged at my House.

Council. How long?

Mr. Blake. About 6 or 7 Months.

L. C. J. Holt. Where is your House?

Mr. Blake. In Red-Lyon-street.

L. C. J. Holt. What other Lodgers had you at the same time?

Mr. Blake. I had a Parliament-Man lodged with me at the same Time.

L. C. J. Holt. Where did Mrs. Baynton lodge;

Mr. Blake. In the opposite Room against the Gentleman.

L. C. J. Holt. How long time?

Mr. Blake. About Seven Months.

Council. How long was Mrs. Baynton gone from your House before this Matter happened?

Mr. Blake. About Five or Six Weeks.

L. C. J. Holt. How long before Michaelmas?

Mr. Blake. I cannot certainly tell; but I believe much about that Time.

Council. When they were in your House, what did you see betwixt them?

Mr. Blake. Nothing of any harm, as I know of.

L. C. J. Holt. Mr. Blake, did you never see any harm by Mrs. Baynton?

Mr. Blake. Not as I know of.

Mr. Soll. Gen. Do you know whether she lay-in at your House?

Mr. Blake. I know not; for aught I know she might: I know nothing of Womens lying-in.

Mr. Wakeman call'd and sworn.

Mr. Soll. Gen. Were you one of the Bailiffs that Arrested Mrs. Busby and Mrs. Rawlins?

Wakeman. I was the Man that executed the Marshal's-Court Writ, and Arrested them.

L. C. J. Holt. Who employed you?

Wakeman. Mr. Hartwell.

L. C. J. Holt. Were you at Mr. Hartwell's House?

Wakeman. My Lord, I'll tell you the Truth of the Matter: On Wednesday before they were Arrested,

rested, Mr. *Hartwell* was at my House to see for me; but being not at home, but in the Country, I came home about 11 at Night: My Daughter said to me, there was a Writ left by Mr. *Hartwell* for me to be served, and it must be done To-morrow Morning. On the Morning he came to me, and said, Mr. *Wakeman*, will you execute a Writ? He carried me to the *Mitre-Tavern*, and called for a Pot of Ale and a Bottle of White-Wine, and we had a Toast and some Cheese. While I was there, one Mr. *Holt* came in, a Man that I never saw in all my Life, and said, The Business cannot be done this Day.

L. C. J. Holt. What Day of the Week was this?

Wakeman. *Thursday*; he appointed me to call upon him at Nine next Morning. He said, If I came first we should get what we had before: He came in before we had done, and the Man of the House was dressing himself in the Kitchen: We eat a Toast, and drank the Wine, and after that, we had another. Mr. *Holt* call'd Mr. *Hartwell* out, and said, It cannot be done; by and by he said it might be done: I don't know what it was, but they took me to *Stretton-Street*; Mr. *Hartwell* and Mr. *Spurr* was with me: I was ashamed to stand in the Street, so I went into an Alehouse, and drank a single Pot of Drink.

Mr. *Soll. Gen.* Had you seen Mr. *Swendsen* before that Morning?

Wakeman. No: I never saw him before in all my Life. At that, if it please your Honour, Mr. *Hartwell* and Mr. *Spurr* went before, and bid me follow the Coach. I did so as near as I could, but could not keep pace with the Coach, being lame; but at *Dartmouth-Ground* Mr. *Spurr* stopp'd the Horses, and then I came up to the Coach; and Mr. *Hartwell*, I suppose, gave the Word of Arrest, and into the Coach he went; but I did not go in because there was no room, but rid behind it. The Coach was order'd to go to the *Star and Garter Tavern* in *Drury-Lane*. When we came there, we went into a Back-Room; and the Gentlewoman that had a Band-Box said to Mrs. *Rawlins*, I will go to some of your Friends.

L. C. J. Holt. What did they do in *Stretton-Grounds*?

Wakeman. They were Arrested there: The Gentlewoman was carry'd by Mr. *Hartwell* to his House, and I follow'd them; but meeting with a Gentlewoman of my Acquaintance, she stopp'd me. When I came to *Hartwell's* House, Where is she, said I? They told me she was below Stairs. I said I had a little Business elsewhere, that will detain me about an Hour: He gave me leave to go. When I went out, Mr. *Holt* call'd me over the Way, and ask'd me, if Mr. *Hartwell* was at home? I said, Yes. And is the young Gentlewoman there too? I likewise said, Yes. He led me to the *Five-Bells* in *Witch Street*, into a Room where there were Three Boxes, and carry'd me to the middlemost Box, and there was a Gentleman.

Council. Was it the Prisoner at the Bar?

Wakeman. Yes, I think so. At that Mr. *Holt* fill'd me a full Glass, which I drank off; and I told him, I was going to do some Business in *St. Martin's*. And when I had done that, I went to *Hartwell's* House again: I enquir'd for the Gentlewoman. Mrs. *Hartwell* said, her Husband was gone along with the Gentlewoman to *Holborn* to make an end of the Matter. I ask'd her, Whereabouts? She said, At the *Vine Tavern*. I went thither, and ask'd for Mr. *Hartwell*. There was he, and Mr. *Butler*, and a Tallow-

Chandler going to eat Stakes: They invited me to eat some with them; which I did. Mr. *Holt* came into the Room two or three times: Then Mr. *Holt* told me, I was discharged of my Prisoner; so away I went.

L. C. J. Holt. You were eating Stakes, you say, at the *Vine Tavern*; Was she there then?

Wakeman. There is a Court against the Tavern, and I saw the Gentlewoman looking out of the *Vine Tavern*, where there were new Sash-Windows; as I came over the Way thro' the Court, this Gentlewoman look'd out of the Window.

L. C. J. Holt. What, before you went in?

Wakeman. Yes, my Lord; but I went in and saw him alone, but knew not whom he was.

L. C. J. Holt. Did you see Mrs. *Rawlins* there?

Wakeman. No, not at the Tavern.

Mr. *Soll. Gen.* When *Hartwell* took away this Gentlewoman, did she go away quietly, or did Mrs. *Busby* and she make an Outcry?

Wakeman. She was a little frightened.

L. C. J. Holt. Where was it you first saw Mr. *Swendsen*?

Wakeman. At the *Five-Bell Tavern*.

L. C. J. Holt. When was it you saw him there?

Wakeman. About Twelve a-Clock.

L. C. J. Holt. Where was it he gave you the Pot of Drink?

Wakeman. At the *Five Bells*; but it was Mr. *Holt* that gave it me.

L. C. J. Holt. How many were there in Company there?

Wakeman. Only Mr. *Holt*, and Mr. *Swendsen*.

Council. What was the Occasion of your going?

Wakeman. Mr. *Holt* call'd me.

Council. When was it you saw him out of the Window?

Wakeman. About an Hour and a Quarter after.

Council. What Answer did you give, when they ask'd you where the Gentlewoman was?

Wakeman. I said, she was at Mr. *Hartwell's*.

Council. You said you serv'd a Writ on Mrs. *Rawlins*, had you no Process against Mrs. *Busby*?

Wakeman. No, none at all.

L. C. J. Holt. On what Account did you keep Mrs. *Busby*?

Wakeman. I did not keep her; but one *Spurr* was employed to do it.

Council. You came back to Mrs. *Busby's*; did not you say that you had been with a young Gentlewoman, who was eating Fowls and Bacon?

Wakeman. Mr. *Hartwell* ask'd me to eat some.

Council. Did not you shew Mrs. *Busby* a Writ, and read it to her?

Wakeman. I cou'd never read a *King's-Bench* Writ.

L. C. J. Holt. Can you read a *Martial's-Court* Writ?

Wakeman. Yes, but not the *Latin* of it.

Coun. When you went to *Hartwell* at the *Vine Tavern*, did you ask for Mrs. *Rawlins*?

Wakeman. Yes, yes; I ask'd where she was? They told me they were making an end of it. My Lord, I had like to have forgot; I asked where was the Prisoner? And Mr. *Holt* told me, they had just made an end of the Business.

Mrs. Pleasant Rawlins sworn.

Mr. *Soll. Gen.* Give an Account to his Lordship, after what manner you were Arrested, and carried from Tavern to Tavern.

Mrs. Rawlins. My Lord, I was Arrested with Madam *Busby*, and carried to the *Star and Garter Tavern* in *Drury-Lane*.

L. C. J.

L. C. J. Holt. How were you carried thither ?

Mrs. Rawlins. I was in a Coach going to *Oxendon Chapel*, when three Bailiffs were about the Coach.

Mr. Soll. Gen. Where did they carry you ?

Mrs. Rawlins. They carried us to the *Star* and *Garter* in *Drury-Lane*.

Mr. Soll. Gen. Who did they carry with you ?

Mrs. Rawlins. There was *Mrs. Busby*, *Mrs. Baynton*, and I, and *Hartwell* the Bailiff ; when we came to the *Star* and *Garter*, they forced me up Stairs into a Back Room, but we got into a forward Room ; but we had not been there long till they parted *Mrs. Busby* and I ; *Mrs. Baynton* was gone, for our Friends, as she pretended. I was in a very great Fright, but *Mrs. Busby* saying we will die together, they took me by Force from her ; *Hartwell* swore a great Oath, and thrust me down Stairs and forced me out of a Back-Door into an Alley. When he went to put me into a Coach, I cry'd out, Murder ; then he threatened to put me into *Newgate*. He carry'd me to his own House, and no body came to help me a great while ; but *Mrs. Baynton* said, that as she was going by the Door she heard my Name, and came in in a mighty Fright ; she said to me, Madam, I pity you, will no body Bail you ? She told me, I will send to my Brother who shall be Bail for you. She sent for him, he came into the Room, and he said, what is the Matter with you, I said, Enough is the Matter when I am arrested for 200 *l.* and owe no Man a Penny. Said he in a Jocular way, what makes you affrighted at that, I have a good mind to arrest you my self. Then they took me thence to the *Vine Tavern* in *Holbourn*, where I was an Hour or Two before I heard any Thing of Marrying or any such Thing.

Coun. What did they do with you all that Time ?

Mrs. Rawlins. They got a Dinner ready, and after we had dined, she begged of me to have her Brother, and said, that if I did not marry him, I should be ruined. I told her I would do nothing without the Advice of my Friends. I desired my Friends to be sent for, but they would not admit it. She looked on my Ring on my Finger, and said, let me see your Ring from your Finger. I said, No, you shall not. She said I will force it off. I said I'll try that : But she forced it from me.

Prisoner. Remember you are upon your Oath.

Mrs. Rawlins. I know I am. When she took my Ring away, I asked her what she would do with it ; she said, we should go and get a Wedding-Ring made by it. I told her I would not marry without the Advice of my Friends. Away she went and bought a Ring, and came up again, and said to her Brother, she had a Ring ; well said I, give me my Ring and do what you will with the other ; she said, If I did not marry her Brother I should be ruined for ever.

There was a Minister in the House, whom they said had been there about a Quarter of an Hour, but I supposed longer ; they brought him, with the Clerk, up Stairs ; the Parson saying, I hear there is a Couple to be married ; he asked no Questions, but told me, if I did not marry this Gentleman, I should be sent to *Newgate* and ruined for ever.

Coun. Give an Account of what was after the buying the Ring.

Mrs. Rawlins. When they brought the Ring, they said to me, will you be married or no ? I answered, I will not, there are none of my Friends here, and I will not marry without the Consent

of my Friends ; They said, If I did not I should be ruined for ever. So with many Threats and Persuasions, they at last prevail'd with me to marry. I was forced to marry him out of Fear, not of going to *Newgate*, but of being murdered.

Coun. Where did they carry you ?

Mrs. Rawlins. To *Blake's House* in *Red-Lyon-Street*, *Holborn*.

L. C. J. Holt. What Time of Day was it ?

Mrs. Rawlins. I cannot give an exact Account ; but I think it was Candle-light.

Prisoner. It was about Twelve a-Clock, at Noon.

L. C. J. Holt. What Time was it that you were marry'd ?

Mrs. Rawlins. My Lord, it was about Three a-Clock.

L. C. J. Holt. When you went to *Blake's House*, who was with you there ?

Mrs. Rawlins. None but *Mr. Swendsen*, *Mrs. Baynton*, and I.

L. C. J. Holt. Was there any Force or Threats us'd when you were at *Blake's House* ?

Mrs. Rawlins. Yes, there was, my Lord.

L. C. J. Holt. Give an Account of it.

Mrs. Rawlins. They thrust me up Stairs, and ordered to have a Bed sheeted. *Mrs. Baynton* said to me, Undress and go to Bed. I said I would not. She said she would pluck my Cloaths off my Back. I said she should not. She said she would pluck off my Cloaths and make me go to Bed.

Coun. What did she do with you ?

Mrs. Rawlins. She put me to Bed.

Coun. Did she use any Violence with you ?

Mrs. Rawlins. Such Violence that made me go to Bed.

L. C. J. Holt. How came you to be released ?

Mrs. Rawlins. It was *Saturday Morning* before I was released ; there was some of my Friends came to the Place where I was.

L. C. J. Holt. Then you were with him all Night ?

Mrs. Rawlins. Yes, my Lord.

L. C. J. Holt. *Mr. Swendsen*, will you ask her any Questions ?

Prisoner. She must be my chiefest Evidence my Lord, when the Witnesses come ; she must be the chiefest of them.

L. C. J. Holt. You will not ask her any Questions now, but when the Witnesses are call'd.

Prisoner. My Lord, I presume she does not go out of Court. Orders given for her to sit down.

Mr. Soll. Gen. We have done with our Evidence at present.

L. C. J. Holt. *Mr. Swendsen*. What do you answer to the Evidence ?

Prisoner. My Lord, I am very much unprepar'd for a Tryal at present.

L. C. J. Holt. Why so ?

Prisoner. Because I had but little Time for Preparation, and I am not prepared, I desire that I may be allow'd Council.

L. C. J. Holt. No, no, it cannot be allow'd you ; and as for the time of your Trial you were told, if you would shew good Cause to have it put off yet, the Court would have done it.

Prisoner. Then I hope if I speak any Thing that may be prejudicial to my Cause, that the Court will not take Advantage from it.

The first Time I was at *Mrs. Nightingale's*, I was desired by *Mrs. Busby* and *Mrs. Baynton* to make a Bowl of Punch, which I did, and we were very merry over it, then I invited them to go on Board a Ship

Ship, which they all did, and we in a short Time came very well acquainted. My Lord, I desire my Wife might stand by her self, and none of them near her.

L. C. J. Holt. There is none near her that will hurt her.

Prisoner. My Lord, I beg she may stand by her self, that I may have a fair Trial; I pray your Lordship to grant me this Favour. My Lord, will you please to grant it?

L. C. J. Holt. Must I grant it only for your Humour?

Prisoner. 'Tis not a Humour, my Lord, but of a great Consequence to me: Will your Lordship grant me it? I beg it, my Lord, for 'tis the most material Thing I have to ask; I beg all those People may be removed from her, 'tis the greatest and most material Thing I have to say.

L. C. J. Holt. I'm sorry for it.

Prisoner. It is so, good my Lord grant me that.

L. C. J. Holt. There's no body near her that concerns you at all.

Prisoner. There are those by her that will do me no Kindness. *Then she was ordered to be remov'd.*

Mr. Soll. Gen. My Lord, her standing there is enough to disorder her.

Prisoner. My Lord, she is very well.

L. C. J. Holt. Remove her a little further.

Coun. My Lord, he does it on purpose to fright her.

Prisoner. We went (as I was telling your Lordship) aboard a Ship, and they invited me to come the Week following to partake of a Treat; accordingly I went, and there was one Mr. Pugh, and he and I made a Bowl of Punch. Mr. Pugh at that Time courted Mrs. Rawlins, and that little Time I was acquainted with her, I discerned she had a Kindness for me, as I had for her; and I told her I could not be easy while she suffered Mr. Pugh to kiss her; she desired me to be easy, and it should be remedied.

L. C. J. Holt. Mrs. Rawlins, do you remember any such Thing?

Mrs. Rawlins. My Lord, I do not remember any such Thing, or that any such Words ever came out of my Mouth.

Prisoner. Did not you say this, Mrs. Rawlins, Mrs. Swendsen I should say, did not you say, if I would not sit by you you would not eat a Bit or a Crumb; when I sat by you and profered my Place to another, can you say you were not offended?

Mrs. Rawlins. No, I was not.

Prisoner. Are not you upon your Oath? did not you give me some Encouragement?

Mrs. Rawlins. I do not know how I could shew it you, I know not of any such Thing.

L. C. J. Holt. You ought to speak the Truth, because his Life depends upon it. Did you in the first Place ever admit of his Courtship, in order to marry you?

Mrs. Rawlins. No, my Lord, I don't remember any such Thing.

L. C. J. Holt. Did you ever shew any Kindness to him upon any such Account?

Mrs. Rawlins. No, I don't know I shew'd him any more Kindness than all the rest of the Family shew'd him.

L. C. J. Holt. Was you ever in his Company alone?

Mrs. Rawlins. No, my Lord.

Prisoner. To give me more Ease and Satisfaction

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after Dinner we had our Bowl and Walnuts, Mrs. Swendsen peeled the Kernels and gave them to me; she gave them faster than I could eat; she heaped my Plate with them, every one at the Table took notice of it, and she jogged me with her Knee, that I should take them, and gave some to Mrs. Baynton, and bid her take them and give to me.

L. C. J. Holt. Mrs. Busby, Were you there?

Mrs. Busby. Yes, my Lord.

L. C. J. Holt. Did you see any Thing of this kind?

Mrs. Busby. No, my Lord.

Prisoner. Will your Lordship be pleased to ask her yourself?

L. C. J. Holt. Mrs. Rawlins, did you e'er give peeled Walnuts to him, or send them to him in particular?

Mrs. Rawlins. No, my Lord, I do not know that I was more kind to him than the rest of the Company.

Prisoner. Every Body took notice of it, and Mr. Pugh in particular.

L. C. J. Holt. What do you say, Mr. Swendsen?

Prisoner. My Lord, Mr. Pugh, if he were here, would say the same as I do. He was afraid I should get away his Lady.

L. C. J. Holt. Where is he?

Court. He is in the Court.

L. C. J. Holt. You may have him for a Witness if you will.

Prisoner. More than this, before he went away, she told him she did not care for him; this she spoke to make me more easy still. This I believe Mr. Pugh can witness, in as much as Madam Busby complain'd to her about it, at Mr. Scoreman's the Picture-Drawer's, who is one of my Evidences; I desire he may be called.

L. C. J. Holt. Well let him be called.

So he was called and came.

L. C. J. Holt. Hear ye, he calls you to be a Witness, you are not to be upon your Oath, but are under the highest Obligation to tell the Truth.

Mr. Scoreman. While I was drawing a Gentlewoman's Picture, Mrs. Baynton's, there was a Fire, it began to be Cold, they fell into Discourse about Mr. Swendsen and Mrs. Rawlins, Mrs. Busby was there at the same Time, they fell into Discourse about Mr. Swendsen and the young Lady.

L. C. J. Holt. Was she there?

Mr. Scoreman. Yes.

L. C. J. Holt. Where was it?

Mr. Scoreman. At my Lodgings; there were Mrs. Busby, the young Lady, and Mrs. Baynton.

L. C. J. Holt. Whose Picture were you drawing?

Mr. Scoreman. Mrs. Baynton's. They fell into Discourse relating to a Matter of Love, between Mr. Swendsen and the young Lady. She said the young Lady had a Love for Mr. Swendsen more than the other.

L. C. J. Holt. You heard her say so?

Mr. Scoreman. No, but I can say Mrs. Baynton said so.

L. C. J. Holt. But tell us what you heard.

Mr. Scoreman. She should have said so, I did not hear her my self, but afterwards upon a Discourse she afterwards said, what she had said she would stand to.

L. C. J. Holt. What did she say?

Mr. Scoreman. I do not know that she said so or not.

Prisoner. My Lord, may I speak it as well as I can, he cannot speak *English* right, I'll speak it to him, my Lord.

N n n

L. C. J.

L. C. J. Holt. No, no. Did you hear Mrs. *Busby* say any Thing? What did she say?

Mr. Scoreman. In way of Discourse she said so.

L. C. J. Holt. What, in way of Discourse, did she say nothing?

Mr. Scoreman. I heard the Lady say only that Word, that all she said she would stand to.

L. C. J. Holt. What did you hear them talk about?

Mr. Scoreman. They were playing at Cards, and she took up the Tricks of Mr. *Swendsen*, which discovered Love.

L. C. J. Holt. The Question is, Whether you did hear them speak any thing of Love, or not?

Prisoner. My Lord, he would speak better with an Interpreter.

L. C. J. Holt. Let an Interpreter be called for.

L. C. J. Holt. What Countryman are you?

Prisoner. My Lord, he is a Dane.

The Interpreter, a Jury-man, was sworn, and beginning to talk with Mr. Scoreman; and then he said, he is none of my Country, he is a Dutchman, I don't understand him.

L. C. J. Holt. He speaks English well enough.

Prisoner. Very well; but he knows not where he begins: He would say what Mrs. *Busby* and Mrs. *Baynton* were speaking, but knows not how to utter himself.

L. C. J. Holt. He cannot say any thing for you.

Mr. Scoreman. I heard but a few Words, and cannot say much of it.

L. C. J. Holt. You must have a better Witness, or you are in a dangerous Condition.

Prisoner. My Lord, Mr. *Pugh* complained to Madam *Busby*, that she slighted him very much.

L. C. J. Holt. What, for Love of you.

Prisoner. Yes, my Lord, I could tell you of divers Things that pass between Lovers, that would be impertinent for me to relate to wife Men.

L. C. J. Holt. Let us hear some of them?

Prisoner. When we were by our selves, she kissed me; and squeezed me by the Hand, when we walked privately in the Garden.

L. C. J. Holt. Did she kiss you?

Prisoner. Yes, my Lord, and squeez'd me often.

L. C. J. Holt. Did you not think her very coming?

Prisoner. Yes, I did; and when we talk'd of Marriage, she seem'd to be very well pleased.

L. C. J. Holt. Mrs. *Rawlins*, you hear what he says: Did you squeeze him by the Hand, and kiss him? Is it true?

Mrs. Rawlins. No, my Lord, I did no such Trick, not I; and as for walking in the Garden, I did not walk in the Garden alone with him.

Prisoner. I could mention a great many of these little Things; but if she denies them I cannot help it. My Lord, the last time I was at the House we had a Barrel of Oysters; I stood with my Hands behind me, and as she passed by at any time, she gave me squeezes by the Hand.

L. C. J. Holt. What say you to this, Mrs. *Rawlins*?

Mrs. Rawlins. My Lord, I did not do so upon my Oath.

L. C. J. Holt. She says she did not do it, upon her Oath.

Prisoner. Now for the Matter of Fact; as for the Arrest, I never knew any thing of it, directly or indirectly, till I saw her at the Bailiff's House.

L. C. J. Holt. If she did know any Thing of, or was consenting to the Arrest, why did you force her to the Tavern, and marry her with a Parson you had provided for that Purpose?

Prisoner. She married me with as much Freedom as could be in a Woman.

L. C. J. Holt. What say you to that Mrs?

Prisoner. Will your Lordship please to ask her, whether I offered any Violence to her either by Word or Deed.

L. C. J. Holt. Mrs. *Rawlins*, give an Account how you were carried from the Bailiff's House.

Mrs. Rawlins. My Lord, when I was at *Hartwell's* the Bailiff's House, Mrs. *Baynton* pretended to come accidentally by, and that she heard my Voice, and came in and said, *How do you do, Mrs. Rawlins?* You know how I do, said I. She pretended to help me, and proposed to go to her Brother to bail me; and he came, and I was carried from thence in a Coach to the *Vine Tavern*,—*She was asked whether he came into the Coach to her?*

Mrs. Rawlins. Yes, he did.

L. C. J. Holt. Did you cry out when they put you into the Coach?

Mrs. Rawlins. No, my Lord, I did not cry out then, I made no Noise then.

L. C. J. Holt. What did he do then?

Mrs. Rawlins. They carry'd me to the *Vine Tavern* a Prisoner.

Mr. Soll. Gen. She went willingly enough from *Hartwell's* House to the *Vine Tavern*, because she thought that there she should be bailed.

L. C. J. Holt. Mrs. What was the Pretence of your being carried from *Hartwell's* House?

Mrs. Rawlins. My Lord, they would not tell me before they carry'd me to the Place.

L. C. J. Holt. Mr. *Swendsen*, Will you ask any other Questions?

Prisoner. Not yet, my Lord. I desire the Parson may be called that marry'd us. *Which was done.*

L. C. J. Holt. Come Doctor you are not upon your Oath; How come you to be concern'd in this Match?

Parson. My Lord, it was at the *Vine Tavern* where I saw them in *Holbourn*.

L. C. J. Holt. Was it the *Mitre*, or the *Vine*?

Parson. The *Vine*, I believe, my Lord.

L. C. J. Holt. How came you there?

Parson. There was a Gentleman fetch'd me and the Clerk from the *Fleet*.

L. C. J. Holt. What to do?

Parson. He said there was a Gentleman there to speak with us. When we came there, the Clerk and I went up one Pair of Stairs and drank a Pint of Wine. Then we were led into another Room; I asked him what I was to do. He told me, for to marry him to that Young Gentlewoman.

L. C. J. Holt. Was there a Licence?

Parson. Yes; When I saw the Licence I read it, and saw it a true Licence; Then I asked the Gentlewoman her Name, to know whether it was the same that was in the Licence; and found it was the same.

L. C. J. Holt. Was it written in the Licence, that the Marriage was to be performed at the *Vine Tavern*?

Parson. No my Lord. But a Blank was left.

L. C. J. Holt. Did you take the Queen's Duty?

Parson. No, my Lord, but returned their Names to the Supervisor: My Lord, when I asked her Name, I also asked her whether she was willing to be married. She said she was willing. And another Gentlewoman was with her, that said she was her Sister: I said to her; Madam, if you consent, and your Sister is willing, here is a Licence, for I believe there is no Danger to marry you.

L. C. J.

L. C. J. Holt. Did you ask her any other way than in your Form, *Will you have this Man to your wedded Husband?*

Parson. I ask'd her, whether she was willing to marry, she said, Yes, she was willing.

L. C. J. Holt. But did you ask her before you you did the Office?

Parson. Yes, my Lord, I did, and she consented to it.

Counsel. Pray who was the Person that came to the Fleet to you, to carry you to the Tavern; was it the Gentleman at the Bar?

Parson. No, 'twas not him.

Mr. Mountague. How long was it before you went to him, after you went into the Tavern?

Parson. My Clerk and I went in, and sat the drinking a Pint of Wine, about a quarter of an Hour; then we went to the Gentleman.

L. C. J. Holt. Do you think that they should grant Licences to marry in a Tavern, and out of Canonical Hours?

Parson. I never did it in all my Life before, and never will do it again.

Mr. Soll. Gen. What was the Reason why you were conducted into another Room, and not where they were?

Parson. I know not the Reason.

Mr. Soll. Gen. How long were you in the Room where they were?

Parson. I cannot well tell.

L. C. J. Holt. Did you Marry them as soon as you came in?

Parson. Almost as soon.

Mr. Mountague. Did you ever marry any at a Tavern before?

Parson. No, my Lord.

Mr. Soll. Gen. Will your Lordship be pleased to hear the Licence read?

L. C. J. Holt. It may be read. You may see the Date and the Names. The Licence is dated Oct. 14. 1702. The Names *Haagen Swendsen* in the Parish of *St. Paul's Shadwel*; and *Pleasant Rawlins* in the Parish of *St. Mary Whitechapel*.

Council. Is there any Blank left?

Parson. Yes, there is a Blank left, that the Marriage may be in the Parish Church of *St. Mary Whitechapel*, vel a Blank.

Mr. Mountague. Were you entertained there?

Parson. Before the Marriage the Clerk and I drank a Pint of Wine in the first Room.

Mr. Mountague. Had you any Victuals then?

Parson. Not before they married; but after.

Mr. Soll. Gen. Pray, Sir, did you bespeak a Dinner before the Marriage?

Parson. No, Sir, the Gentleman bespoke a Fowl.

Mr. Dan. Cotchett was called.

Prisoner. My Lord, I desire he may be asked whether he heard any Noise, or whether any Violence was offered to the Young Woman?

L. C. J. Holt. Did you hear any Noise or perceive any Violence offer'd to the Young Woman?

Mr. Cotchett. No, my Lord.

Prisoner. Ask Mrs. *Cotchett* whether any Noise or Violence was offered to the Young Lady?

L. C. J. Holt. I'll ask her that Question: Was there any Noise, or Violence used to the Young Lady?

Mrs. Cotchett. No, my Lord, there was no Noise; they came in and asked for a Room, and I shewed them a lower Room, but they would not have that, but went up. Soon after Mr. *Holt* the Vintner came down and went out, and Mr. *Hartwell* call'd for a

Pint of Wine for the Coachman, but the Drawer grumb'd at it, and said he did not know who'd pay for't. Then Mr. *Hartwell* the Bailiff told me it was an Arrest, and that the Parson was to be Bail for the Lady, and at that I very much wondered; and afterwards they told me there was a Wedding above, which we admired at, that there should be a Wedding and Bailiffs: And after all was over, the Gentleman and the Lady went out at the Back-Door, and took Coach.

Prisoner. Did you see Mrs. *Swendsen* Discontented when she went out?

Mrs. Cotchett. No, my Lord, she seemed not Discontented: What I know I'll speak, an no more.

Sarah Walker called.

L. C. J. Holt. Do you live at the *Vine-Tavern*?

Walker. Yes, my Lord.

L. C. J. Holt. What Place?

Walker. Cook, my Lord.

L. C. J. Holt. Was you in the House when that Young Gentlewoman was carried Prisoner there? Where were you then?

Walker. In the Bar, my Lord.

L. C. J. Holt. Did you keep the Bar?

Walker. No, my Lord; but I was washing the Bar at that time.

L. C. J. Holt. Did you hear any Noise?

Walker. No, my Lord.

L. C. J. Holt. Did you hear of a Wedding?

Walker. Yes, my Lord.

Prisoner. My Lord, Will you be pleas'd to ask her, if she was not had before the Recorder, and promis'd a Reward if she would say any thing for their Service.

L. C. J. Holt. What do you say to this?

Walker. My Lord, only this, That if I knew any thing, and discover'd it, I should be satisfied for my Trouble.

L. C. J. Holt. Were you sent up Stairs to the Gentlefolks to receive Directions for the Supper?

Walker. Yes.

Mr. Soll. Gen. When you came up into the Room, what Condition was the Young Gentlewoman in?

Walker. She sat at one End of the Room, and seemed to be very Melancholy.

Mr. Soll. Gen. How did she look when she went away?

Walker. Not Melancholy then. When Orders were given about the Supper, I asked her what Sauce she would have; she said she would eat nothing at all.

Mr. Blake's Daughter being called.

Prisoner. Ask what she knew of my Wife?

Blake. My Lord, she carried it very well; the Lady was pleased to say that I should wait upon her. I offered to pull off her Shoes and Stockings when she went to Bed, she held out her Legs, and I pull'd off her Shoes and Stockings.

Mr. Soll. Gen. Were you present at the beginning, before she began undressing?

Blake. Yes.

Mr. Soll. Gen. When she was come in, were you there all the Time?

Blake. No, I run to and fro.

Mr. Soll. Gen. Do you know Mrs. *Baynton*?

Blake. Yes, Sir.

Mr. Soll. Gen. Pray, did she ever lie-in at your House?

Blake. Yes, Sir.

Mr. Soll. Gen. Hath she a Husband?

Blake. I cannot tell.

L. C. J. Holt. Did you make the Bed in Mr. *Swendsen's* Chamber?

Mr.

Blake. Yes, my Lord, I made it where he lay, I saw nothing.

L. C. J. Holt. How long was it after from the Time they came, to the Time they went to Bed?

Blake. I know not, they came into the House just about Dinner?

L. C. J. Holt. What time was it?

Blake. About three or four a-Clock in the Afternoon.

L. C. J. Holt. How long was it after they came, before they went to Bed?

Blake. About two Hours, or thereabout.

L. C. J. Holt. Do you think that 5 or 6 a-Clock was a fit time to go to Bed?

Blake. I knew not what was betwixt them.

Mr. Soll. Gen. Is it usual to go to Bed at that time at your House?

Blake. No; I did not know what was betwixt them.

Mr. Mountague. What time did they rise again?

Blake. About 7-Clock.

Mr. Mountague. Did they lie at your House that Night?

Blake. No; they did not.

L. C. J. Holt. When did they go away?

Blake. They went away as soon as Supper was done.

Prisoner. My Lord, I desire she may be asked whether my Wife was Sorrowful or Discontented, or unwilling to go to Bed.

L. C. J. Holt. What time was it they went to Bed?

Blake. About Four a-Clock.

L. C. J. Holt. Did you know what the Design was?

Blake. No, my Lord, I did not know any other-wise than as *Mr. Swendsen* told me the Young Lady was his Wife.

L. C. J. Holt. What time did they rise again?

Blake. About two Hours, they rose up and got to Supper.

Judge Powis. What time did they go from your House?

Blake. Between Eight and Nine a-Clock.

L. C. J. Holt. Where did they go? Do you know where they went?

Blake. Indeed, my Lord, I cannot tell.

Mr. Blake Sworn.

Mr. Soll. Gen. *Mr. Blake*, How long have you known *Mrs. Baynton*.

Mr. Blake. About 12 Years.

Mr. Soll. Gen. Did you ever know that *Mrs. Baynton* had a Husband?

Mr. Blake. I cannot tell, it was reported that she had one.

Mr. Soll. Gen. Did you ever see *Mr. Baynton*? Did he own her to be his Wife?

Mr. Blake. My Lord, They did not live with me while he was living.

M. Soll. Gen. How long has he been dead?

Mr. Blake. I don't certainly remember; about three or four Years.

Mr. Soll. Gen. How long is it since *Mrs. Baynton* lay-in at your House?

Mr. Blake. About four Months ago.

Mr. Soll. Gen. When she was such a Woman as this, and brought a Gentlewoman to your House, and ordered a Bed to be made, how could you admit her into your House again?

Mr. Blake. I did not know that it was any clandestine thing.

L. C. J. Holt. Have you any more Witnesses, *Mr. Swendsen*?

Prisoner. Let the Constable be call'd for.

L. C. J. Holt. What Questions shall I ask him?

Prisoner. Ask him what it was my Wife said to him?

Constable. My Lord, the Man was in one Room and the Woman in another; when I opened the Door the Gentleman asked her how she did.

L. C. J. Holt. What Gentleman was it?

Constable. It was the Gentleman that gave me the Warrant. He said to her, Are you married? Yes; There is my Husband. She seemed very much satisfied: He said to her, Madam, I wish you much Joy, and if you please to go to the Recorder's, there is your Guardian to approve of what you have done: But when she was dress'd, she would go to the next Justice of the Peace: They could not agree about going, but they drank each of them a Glass of Wine and went away. The Gentleman that brought me the Warrant was also with me.

L. C. J. Holt. Are they here?

Constable. The Warrant was to take up the Bailiffs and all together.

L. C. J. Holt. Where do you live?

Constable. In *Lincoln's-Inn-Fields*.

L. C. J. Holt. In what House did you see them?

Constable. 'Twas in *Red-Lyon-street*, over-against the *Red-Lyon-Tavern*.

L. C. J. Holt. About what time of the Night was it?

Constable. About Seven a-Clock.

L. C. J. Holt. What Night was it?

Constable. Indeed, my Lord, I cannot tell.

Mr. Mountague. Whose House was it? Was it *Blake's* House?

Constable. Yes, it was so.

L. C. J. Holt. Where is your Warrant?

Constable. They took it away from me.

L. C. J. Holt. But you ought not to have parted from your Warrant.

Constable. The Men were not there that the Warrant run for.

L. C. J. Holt. Was not the Warrant against *Mr. Swendsen*?

Constable. The Warrant was for such Men as took the Young Gentlewoman away. I cannot tell whether his Name was there or no.

L. C. J. Holt. *Mrs. Rawlins* what were those Men who came along with the Constable; were they your Friends?

Mrs. Rawlins. Yes, my Lord, they were my Friends.

L. C. J. Holt. What is this *Geary*?

Mrs. Rawlins. He is an Acquaintance of *Madam Busby's*?

L. C. J. Holt. Did you say you consented to the Marriage before them?

Mrs. Rawlins. If I did, I did not know what I said.

Prisoner. My Lord, I desire she may be asked what she said to the Constable.

Mrs. Rawlins. My Lord, I do not know whether I said such a thing; if I did, I was not in my Senses, I did not know what I said.

Prisoner. My Lord, I hope you will give me leave to speak. She said to the Constable, I am very well content with the Marriage, and this is the Ring that married us.

L. C. J. Holt. What say you to that, *Mrs. Rawlins*?

Mrs. Rawlins. I don't know but I might; but I did not know what I said.

L. C. J.

L. C. J. Holt. Had you been in Bed then ?

Mrs. Rawlins. Yes, we were in Bed about an Hour.

Mr. Soll. Gen. Was there any Threats used by *Mrs. Baynton.*

Mrs. Rawlins. Yes, my Lord ; she said that I must own him for my Husband, or else we were all ruined.

Justice Baber called.

Prisoner. My Lord, he is one of the chiefest Witnesses that I have, I desire it may be asked him, what my Wife declared to him of her own accord.

J. Baber. My Lord, I think it was *Friday Night*, the 6th of this Month, the Prisoner here at the Bar, and I suppose that may be the Gentlewoman too [pointing to her] and another Gentlewoman and a Woman came to me to my House in *York-Buildings*, and desired me, but the Prisoner in particular, that I would administer a voluntary Oath to the young Lady, which she was willing to take, that she was married to this Gentleman. I told him that I had nothing to do to confirm Marriages, and told them I was loth to meddle with it.

L. C. J. Holt. How came they to you ? Had they any Officers ?

J. Baber. No, my Lord, they came in a Coach without any Officer.

L. C. J. Holt. Was there any Oath taken ?

J. Baber. No, my Lord.

Council. What was the Reason that you did not tender the Oath.

J. Baber. Because I thought I had nothing to do with it.

Council. What sort of Frame was the young Woman in ?

J. Baber. In very great Disorder ; not like a Gentlewoman, but in a very confused Condition : She spoke what she said by her own Consent ; but with much Disorder.

Prisoner. My Lord, I desire it may be asked *Justice Baber*, whether I desired him to tender the Oath to my Wife.

L. C. J. Holt. Did *Mr. Swendsen* desire you to tender the Oath ?

J. Baber. He did put me upon it at first.

Prisoner. I ne'er did so in all my Life.

Mr. Bulkley called.

Prisoner. My Lord, I desire this Man may be heard.

Mr. Bulkley. This Gentleman, on the 7th of *November*, in the Forenoon, stopped at the Porch of my Door, and gave me Orders to wait upon him, upon the Business of my Calling.

L. C. J. Holt. What is your Calling ?

Mr. Bulkley. A Barber. He told me that he was married. I asked him, What are you married ? Yes, said he, I am ; and here's my Wife ; and the Gentlewoman she said so too. At that, I wished them much Joy and Happiness. The young Woman said, She did not question it, since what she had done, was with her own voluntary Consent.

Mr. Hudson called.

Prisoner. What did you hear my Wife say ?

Mr. Hudson. When *Mr. Swendsen*, with his Wife, came to our House, (my Lord) he bid her take *Mr. Blake* by the Hand and ask him how he does. She said, Yes, my Dear. She went into the House and took my Master by the Hand, ask'd him how he did. *Mr. Swendsen* said, This is my dear Wife ; and she said, This is my dear Husband, and took him about the Neck and kissed him.

L. C. J. Holt. What Trade are you ?

Mr. Hudson. An Upholsterer ; *Mr. Blake* is my Master.

L. C. J. Holt. You say the young Woman took *Mr. Blake* by the Hand, and said, How do you do ? Did she ever see *Mr. Blake* before ?

Mr. Hudson. Not that I know of. But *Mr. Swendsen* said, This is my dear Wife.

Mr. Soll. Gen. When was this ?

Mr. Hudson. On *Saturday Morning*.

Mr. Soll. Gen. If they lay there over-night, what Necessity was there for *Swendsen* to tell *Mr. Blake* that was his dear Wife.

Mr. Hudson. He did not say so to him, but to his Wife ; and she kissed him.

Mr. Mountague. What need he to tell *Mr. Blake* that was his Wife, when he knew it before ?

Mr. Hudson. Why may not I, if I had a Wife, come to her and say, *My dear Wife* ?

Mr. Soll. Gen. *Mr. Blake*, Pray was *Mrs. Rawlins* at your House before then ?

Mr. Blake. Never, as I know of.

Mr. Green called.

Prisoner. I desire that this Man be asked what he heard my Wife say before the Recorder ?

L. C. J. Holt. What did you hear the young Woman say before the Recorder ?

Mr. Green. She owned that she was married to the Gentleman, by her own Consent, without any Force or Compulsion.

L. C. J. Holt. Did she marry him willingly ?

Mr. Green. Yes, my Lord, she said so.

Prisoner. My Lord, I desire he may tell how she behaved herself there.

L. C. J. Holt. What said she ?

Mr. Green. She said she was married to that Gentleman without Force or Compulsion.

Council. Did she say nothing else ?

Mr. Green. This is all that I remember.

Mr. Soll. Gen. Did the Gentlewoman continue in that Tone all the Time she was at the Recorder's ?

Mr. Green. No, I believe she did not.

L. C. J. Holt. Was the Recorder by then ?

Mr. Green. Yes, the Recorder was by. Then he asked her whether she was married by her own Consent.

L. C. J. Holt. What did the Recorder say more ?

Mr. Green. He said, he was afraid she was drawn in by this Man, who he feared was a Spark and Bully of the Town.

Council. Pray, when she said she was married by her own Consent, had *Mr. Swendsen* her Hand in his ?

Mr. Green. Yes.

L. C. J. Holt. Then I ask you whether *Swendsen* was afterwards withdrawn ?

Mr. Green. He was so.

L. C. J. Holt. And did you hear what she said after that ?

Mr. Green. No, I did not, I was thrust out.

L. C. J. Holt. Where do you live ?

Mr. Green. I live in *Carter-Lane*. I belong to the General Post-Office.

L. C. J. Holt. How came you to be acquainted with this Matter.

Mr. Green. My Lord, I came into *Red-Lion-Street* accidentally, two Doors off *Mr. Swendsen's* : I went to *Mr. Swendsen's* Lodgings, and asked how he did. I was told he was very well, that he had married a Fortune, and was in Bed with his Lady.

L. C. J. Holt. What was the Man's Name ?

Mr. Green. His Name was *Blake*, my Lord ; it was a pure accidental Thing to me.

L. C. J.

L. C. J. Holt. How long have you known Mr. Swendsen?

Mr. Green. I have known him several Years.

L. C. J. Holt. Have you dealt with him?

Mr. Green. Yes, I have; and I believe here are many present, can give a better Account of him than I can.

Prisoner. My Lord, I desire he may be asked, what my Wife said to the Recorder.

Mr. Green. My Lord, upon Examination she seemed to be much surprized upon that Occasion, but what she did, she said was voluntarily; and that as he was her Husband, so she would own him; and when she was asked whether she was in Drink; she said she was never given to drinking.

Prisoner. And as I have been represented by some as a Bully of the Town, I desire I may have my Friends heard, as to my Life and Conversation.

One of his Friends called.

L. C. J. Holt. Where do you live?

Ans. At Ratcliff; my Education has been at Sea. I have been acquainted with Mr. Swendsen two Years, and have found him to be a very honest and ingenious Man.

L. C. J. Holt. Had you any Dealings with him?

Ans. Yes, my Lord, I have dealt with him for 3000 l. and better?

L. C. J. Holt. In what manner did you deal with him?

Ans. I consigned my Effects to him.

L. C. J. Holt. From whence?

Ans. From England to Norway.

L. C. J. Holt. How could they be consigned to him when he was here?

Ans. He was not here then, but at Norway. In May 1701. he came over, and had a Ship of mine, called the *Swan*, and sold her for my Account.

Coun. Did you apprehend that he traded for himself, or as a Factor?

Ans. He traded for himself; and I can shew you the Bills of Lading that will shew they were for his Account: And I believe all that knew him, will give him the Character of an honest Man.

Mr. Evans called.

L. C. J. Holt. What do you know of Mr. Swendsen?

Mr. Evans. I was in Norway, and found then that he lived in very good Repute and Credit there among all People, the best of Trading People; and I found he had a familiar Converse with them: I was with him at the *Generance* and *Admirance*, which are the chief Offices in the Place: I was by his Letter of Recommendation credited by the most eminent Merchants of Norway. At that Time he had several Ships consigned to him for Lading, at a Time when Goods were difficult to be gotten, and he did load them.

Another Witness called.

L. C. J. Holt. What do you know of Mr. Swendsen?

Ans. My Lord, I was born in Norway, where this Gentleman lived for some Years, and was esteemed worth 10000 Dollars. I have had no great Dealings with him, but when he wanted Money, when Money was short with him, I lent him some, which he paid again very honestly.

Prisoner. Call John Shorey.

Shorey. The Knowledge I have had of him was caused by his buying several Parcels of Goods, of me, and order'd them to be shipp'd, and paid me honestly for them.

Another Witness called.

L. C. J. Holt. What say you?

Ans. I have known this Gentleman about two Years: The first of my Knowledge was, I had a Bill of Exchange of 50 l. drawn upon him, which he paid very honestly. I never heard any otherwise, but that he was a very honest, just Man.

Mr. Soll. Gen. I would observe to your Lordship, that the principal Part of our Evidence the Prisoner hath given no Answer to; that is, the Force: If the taking and detaining Mrs. Rawlins was by Force, as several of our Witnesses have testified: And if she married while she was under that Force, no subsequent Act or Consent of hers can lessen the Offence, if the Jury could give Credit to the Prisoner's Evidence, and believe her Consent was real. The Gentlewoman did herself confess, that after she had been hurried from Tavern to Tavern, she did declare he was her Husband, and that she consented to the Marriage; but what afterwards happen'd, plainly shews that it was through Fear and nothing else: Had she really consented to the Marriage, why was she carried to the Justice of Peace to take an Oath, that she was married by her own voluntary Consent? Whilst the Prisoner held her by the Hand before the Recorder, she confessed that she married with her free Consent: As soon as the Prisoner was withdrawn, she burst out into a Flood of Tears, and confessed that she was married by Constraint. My Lord, there is but one thing more I would answer, and that is the Licence which was given in Evidence to give Colour to this Marriage; but this plainly shews, that this whole Management was the Prisoner's contriving. The Licence bears Date three Weeks before the Time of the Marriage, which shews how long they had waited for an Opportunity to accomplish this Design. When the Prisoner took out this Licence he swore her Age to be 25, and his to be 35.

My Lord, now we will examine some Witnesses to these Facts, and so we'll have done. She was carried to Justice Baber to take a voluntary Oath. If your Lordship pleases he may again be called: We will examine him upon Oath.

Justice Baber called.

Mr. Soll. Gen. Pray, Sir, give an Account of the whole Matter.

J. Baber. They came to me about 8 or 9 a-Clock on Friday Night the 6th of this Month; and the Prisoner here told me the Purport of his coming, that it was a light and short Business; and pointing to the Gentlewoman, said, that she came to take a voluntary Oath, that she was married to him with her own Consent; she said she was married, and that with her Consent. I told her, I had nothing to do with confirming Marriages. He told me, amongst other Things, that he had a Certificate. You know that best, said I; a Marriage is a Marriage, and I have nothing to do with it.

Mr. Soll. Gen. But when she told you that she was married, what Condition was she in?

J. Baber. She was in a very great Disorder.

Another Witness.

Mr. Soll. Gen. Was you before the Recorder?

Witness. Yes, on Saturday the 7th of this November. While Mr. Swendsen held her by the Hand she owned the Marriage; but when he was withdrawn she threw herself upon me, and desired me to stand by her, or she was undone.

Mr. Soll. Gen. What Account did she give when Mr. Swendsen was withdrawn?

Ans. She spoke much to the same Purpose as she

she has done here ; and that what she had done was all by Force, and out of Fear.

Mr. Taylor call'd and sworn.

Mr. Soll. Gen. Do you know any Oath the Party took, in the taking of this Licence ?

Mr. Taylor. Yes, my Lord.

Mr. Soll. Gen. How old did he say the Gentlewoman was ?

Mr. Taylor. He said that she was 25, and that he was 35 Years old.

Mr. Soll. Gen. Are you sure he took the Oath ?

Mr. Taylor. Yes, my Lord, there is the Surrogate's Hand, and the Prisoner's own Hand to it.

Mr. Soll. Gen. Were you present ?

Mr. Taylor. No, I was not, but my Clerk was.

Mr. Serj. Darnel. My Lord, there's his Hand to it, and we can prove his Hand.

Mr. Soll. Gen. My Lord it is an Act of the Court.

Coun. My Lord, I hope that may be of the same Force as a Deposition in *Chancery*.

L. C. J. Holt. It cannot be read as Evidence. *Mr. Taylor*, did he ever take a Licence at any other Time ?

Mr. Taylor. No, my Lord.

L. C. J. Holt. Was the Licence dated that Day he took it ?

Mr. Taylor. It is always dated the same Day it is taken.

Mr. Mountague. My Lord, I desire *Mrs. Busby* may be asked, whether she talked at the Picture-Drawer's about any Thing of Love, or no ? *Mrs. Busby*, the Question is, Whether or no you talked any Thing about Love at the Picture-Drawer's ?

Mrs. Busby. My Lord, *Mrs. Baynton* desired me to go with her to the Picture-Drawer's to see her Picture drawn ; we were talking by the Fire-side that *Mrs. Rawlins* had spoke by way of Discouragement to *Mr. Pugh* ; *Mrs. Baynton* said that she thought her Brother would make her a very good Husband, and was able to make her a considerable Jointure here in *England*. My Lord, *Mr. Pugh* came, by the Consent of Friends, on honourable Terms.

L. C. J. Holt. Gentlemen of the Jury, This Prisoner is indicted for Felony, in taking away by Force *Mrs. Pleasant Rawlins*, and marrying of her ; this is Felony by the Statute of the Third of *Henry VII.* which enacts, " That if any Person shall " take any Woman that hath any Substance in " Goods or Land, against her Consent, and marry " or defile her, he and his Procurers and Receivers, " shall be adjudged to be Felons.

Now it hath been proved to you, that this young Woman had a Personal Estate left her by her Father, to the Value of 2000 *l.* and had another Estate in Land, to the Value of 20 *l. per Annum*. If any one shall take her away by Force, and marry her, he is guilty of Felony by that Statute. You have heard that she was placed by her Guardian, under the Tuition of *Mrs. Busby*, who took a Lodging about 3 Years last past, at one *Mrs. Nightingale's*, in *Stretton-Grounds, Westminster* ; and boarded with her, who took Boarders into her House ; and if any Friend of her Boarders came to Dinner there, she receiv'd 12 *d. per Head*: About 3 Weeks or a Month before *Michaelmas* last past, there came one *Mrs. St. John*, and recommended to her a Lodger of her Acquaintance, and desired that she might board with her as others did, and said she was a Widow that came out of the Country about a Suit of Law, and represented her to be a sober Person. *Mrs.*

Nightingale refused her at that Time, and heard no more of her till about 3 Weeks after ; then she, *Mrs. St. John*, returns and prevails with *Mrs. Nightingale*, to take her Acquaintance into her House. *Mrs. Baynton* that is mentioned in the Indictment, was the Person designed by *Mrs. St. John* ; and she came to *Mrs. Nightingale*, and desired to be with her as other Boarders were ; she pretended to be of very good Quality, so she was taken into the House ; her Carriage and Demeanor there were very civil, and she pretended she had a Brother, that would come to see her : The Prisoner at the Bar was the Person that came, and she call'd him Brother, and owned him for such ; he dined there several Times with the rest of the Boarders ; he said, He had an Interest in Shipping, and invited all the Family to go on Board a Ship. They accepted of his Invitation, and were very well entertained, but suspected nothing ; but at length it was observed there was too great a Familiarity between *Mrs. Baynton* and the Prisoner, more than was common betwixt so near Relations ; they afterwards perceived that *Mrs. Baynton* was inclinable to drink, which caused some Jealousy of her in the Family, and she perceiving the Strangeness of the Family, gave *Mrs. Nightingale* notice that she should go in a short Time, for that she had finished her Business at Law, and that the Town was chargeable, and she intended to be gone at such a Time. When that Time was expired, she pretended to *Mrs. Nightingale* that there was another Thing had happen'd that would detain her a Week longer : She consented that she should stay. Now you may observe by the Evidence, that it was usual for *Mrs. Busby* and *Mrs. Rawlins* to go to *Oxendon Chapel* on *Friday* ; which *Mrs. Baynton* very well knew, and pretends that she was to go in a Coach that way into *Golden-Square*, and invites them to go in her Coach, and promised to set them down by the Chapel : They accepting the Invitation, and being come near the Place, the Coach was stopped by several Men. *Hartwell* the Bailiff opened the Door, got into the Coach, said it was an Arrest. At which *Mrs. Busby* was very much concerned, and thought this Arrest was for *Mrs. Baynton*, and that she and *Mrs. Rawlins* might go out, for they were not concerned in the Matter. At last they perceived it was of themselves ; and then *Mrs. Baynton* pretended to be concerned for them : And when the People in the Street asked what was the Cause of the Disorder ; the Bailiffs said, that they were Cheats and Trading-Women that owed People Money, and now they are Arrested for it. Under this pretended Arrest, they were carried to the *Star and Garter Tavern* in *Drury-Lane*, and put into a Back-Room. They were in a great Consternation at their being Arrested, being not conscious to themselves that they owed Money to any Person. One came to *Mrs. Busby*, and said, See that your Name be right, that you are rightly Arrested. Another of the Bailiffs, by Force, carry'd away *Mrs. Rawlins*, saying, she was his Prisoner ; and it was pretended, that one Bailiff had a Process to carry the one to *Newgate*, and another had another Process to take the other to the *Marshalsea*. *Mrs. Rawlins* was carried to *Hartwell's House*. When she was there, *Mrs. Baynton* pretended that coming by accidentally, she heard her Voice, and came in, and seem'd to pity her, and said, Madam, will none of your Friends help you ? She proposes her Brother to be Bail, and *Holt* he was to be the other. Under that Pretence of being bailed, they carry her to the *Vine Tavern* in *Holbourn*, where *Hartwell* pretended

tended to be very willing to take his Bail, and said he knew *Holt*, but questioned the Prisoner. It will appear to you from this Evidence, and that which follows, of this Force and Contrivance, that their Design was to bring about the Marriage; for when the Bail was pretended to be refused, Mrs. Baynton proposes a Marriage between the Prisoner and Mrs. Rawlins, as the best way to make an end of this troublesome Business: She would have the Ring from her Finger, to get a Wedding-Ring made by it. Says Mrs. Rawlins, I have no mind to be married: Says Mrs. Baynton, it's best for you to be married; and threatened Mrs. Rawlins, that if she did not marry, she should be committed to *Newgate*. There was a Parson and Clerk ready, who were called to do the Office. The young Woman being under this Terror, the Office of Matrimony was performed; and she was forthwith conveyed to one *Blake's*, and by Constraint there was put to Bed in the Day-time. You must go to Bed, says Mrs. Baynton: I will not go, says the young Woman: And some Violence was used to force her Cloaths off, and she was put to Bed, where she lay about an Hour or Two, and thereby the Marriage was supposed to be consummated.

The Prisoner, on the next Day, being discoursed with about this Matter, and asked, whether he was Mrs. Baynton's Brother? No indeed, says he; I made use of her as my Tool; she hath done my Job for me; I'll make her Satisfaction for it, not Tomorrow, being *Sunday*, but on *Monday* I will do it, and never see her Face more. After all this Evidence, the Prisoner doth insist upon his Innocence, because he was not present at the Arrest; and hath produced several Witnesses to prove, that this young Woman was very well satisfy'd with the Marriage; and that Reverend Divine the Parson asked her, whether she was willing to be married to the Gentleman? And she said she was willing. And then Mr. Blake's Maid and Daughter said, that she desired them to pluck off her Shoes and Stockings, undress her, and put her to Bed. And that very Night the Prisoner and Mrs. Rawlins went to Mr. Baber's, a Justice of the Peace, at *Tork-Buildings*, to take a voluntary Oath before him, that she married this Prisoner by her own free Consent. Mr. Baber would not Administer the Oath. And that afterward they Bedded together that Night, and the next Day they went abroad together in a Coach; and meeting his Barber, the Prisoner bids him come to him to shave him, and says to him, Here is my Wife; she said likewise, that he was her Husband: He wished her much Joy; she reply'd, that she did not question it, seeing that what she had done was by her free and full Consent; and declared, she was well satisfied with what was done. The next Proof is of their Return to *Blake's* House, where they first lodged; the Prisoner *Swendsen* orders his Wife to take Mr. Blake by the Hand, and ask him how he did? Which she did, and expressed to him how well she was pleased with the Marriage, saying, This is my dear Husband, and kissed him. His Witness tells you, on *Friday* Night a Constable comes with the Recorder's Warrant, to apprehend the Persons supposed to have committed this Force; and discoursing with her, she expressed her self very well satisfied with her Marriage, so that they desisted from serving the Warrant. Then he relies upon his Reputation, as being a Man of great Credit, and having had Goods consigned to him, and paid Bills of *Exchange*; and produces Witnesses to prove, that he was a Trader in *Norway*, where he lived, and in good Credit, remitted Mo-

ney, drew and paid Bills of *Exchange*, freighted Ships, &c. and was in very good Esteem by the chiefest in those Parts. Then he called other Witnesses, to let you know how the young Woman carried it at the Recorder's; that there she said, that she was married by her own free Consent, &c. Gentlemen, this is the Sum of the Evidence that he hath given. To which it is replied, That as to what was said before the Recorder, that is true; so long as he had her Hand in his, she declared her Consent to, and Satisfaction in the Marriage; but when he was withdrawn, and she was examined by her self, she declared her Marriage was by Violence and Force, that she did it out of Fear, &c. Then they tell you again, of a Licence that was taken out by him, and produced by him, but bore Date almost Three Weeks before this Marriage was accomplish'd: It was observ'd also upon the Licence, that this Licence was to marry Mrs. Rawlins of the Parish of *St. Mary White Chapel*, when she lived not there.

This is the Sum of the Evidence on both Sides, and these Observations are to be made from it:

I. You are to know, That if she be taken away by Force, and afterwards married, tho' by her Consent, yet is he guilty of Felony: For it is the taking away by Force that makes the Crime, if there be a Marriage, tho' by her Consent.

II. In the next place it is to be observed, That she was taken away by Force, and a Stratagem was used to give an Opportunity thereunto, and the Arrest was but a Colour.

III. You may consider upon the Evidence, how far the Prisoner was concerned in the first Force: It is true, he was not at the Arrest, and did not appear until she was brought to *Hartwell's* House; and under that Pretence of Bailing her, she was carried to the *Vine* Tavern, where there was a Parson ready, and the Marriage was had in such manner as you have heard. Now, considering these Matters, it is left to you to determine, whether the Marriage was not the End of the Arrest? And if so, how it would be possible for such a Force to be committed to effect the Prisoner's Design, and he not be privy to it?

IV. If it can be imagined, that he was not privy to the colourable Arrest, yet she was under a Force when he came to her at *Hartwell's* House; and from thence she was carried by Force unto the *Vine* Tavern, where she was married. That is a forcible taking by him at *Hartwell's* House; and tho' when she was at the *Vine* Tavern she did express her Consent to be married, yet it appears even then she was under a Force, and had no Power to help her self. Her Marriage was by Force, when she was carried to *Blake's*, and put to Bed; all this was Force: Nay, when she was carry'd to the Justice of Peace, even then she was under a Force; and all that she said was not freely, but out of Fear: Such a Force would avoid any Bond, for she was under Imprisonment. But however, if the first taking was by Force, and she had consented to the Marriage, the Offence is the same, it is Felony.

And as to his Reputation, it is possible he might have been an honest Man: A Man is not born a Knave, there must be Time to make him so, nor is he presently discovered after he becomes one. A Man may be reputed an able Man this Year, and yet be a Beggar the next: It is a Misfortune that happens to many Men, and his former Reputation will signify

nify nothing to him upon this Occasion. If you be satisfied upon the Evidence, that he is guilty of this Crime, you are to find him so; if not, you ought to acquit him.

Mr. Swendsen. I desire, my Lord, that my Wife may be asked, Whether she did not, upon her Knees, swear, she went away from me as a good a Maid as she came to me?

L. C. J. Holt. That is a Question need not be ask'd, since the Marriage is so plainly proved, which is sufficient to bring you within the Statute.

The Jury desire the Act may be read.

L. C. J. Holt. Let it be read. *It was so.*

The Jury ask Mrs. Rawlins, how old she is?

Mrs. Rawlins. Eighteen at Candlemas.


L. C. J. Holt. Would you ask any Questions upon this Act?

Jury. No, my Lord.

Then the Jury went out, and after three Hours stay, brought him in Guilty.

He was sentenced afterwards along with Sarah Baynton.

CLXXVI. *The Trials of SARAH BAYNTON, JOHN HARTWELL, and JOHN SPURR, at the Queen's-Bench, for forceably taking away Mrs. Pleasant Rawlins, and procuring her to be married to Haagen Swendsen, Nov. 25. 1702. Mich. 1 Ann.*

 Motion was made by the Queen's Council, for putting off this Trial to Friday, November the 27th, but his Lordship would not grant it, but ordered it to begin presently.

The Prisoners were call'd to the Bar, and a Proclamation made for all concern'd to attend.

The Jury were sworn, whose Names are, viz.

Robert Lympny, Gent.
John Outing, Gent.
Francis Parr, Gent.
Richard Bealing, Gent.
Charles Murry, Gent.
John Cannon, Gent.

Giles Ridle, Gent.
Robert Legg, Gent.
Thomas Elton, Gent.
Charles Longland, Gent.
Simon Smith, Gent.
Henry Lobb, Gent.

Clerk of the Ar. **S**arah Baynton, John Hartwell, and John Spurr, hold up your Hands. [*Which they did.*] Gentlemen of the Jury, look upon the Prisoners, and hear their Charge. *Then the Indictment was read as in the first Trial: Upon which they were Arraigned, and plead not Guilty.*

* Sir Simon Harcourt. Lordship, and you Gentlemen of the Jury: The Prisoners at the Bar, together with one Swendsen, stand indicted before you for a very great Offence; Swendsen (for whose Sake this Felony was committed, for which the Prisoners are now to answer) has already had his Trial: The Three Prisoners at the Bar were his Accomplices. The Law, to shew how odious such Offences are, and to deter all Persons whatsoever from committing them, has made no Distinction between the Principal and Accessories: The Abettors, Procurers, or Contrivers, are declared and enacted to be, and to be judged as principal Felons. The Gentlewoman mentioned in the Indictment, Mrs. Pleasant Rawlins, was the Daughter of Mr. William Rawlins, who left her a good Fortune: Her Grandfather likewise left her an Estate of Inheritance. Her Father being dead, her Guardian, Mr. Busby, placed her under the Care of his Sister, who boarded with her at one Mrs. Nightingale's. Mrs. Baynton (one of the Prisoners at the Bar) and Mr. Swendsen lodged at Mr. Blake's,

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where they projected what was afterwards put in practice. Lodgings were to be taken for Mrs. Baynton at Mrs. Nightingale's. In order thereunto, 'twas pretended, That she was a Country Gentlewoman who came to Town about a Law-Suit, and being very tender of her Reputation, would board in a sober Family. By these Insinuations, Lodgings were taken for her at Mrs. Nightingale's, where in a little Time she got acquainted with the Family; and in Conversation, as often as 'twas possible, would take some Opportunity to discourse of her own Affairs, particularly of her Relations, of her dear Brother Swendsen, who was never mention'd without many Commendations. Mr. Swendsen, tho' no ways related to her, often visited her under that Character: But Mrs. Baynton having lived a very scandalous lewd Life in Town, could not long continue under the Disguise she came in to Mrs. Nightingale's. Intimation was given to the Family of her true Character, and Notice thereof was soon given to her by her Maid. Whereupon she resolved to quit her Lodging; and being past all Hopes of betraying Mrs. Rawlins, and wheedling her into her Ruin with her Consent, she enters upon another Project, which was to bring about the Marriage by Force and Violence.

In this Contrivance, you will find every one of the Prisoners at the Bar had their several Parts to act; Hartwell was to get a Writ, Mrs. Baynton, who could not be concerned in the Execution of the Writ, was to contrive when and in what manner it might be executed: Hartwell sues forth the Writ, and Mrs. Baynton appoints the Time. She knowing it to be the usual Custom for Mrs. Busby and Mrs. Rawlins to go to Church on Friday Mornings, she prepares a Coach, and proffers her Service to set them down at the Chapel, and prevail'd with them to come into the Coach. As they were going toward the Chapel, Hartwell the Bailiff stops the Coach, and gets into it; and Spurr conducts the Coach to a House that they had prepared for their Purpose. When Hartwell got into the Coach, Mrs. Rawlins and Mrs. Busby, not imagining themselves to be concerned, desired him to let them go out; No, says Hartwell to Mrs. Busby, it is you that I am concerned with; let you and I have a few Words together,

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gether, and all Things will be set to rights. But Mrs. *Busby* refusing to have any Discourse with him, away they were all carry'd (Mrs. *Busby*, Mrs. *Rawlins*, and Mrs. *Baynton*) to the *Star and Garter* Tavern in *Drury-Lane*. While Mrs. *Busby* and Mrs. *Rawlins* were kept together, they had no Hopes of making Mrs. *Rawlins* marry; and therefore *Hartwell* by Force takes away Mrs. *Rawlins*, and carries her to his own House: *Spurr*, who had no Process whatsoever against Mrs. *Busby*, yet keeps her Prisoner at the *Star and Garter*. Mrs. *Baynton* seeing her Friends used in this manner, pretended a very great Concern, and out of Kindness went to find their Friends to bail them. Mrs. *Rawlins* had not been long at *Hartwell's* before Mrs. *Baynton* came into the House to her, in a great Surprise to find her there, telling her she fancied, as she passed by *Hartwell's* House, she heard Mrs. *Rawlins's* Name mentioned: Immediately she gave her a very melancholy Account, how she had been in Search for her Friends; but none could be found, and to Goal she must go, except Bail could be got. At last she thought of her Brother, she was sure he would be her Bail; and having placed him hard by, she brings him to *Hartwell's*. When he comes there, all Three of them (*Hartwell*, Mrs. *Baynton*, and Mr. *Swendsen*) under Pretence of setting Mrs. *Rawlins* at Liberty, take her to another Tavern, where she was plainly told, she must marry Mr. *Swendsen*, or go to *Newgate*, and undergo the Miseries of a Goal: If she married, then all should be well. The Circumstances of the Taking, Detaining, and Marrying this Gentlewoman at that Tavern, and of the several Facts I have mentioned, our Witnesses will prove to you.

Mr. Busby sworn.

Mr. *Serj. Darnel*. I pray give his Lordship an Account of this young Gentlewoman, Mrs. *Pleasant Rawlins*.

Mr. *Busby*. My Lord, her Father, Mr. *William Rawlins*, was a Man of very good Estate: He ordered his Estate to be sold to pay his Debts and Legacies, and the Overplus was given to his Daughter this young Gentlewoman, which was about 2000 *l*. Her Grandfather likewise by Will left her an Estate of 20 *l. per Annum*.

Mrs. Nightingale sworn.

Mr. *Serj. Darnel*. Mrs. *Nightingale*, pray give an Account to his Lordship, how long this Gentlewoman lived in your House.

Mrs. *Nightingale*. My Lord, she hath lived with me about three Years; and since Mrs. *Busby* and Mrs. *Rawlins* came to live with me, my Husband died: I am likewise a Widow too; we all lived together. Mrs. *St. John*, about nine Weeks before this Fact, came to me, and asked me whether I took Boarders? I said, No, I would take none without it were those Ladies that boarded with me before. She told me, this was a Country-Gentlewoman that was coming to Town about a Suit of Law; she was a very good Woman, and would be near a Church. She told me, that she was a-kin to the Lady *Anne Baynton*, and a great deal more that I cannot remember: But I told her, I did not design to take Boarders. She came about three Weeks after, and asked me, whether I was in the same Mind? She told me the Gentlewoman was come to Town: She told me she was an extraordinary good Woman, and that her Husband was acquainted with the Family, and gave her an extraordinary Character. She said she would not have parted with her herself, but that she did not take in Boarders, and therefore thought it not worth her while to take her in.

L. C. J. Holt. Did she say, she was her Husband's Acquaintance?

Mrs. *Nightingale*. She told me, That her Husband was very well acquainted with the Family. She told me, Mrs. *Baynton* came to Town on Saturday Night, and was very weary with her Journey. She said to me, Madam, if you please she shall come to you, and recommend her self. At length she came, and repeated the same Things, That she was a Country-Gentlewoman, and came up about a Suit of Law, &c. She said, Madam, I understand you are very nice in taking of Boarders, which makes me the willingest to come to board with you. I took her to be a very sober Woman; and seeing it was but for a little while, I agreed with her. She said she would come on Wednesday: The Reason she told me, that she came to Town no sooner, was, because her Maid was sick of a Fever. Mrs. *St. John* recommended to her a Neighbour's Child, which was a pretty civil Girl; she hired her, which made me still like her the better. On Wednesday, Mrs. *Baynton* and her Servant came: We were all Widows, and became very familiar in a short Time; for she is a Person of a great deal of Sense, if pleased God to give her Grace. She invited us on *Michaelmas-Day*, to go on Board of a Norway Ship; she had a Friend there. One of my Friends asked, whether she had any Interest in it? She said, Yes, she had. She likewise said she had a dear Brother come to Town, an extraordinary Christian, that had married her Sister: They strived, she said, who should out-do one another in Affections; and when her Sister was upon her Death-bed, she recommended Mrs. *Baynton* to be both his Wife and Sister. Mrs. *Baynton* said, My dear Brother will come To-morrow to see me. Accordingly he came, with two Gentlewomen with him, that we never saw before nor since: Then she sent for a Bottle of Claret, and desired us to drink, which we did, with them. Then she took Occasion to praise the Family she was in: She invited her Brother to live in the same Street near to her, seeing he had but a pining Stomach; and said, she believed he would like their Victuals. He declined that, saying, it was out of the way for his Business, being obliged to be every Day at 'Change. Then she asked me, what I would have a Meal, if he should come at any Time to see her? I told her 12 *d.* for a Dinner; for so I had of the young Ladies Friends that came to see them.

Mr. *Serj. Darnel*. Pray, how did the Country-Gentlewoman behave her self?

Mrs. *Nightingale*. She seem'd to be very modest, but shew'd abundance of Love to her Brother.

Mr. *Serj. Darnel*. In her Behaviour?

Mrs. *Nightingale*. Very well, below Stairs; but the Maid said she would swear above.

Council. How oft did he dine there?

Mrs. *Nightingale*. Nine or ten Times.

Council. You say he dined nine or ten Times at your House, did you discern that there was any thing of Love betwixt him and Mrs. *Rawlins*?

Mrs. *Nightingale*. No body in the House discerned that there was.

Mr. *Serj. Darnel*. Were they observed at any Time to be alone?

Mrs. *Nightingale*. No, Sir, they were never alone that I know of.

Mr. *Serj. Darnel*. Had you any mistrust of Mrs. *Baynton*?

Mrs. *Nightingale*. Yes, Sir; she came twice Home elevated with Drink, and we began to suspect there was something between her and her Brother that was

was not usual. My Lord, her Servant took notice, that we carried it with Strangeness towards her Mistress; inasmuch that she said to her Mistress, Do you not discern the Family to be strange? Ay, Betty (said she) but I do not care; if they rouse me, they'll find me like a Lion: Or to that Effect.

Mr. Soll. Gen. Did Mrs. Baynton discern that you knew that she said so?

Mrs. Nightingale. No, Sir.

Mr. Soll. Gen. Did you express any Dislike of her?

Mrs. Nightingale. No, Sir, not to her; tho' I discovered my Dislike of her to several of the Family, telling them, I designed to give her Warning when her Month was up. But before that, she came to me and paid me, as her Custom was, for a Week. She told me she had received a Letter from her Friends, That the Trustees had made up the Business; and the City being chargeable, she designed to return into the Country. I went to my Mother in another Room, and expressed to her, with a great deal of Joy, the Warning she had given me. When her Time was expired, she came to me again, and said, There was a Fellow would cheat her in Town, and that she must take out a Statute of Bankrupt against him, which would detain her a Week longer; and upon her D-fire, because I would part friendly, I consented to her staying a Week longer.

L. C. J. Holt. Speaking to the Prisoner Baynton, said, She might ask Questions.

Mrs. Baynton. Yes, my Lord. Mrs. Nightingale, when I went into your House there was no such Character of me, as you speak of; but you invited me; and I said, That if I should be troublesome, I would not come.

L. C. J. Holt. She liked you well by the Character that was given you by Mrs. St. John, but afterwards she had no such good Thoughts of you.

Mrs. Baynton. If they did not like me, my Lord, they might have given me Warning; but instead of that, when I gave her Warning, she seemed to be sorry.

L. C. J. Holt. She was glad of the Opportunity of your giving her Warning.

Mrs. Baynton. You were pleas'd, Mrs. Nightingale, to speak of going aboard of Ship, it was after Mr. Swendsen had been there a second Time: When he came to your House, you said you loved Punch entirely; and I said, If you please, Madam, Mr. Swendsen shall make a Bowl; and this was before our going on Board.

L. C. J. Holt. Was Mr. Swendsen aboard the Ship?

Mrs. Nightingale. Yes, he was; but I knew not of his being there.

Mrs. Busby sworn.

Mr. Serj. Darnel. Come Mrs. Busby, give an Account to my Lord and the Gentlemen of the Jury what you know of this Matter.

Mrs. Busby. My Lord, I know Mrs. Nightingale told me that Mrs. St. John came to take Lodgings for Mrs. Baynton, according as Mrs. Nightingale expressed her self; and I was a little curious in enquiring what she was, and begged her Pardon for asking so many Questions about her.

Mr. Serj. Darnel. After she had been there, how did she carry her self?

Mrs. Busby. At Michaelmas-Day, at Night, she came up very brisk, and said she had heard from her dear Brother, and fell a praising him, and said how happy she was in him; and that her Sister, upon her Death-bed, said that she should be both

Wife and Sister to him; She said likewise, that she had been a Widow 4 Years, and that she would never marry for the Love she had to her Brother.

Mr. Serj. Darnel. Pray give an Account, Mrs. Busby, whether there was any Talk in the Family of this Woman's leaving the Family?

Mrs. Busby. Sir, as to her leaving the House, we were informed that she was not what we took her to be; and Mrs. Nightingale and I were very uneasy; at which Mrs. Nightingale design'd to warn her away.

Council. Mrs. Busby, Pray give an Account of your going in the Coach with her.

Mrs. Busby. On Friday Morning, the 6th of this Month, Mrs. Baynton said she was going to have her Lac'd-Head washed; she sent her Maid for a Coach, and said she would set us down near the Chapel. After she had invited me, and I saw the Coach, I did not know how to evade it well, but accepted of her Civility. She bid the Coach stop at Hedge-Lane, and said we should be as near to the Chapel, as she went to the Place whither she was going. When we came to the old Buildings, I was looking out at them, and on the contrary Side I heard a Bustle, Mrs. Baynton called to the Coach to go on, and presently Hartwell was in the Coach, with his Arm about Mrs. Rawlins's Waist. I did think Mrs. Baynton was arrested, I cry'd out for God's Sake let us alone, we are not concern'd. Hartwell pull'd up the Glass, and said we were the Persons concerned. She (pointing to Hartwell at the Bar) said, This is the Man, and he himself own'd it before the Recorder, that he told me 'twas the young Lady and I was concerned; says he, Let me have a few Words with you, and all will be well. I said, To be sure I will not say any thing to you except my Friends were near. This Lady, Mrs. Baynton, said, No Madam, be sure do not; she advised me not to be frightned, for such a Case once happen'd to her with her Niece. I asked Hartwell what he would do with us? He said he would carry us to a Place where we might send for our Friends, and make up the Business. Mrs. Baynton seemed to take my part, and said she would go to my Friends; and such Discourse as this held till we came to the Star and Garter Tavern.

Council. Mrs. She pretended to be your Friend?

Mrs. Busby. Yes, Sir, she argued with the Bailiff and said, may I not go where I will? And seemed to be very angry with him. Mr. Hartwell also seemed to be very angry with her, and call'd her Mrs. Pert, saying; if she were Civil, she should have the more Respect.

Council. Whom did he call Mrs. Pert?

Mrs. Busby. He called Mrs. Baynton so. Then they carried us to Drury-Lane, and she advised us to put on our Masks upon our Faces: I thought to do it, but afterwards recalling my self, and thinking I had done nothing amiss, I would not. They conducted us to the Tavern and put us into a back Room, and Mrs. Baynton hastened out of the Room as if she would go for some of my Friends, as she said she would: I directed her to Mr. Thorntons and another; which she said she went to. The Room where we were was very dark, so we pressed into a forward one: We were in a very great Fright, inasmuch, that I said to Mrs. Rawlins, We'll live and die together, and then she took me hold by my Arm. Hartwell seeing that, took her from me by Force, and said she must go with him. I understood she was arrested in one Court, and I in another; She must go to the Marshalsea, and I to

Newgate. Then they hurried her down Stairs out at a back Door into a Coach: I cry'd out *Murder* out of the Window, and said, For God's Sake take care of the young Woman, for I know not where they are carrying her. After this, Mr. *Spurr* said to me, What have you got by Bawling? We are better known here than you. My Fright was very great, and I was very much surprized: There was a Man left with me, I made my Complaint for Friends to be sent for. Says I to him: Is it Treason or Felony? He told me he did not know, he was only hired for a Crown to keep me: I desired that the Gentlewoman of the House might come up to me; it was about 12 a-Clock, and at last she did. And Mr. *Wakeman* came up, and said, Madam, Why do you not Eat and Drink? He said the young Gentlewoman was well, and did both. Said the Woman of the House to me, Do not you owe Money? I said, No. Nor the young Lady neither? I answered, None that we should be Arrested for. When this Mr. *Wakeman* was here, said the Gentlewoman of the House to me, Why do you not enquire into the Cause of Action? *Wakeman* told me, that there was a Writ against *Sabina Busby*, at the Suit of *William Jones*, and that *William Jones* arrested me. Says the Woman of the House, it may be your Name is not right, and so you may be falsely Arrested. I asked whether I might not send for Bail, it being an Action of Debt. It being an Action of Debt, says he, you may; and I will go for you as cheap, and as soon as a Porter. But I saw him no more till Night.

Council. How long did they keep you?

Mrs. *Busby*. It was betwixt 10 and 11 when they carried me there first, and it was not till near Night that I saw him again.

Mr. *Serj. Darnel*. Did he make you give Bail for your Discharge in the Afternoon?

Mrs. *Busby*. There was a Lad in the Room said, Madam, I will go to some of your Friends for you. I directed him to some of them, and when he came again, he said, they were not at home. There was a poor Man, a Labourer, at work in the Chimney, he gave me a private Wink, and said he would go for me, for he knew Mr. *Unkles*; he went, and Mr. *Unkles* came. I likewise sent for Mr. *Thornton* and another; they all came, and met together. Mr. *Thornton* demanded on what Account they kept me there? They said they had a Writ against me of 200 l. Then they said they would bail me. They asked them, Where the young Lady was? They told him she was with her Friends. Then, my Lord, after this, the Bailiffs shifted off, and I knew nothing more of it, but went away to get a Warrant to take care of the young Lady.

Council. Had you any manner of Dealings with Mr. *Jones*?

Mrs. *Busby*. No manner of Dealings with him in all my Life.

Mr. *Mountague*. When you came into the Fore-Room, was *Hartwell* then with you in the Room?

Mrs. *Busby*. She and I was in a great Fright; several was there, and *Hartwell* was one of them.

L. C. J. *Holt*. Was Mrs. *Baynton* there?

Mrs. *Busby*. Yes, my Lord.

L. C. J. *Holt*. How long did she stay?

Mrs. *Busby*. She went out presently; she told me she would go to some of my Friends; and away she went.

L. C. J. *Holt*. Did she come again?

Mrs. *Busby*. No, my Lord.

L. C. J. *Holt*. Did you see *Hartwell* there?

Mrs. *Busby*. My Lord, he was there, and forced the young Lady from me; and *Spurr*, when I put my Head out of the Window, and cried after her, said to me, What have you got by your Bawling? We are better known here than you.

Mr. *Justice Gould*. Pray, when was the first Time you took Notice of *Spurr*?

Mrs. *Busby*. Sir, the first Time I took particular Notice of him, was, when I put my Head out of the Window; but it seems he hid behind the Coach; he was left with me when Mrs. *Rawlins* was taken away, and was in the Room when my Friends came; and Mr. *Wakeman* was there too.

Mr. *Justice Powell*. I ask you, did your Friends offer Bail?

Mrs. *Busby*. Yes, Sir, they did.

Mr. *Justice Powell*. Did any of them require Bail?

Mrs. *Busby*. My Friend, Mr. *Thornton*, asked on what Account they kept me? And they said they had an Action of 200 l. against me.

Mr. *Hartwell*. Was I there then? Did I ever come back after you were there?

Mrs. *Busby*. I believe you were, but I cannot be positive; but you were in the Coach, and you were the Man that carried away Mrs. *Rawlins* from me.

Mr. *Wakeman* called.

Mr. *Soll. Gen.* Give an Account to my Lord and the Council, of what you are concerned in this Matter.

Mr. *Wakeman*. If it shall please your Honour, my Lord, Mr. *Hartwell* came on *Wednesday* (before this Thing happen'd) to my House, and left Word there, that there was a Writ to be executed, if I would execute it: I was not then at Home, but when I came Home, which was late at Night, my Daughter told me of it. I went to him on *Thursday* Morning. He said to me, Mr. *Wakeman*, I have a Writ to be executed, will you do it? I said I would. Then he carried me to *Westminster* to the *Mitre-Tavern*, and made no stop nor stay; then he called for a Quart of Ale, and a Quart of White-Wine, and a Toast and Cheese; and when he had eat one Toast, we had another. The Man of the Tavern came in, whose Name was *Holt*. Mr. *Hartwell* said to me, We must not do the Business this Morning; it cannot be done, said he: But he appointed me to come on *Friday* Morning. He ordered me, if I came first, to call for Wine, and the same as we had before. I came first, and called for Wine, Ale, a Toast and Cheese; in the mean Time Mr. *Hartwell* came in, and eat some with me.

L. C. J. *Holt*. Who was the Writ against?

Mr. *Wakeman*. It was against Madam *Rawlins*. Mr. *Holt* went out, and called Mr. *Hartwell*, and said, the Business would be done that Morning. Then we followed him to *Stretton-Ground*. Mr. *Holt* said to *Spurr* and my self, we had best stand near the Place: He took Mr. *Hartwell* with him to the Top of the Street, the People gazed at us, and I was ashamed, and went into an Ale-House; a Man came back, and said, The Coach is at the Door; and Mr. *Hartwell* came and said, the Coach would come by presently; Mr. *Hartwell* and *Spurr* went before, and bid me follow the Coach; and coming near the Park, in *Westminster*, I was behind; Mr. *Spurr* stopped the Coach. Mr. *Spurr* stopping the Coach I made up to it; but before I came to it Mr. *Hartwell* was in the Coach, and what he said to them I do not know.

L. C. J. *Holt*. Who stopped the Coach?

Mr. *Wake-*

Mr. *Wakeman*. Mr. *Spurr* stopped the Coach, and served the Writ ; it was my Writ. Mr. *Hartwell* ordered the Coach to drive to the *Star and Garter Tavern* in *Drury-Lane* ; we went all along with it ; and when we came there, they led us to a little Room, and the Gentlewoman did not like it, but went into a forward Room, and this Gentlewoman (pointing to Mrs. Baynton) with her Band-box, was with them.

Council. Who was it ?

Mr. *Wakeman*. (pointing to Mrs. Baynton at the Bar, said 'twas she) I did not know but she was this Lady's Friend ; I never saw any of them before in all my Life. Mr. *Hartwell* went down, and Mrs. Baynton ; and I thought she went to fetch Madam *Rawlins's* Friends. Mr. *Hartwell* came to the young Lady, and said, You must go to my House. The young Gentlewoman said, O Lord, don't part us. But he did so, and put her into a Coach. I saw the Gentlewoman going, but did not go with her myself, for I was stopped by a Gentleman of my Acquaintance ; but when I came to Mr. *Hartwell's* House, I said, Mr. *Hartwell*, Where is the young Gentlewoman ? He told me she was below Stairs. I told him that I had something of Business elsewhere. I asked him, and he gave me Leave to go. I went, and when I returned back to Mr. *Hartwell's* House, I asked for him, but his Wife told me he was not within. I asked where the young Gentlewoman was ? She answered, that she was gone with her Husband to the *Vine-Tavern* in *Holborn*. I went and asked for Mr. *Hartwell* ; they told me he was above Stairs. I went up, and found him with Mr. *Spurr*, and a *Tallow-Chandler*. I should have told you, that when I went from Mr. *Hartwell's* House about my Errand, I saw Mr. *Holt* standing near the Back-Door of the *Five-Bell Tavern* in *Witch-street*, and he asked me where Mr. *Hartwell* was ? I told him he was at Home. Then *Holt* asked for the Woman, I said she was at *Hartwell's*—Afterwards I saw Mr. *Swendsen* at the *Five-Bells* with *Holt*, and he gave me a full Glass of *Claret* ; I drank it off, and away I went. When I went to the *Vine-Tavern*, Mr. *Hartwell*, Mr. *Spurr*, and a *Tallow-Chandler* were in a Room by themselves. I saw that Gentleman (looking out of a Window) that was with *Holt* ; he looked at me, and I at him. Mr. *Hartwell* asked me if I had dined ? I told him No. He said there were some Stakes. I dined there ; then the Gentlewoman, viz. Baynton, at last came out of Door and called Mr. *Hartwell* to her. When Mr. *Hartwell* came from her, he told me the Matter was made up, and the Prisoner was discharged.

L. C. J. *Holt*. Who was the Writ against ?

Mr. *Wakeman*. Mrs. *Rawlins*.

L. C. J. *Holt*. When the Prisoner was discharged they gave you the Writ again ?

Mr. *Wakeman*. Yes.

L. C. J. *Holt*. Had you a Writ against Mrs. *Busby* ?

Mr. *Wakeman*. I had none against her.

Council. How far is it from *Hartwell's* House to the *Star and Garter-Tavern* ?

Mr. *Wakeman*. It is about a Furlong.

Council. What was your Writ for ?

Mr. *Wakeman*. But 20 l.

L. C. J. *Holt*. And you said you had an Action of 20 l.

Mr. *Wakeman*. My Lord, Mr. *Hartwell* said so. I do not know the Woman, but she will be shewed us.

L. C. J. *Holt*. Look at the Prisoner at the Bar. Was she in the Coach when Mrs. *Rawlins* was Arrested ?

Mr. *Wakeman*. Yes, yes. I had no ill Design in what I did.

L. C. J. *Holt*. Did you go behind the Coach ?

Mr. *Wakeman*. Yes, my Lord, I did.

The Writ produced and read in Court.

Mr. *Just. Gould*. Were you there at the *Star and Garter* when Mrs. *Busby's* Friends came to Bail her ?

Mr. *Wakeman*. When I came to the *Star and Garter Tavern*, the Gentleman came and asked me, whether I knew where Mrs. *Busby* was ? I told him I left her at the *Vine-Tavern*, and believed that there they might find her.

L. C. J. *Holt*. Was *Spurr* at the *Vine-Tavern* any Time ?

Mr. *Wakeman*. My Lord, I left *Spurr*, *Hartwell*, and the *Tallow-Chandler* at the *Vine-Tavern*.

Mr. *Serj. Darnel*. Was it Mr. *Hartwell* or *Spurr* that asked you to eat Stakes ?

Mr. *Wakeman*. It was *Spurr*.

Mrs. Baynton. Mr. *Wakeman*, Did you ever see me before the Arrest ?

Mr. *Wakeman*. No, I never saw you before then.

Mrs. Berkley Sworn.

Mr. *Serj. Darnel*. Pray look upon this Prisoner, Mrs. Baynton, Do you know her ?

Mrs. Berkley. Yes, Sir, I do know her.

Mr. *Serj. Darnel*. How came you to know her ?

Mrs. Berkley. By her lodging in Mrs. *Nightingale's* House, and no otherwise.

Mr. *Serj. Darnel*. Did you ever hear her speak of a Brother that she had ?

Mrs. Berkley. Yes, Sir, she said this Mr. *Swendsen* was her Brother.

Mr. *Serj. Darnel*. Mrs. *Rawlins*, Are you Sworn ?

Mrs. *Rawlins*. Yes, Sir.

Mr. *Serj. Darnel*. Stand forward a little. Do you give my Lord an Account of the whole Matter.

Mrs. Baynton. Mrs. *Rawlins*, speak the Truth, I desire nothing but Justice.

L. C. J. *Holt*. You are upon your Oath remember, and therefore speak nothing but the Truth.

Council. Give an Account of your Proceedings in the whole Matter.

Mr. *Serj. Darnel*. Do you know any of the Prisoners at the Bar ?

Mrs. *Rawlins*. Yes, I know them all, Mrs. Baynton, Mr. *Hartwell*, and Mr. *Spurr*.

L. C. J. *Holt*. Do you know them ?

Mrs. *Rawlins*. Yes, my Lord.

L. C. J. *Holt*. How came you to be acquainted with Mrs. Baynton ?

Mrs. *Rawlins*. My Lord, I came to be acquainted with her by her taking Lodgings at our House. She came and took Lodgings at Mrs. *Nightingale's* for a Month or Six Weeks. When her Month was out, she said her Business was done, and she must go into the Country.

Mr. *Serj. Darnel*. Give an Account of what happen'd to you on Friday the 6th of November.

Mrs. *Rawlins*. We were going to *Oxendon Chapel*, Mrs. *Busby* and I. Mrs. Baynton told us, she was going that Way, and invited us into her Coach ; she said she would set us down near the Chapel ; we accepted of her Invitation, and went with her. When we were at the *Broad Way* in *Dartmouth-Ground*, there was *Hartwell*, and Two more Bailiffs ; they stopp'd the Coach, and Mr. *Hartwell* got in. Said Mrs. *Busby*, to him, For Christ's Sake let us go out we owe no Man any thing. He said the Matter concerned Mrs. *Busby* and me, and he ordered the Coach to be driven to the *Star and Garter Tavern* in *Drury-Lane*.

Mr. *Serj.*

Mr. *Serj. Darnel*. Did any Body come into the Coach?

Mrs. *Rawlins*. Yes, Sir, Mr. *Hartwell*.

Mr. *Serj. Darnel*. Did he do any Thing to the People in the Coach?

Mrs. *Rawlins*. No, Sir, but ordered the Coach to go to the *Star* and *Garier* Tavern. When we came there we went up Stairs, and did not stay above a Dozen Minutes in one of the Rooms, but removed from thence to a Room forward: Mrs. *Baynton* was gone, and *Hartwell* sent up *Spurr*.

Mr. *Serj. Darnel*. Mistress, Pray look, Do you see the Man that came up to you?

Mrs. *Rawlins*. I suppose it was the Man that is next to Mrs. *Baynton*; if I be not mistaken it is him; I cannot be positive.

Mr. *Serj. Darnel*. Some of them came up to you and said, they must have the young Lady down Stairs?

Mrs. *Rawlins*. Yes, Sir; and Mrs. *Baynton* said, Nay. They after that forced me away.

Mr. *Serj. Darnel*. Who was it that did that?

Mrs. *Rawlins*. It was Mr. *Hartwell* that did it.

Mr. *Hartwell*. Who is Mr. *Hartwell*?

Mrs. *Rawlins*. Your self, Mr. *Hartwell*, took me about the Middle, and drove me down Stairs. I cried out Murder, and desired some good Body to go with me; he said, if I did not hold my Tongue he would send me to *Newgate* that Minute.

Mr. *Serj. Darnel*. Where did he carry you?

Mrs. *Rawlins*. He carried me from the *Star* and *Garier* Tavern to his own House.

Mr. *Serj. Darnel*. Where is his House?

Mrs. *Rawlins*. In *Witch-street*.

Mr. *Serj. Darnel*. How long did he keep you there?

Mrs. *Rawlins*. I do not know justly, but I think it was about an Hour.

Mr. *Serj. Darnel*. What did they do with you there?

Mrs. *Rawlins*. They put me into a Back Room, there was no Body with me: but at last Mrs. *Baynton* came in and pretended she was going by and heard my Name, and therefore came in. I was very much frightened. She said she had been at several of my Friends, but could get no Body to come. She told me she would send for her Brother, and he should be Bail for me.

L. C. J. *Holt*. You say she would send for her Brother to be your Bail?

Mrs. *Rawlins*. Yes, my Lord.

L. C. J. *Holt*. What followed then?

Mrs. *Rawlins*. She went for her Brother to come to be my Bail, and it was hardly half a Quarter of an Hour before she came in again with her Brother.

Council. What is her Brother's Name?

Mrs. *Rawlins*. *Swendsen*. Mr. *Hartwell* came into the Room where I was, and said, Is Mrs. *Rawlins*'s Friend come yet? Mrs. *Baynton* answered, Yes. They had a Coach prepared at the Door, and in that they carried me to the Tavern in *Holbourn*; there was in the Coach, Mrs. *Baynton*, her Brother, Mr. *Hartwell*, and I.

Mr. *Mountague*. Where did they carry you?

Mrs. *Rawlins*. To the *Vine-Tavern* in *Holbourn*.

Mr. *Mountague*. What did they do with you then?

Mrs. *Rawlins*. They carried me up Stairs, put me into a Room, I cannot tell exactly how long I was there.

Mr. *Mountague*. What did they do then?

Mrs. *Rawlins*. Then *Holt* was there to be the other Bail; they were very willing to take his Bail, but

were very scrupulous in taking Mr. *Swendsen*'s Bail. They told me, in short, that I must marry Mr. *Swendsen*, and that would put an End to it, or else I must go to *Newgate*.

L. C. J. *Holt*. Who said so?

Mrs. *Rawlins*. Mrs. *Baynton* said, If I did not marry her Brother, I must go to *Newgate*. I replied, that I would not marry without my Friends Advice; but I was not so much afraid of going to *Newgate*, as I was of being murdered, or sent away somewhere into the Country, where I might never see or hear of my Friends.

Council. How did they behave themselves in the Room?

Mrs. *Rawlins*. They importun'd me to marry Mr. *Swendsen*, and for that End Mrs. *Baynton* would have my Ring from my Finger; I would not let her have it, but she forced it away from me. I asked her what she would do with it? She told me, she would go and get a Wedding Ring made by it. She went and bought a Wedding Ring, and gave me my own again: Then the Minister and Clerk was brought into the Room; the Minister and Clerk came in and married Mr. *Swendsen* and me.

Mr. *Serj. Darnel*. How long did you stay in the Room after you were married?

Mrs. *Rawlins*. Not a Quarter of an Hour.

L. C. J. *Holt*. Where was *Hartwell*?

Mrs. *Rawlins*. They were in the Room over-against us.

L. C. J. *Holt*. Who brought the Parson into the Room?

Mrs. *Rawlins*. *Holt* brought them in.

L. C. J. *Holt*. Where did they carry you then?

Mrs. *Rawlins*. To Mr. *Blake*'s House in *Holbourn*.

L. C. J. *Holt*. Who went with you?

Mrs. *Rawlins*. No body but Mr. *Swendsen*, Mrs. *Baynton*, and my self.

L. C. J. *Holt*. What did they do then?

Mrs. *Rawlins*. They ordered the sheeting of a Bed, and put me to Bed.

Council. Was there any Compulsion in going to Bed, or did you go voluntarily?

Mrs. *Rawlins*. I did not go freely, but was forced to Bed; Mrs. *Baynton* asked me to go to Bed; after which she asked me the Reason why I would not go to Bed? Says I, my Reason is, because I don't care to go to Bed so soon.

Mr. *Serj. Darnel*. Who undressed you?

Mrs. *Rawlins*. Mrs. *Baynton* and Mr. *Blake*'s Daughter.

Mr. *Serj. Darnel*. How long was you in Bed?

Mrs. *Rawlins*. About an Hour or Two.

Mr. *Mountague*. When you went out, had you any Expectation to go any where else but to Church?

Mrs. *Rawlins*. No where but to Church, upon my Word.

Mr. *Mountague*. Did you go voluntarily to the Tavern in *Drury-Lane*, or against your Will?

Mrs. *Rawlins*. To be sure it was against my Will.

Mr. *Hartwell*. Did you see me, Madam, at the *Vine-Tavern* the Time that you were confined there?

L. C. J. *Holt*. Did you see *Hartwell* at the *Vine-Tavern* before you were married?

Mrs. *Rawlins*. Yes, Mr. *Hartwell*, you may remember that you were once in the Room where I was: I will give you an Instance of it; you were smoking a Pipe of Tobacco; Mrs. *Baynton* said to you, What would you have with her? You said I was the Prisoner.

L. C. J. *Holt*. Did they take the Bail that was offered?

Mrs. *Rawlins*.

Mrs. *Rawlins*. Mr. *Hartwell* said, he would consider it with Mrs. *Baynton*; and they all went out, and left me alone by my self. Mrs. *Baynton*, after they had consulted together, came in and told me that they refused the Bail.

Mrs. *Baynton*. When you were left by your self, Mrs. *Rawlins*, if you had not a mind to marry Mr. *Swendsen*, why did not you make your Escape.

L. C. J. *Holt*. Did she come there by her Consent?

Mrs. *Baynton*. No, my Lord, but when she was left to her self, she might have easily got away.

L. C. J. *Holt*. Mrs. *Rawlins*, You were left alone in the Room, Was there any Proposal of your Marriage to Mr. *Swendsen* made before that?

Mrs. *Baynton*. My Lord, if I may have leave to speak, they contracted Friendship almost a Month before.

L. C. J. *Holt*. Mrs. stay your Time. [To Mrs. *Rawlins*] Consider the Question.

Mrs. *Baynton*. My Lord, the Ring was bought before she was left alone, she knows it very well, and was looking upon it when I came into the Room again.

L. C. J. *Holt*. To Mrs. *Rawlins*. Had you the Ring before that?

Mrs. *Rawlins*. Not as I know of, my Lord.

Mrs. *Baynton*. You had the Ring upon your Finger, and said, it was a very handsome one; but I had bought it a little too wide for you.

Mrs. *Rawlins*. It is very ridiculous; I said no such Thing.

L. C. J. *Holt*. She was left in the Room alone, when you both went out; but it seems it was upon her Desire to be Bailed, and therefore she would not escape.

Mr. *Serj. Darnel*. Yes, yes, it was with the Intent to be Bailed that she did this.

L. C. J. *Holt*. Mrs. *Baynton*, it is now Time for you to make your Defence.

Mrs. *Baynton*. My Lord, I will. Mrs. *Busby*, when Mr. *Swendsen* came to her House first, called him her dearly beloved Likeness; Did not she say so Mrs. *Rawlins*?

L. C. J. *Holt*. Did you ever hear Mrs. *Busby* call Mr. *Swendsen* her dearly beloved Likeness?

Mrs. *Rawlins*. My Lord, I desire she may answer for her self.

Mrs. *Baynton*. Pray, my Lord, let her stand by her self a little, that no body may speak to her.

L. C. J. *Holt*. Did you ever hear her speak of Mr. *Swendsen*, that he was her dearly beloved Likeness?

Mrs. *Rawlins*. Yes, my Lord; I do not know but she might say so.

L. C. J. *Holt*. What, when Mr. *Swendsen* was by?

Mrs. *Rawlins*. No, my Lord.

L. C. J. *Holt*. Do you remember that you ever heard Mrs. *Busby* call him so?

Mrs. *Rawlins*. Once, my Lord, to Mrs. *Baynton*.

L. C. J. *Holt*. What say you Mrs. *Busby*, did you call him so?

Mrs. *Busby*. My Lord, I thought him very much like my Husband in one Part of his Face, and Mrs. *Baynton* her self call'd him my beloved Likeness.

Mrs. *Baynton*. My Lord, How could I call him her beloved Likeness, and never saw her Husband with my Eyes?

L. C. J. *Holt*. Well, what Questions will you ask?

Mrs. *Baynton*. My Lord, I will ask Mrs. *Rawlins* several Questions. The Second Sunday when I was at their House, Mrs. *Rawlins*, you know you staid at home, and I did so too; Did not you say then, that you wished Mr. *Swendsen* was there, when they were all at Church, did not you say so? Remember you are upon your Oath.

L. C. J. *Holt*. Upon your Oath, do you remember any such Thing?

Mrs. *Rawlins*. No, my Lord; and I would not for all the World say any thing but the Truth.

L. C. J. *Holt*. Did you, or did you not?

Mrs. *Rawlins*. Indeed, my Lord, I do not remember that ever I said any such Word.

Mrs. *Baynton*. Mrs. *Rawlins*, did you not come to my Bed-side often, and kiss and hug me, and would be talking with Pleasure of Mr. *Swendsen*?

L. C. J. *Holt*. Do you remember that you sat at her Bed-side, and spake of Mr. *Swendsen*, and kissed and hugged her?

Mrs. *Rawlins*. My Lord, indeed Mrs. *Baynton* did much talk of her Brother.

L. C. J. *Holt*. But did you talk of her Brother?

Mrs. *Rawlins*. My Lord, if I did say any Thing, I did not speak with a Design to have him; it may be I might do so.

Mrs. *Baynton*. Mrs. *Rawlins*, did not you bid me to tell him, that there was a good Lady, that had her Fortune in her own Hands, and at her own Disposal, that would make him a very good Wife? Did not you tell me this?

Mrs. *Rawlins*. I did not say so; but said there was a very good Lady that would make a very good Wife whenever she married; but did not say, that she would make him a good Wife.

Mrs. *Baynton*. Mrs. *Rawlins*, Have not you been the most uneasy Woman in the World, when he did not come to dine at Mrs. *Nightingale's*?

L. C. J. *Holt*. Speak out.

Mrs. *Baynton*. My Lord, Mr. *Swendsen* had a Cold, and she told me, she could not be easy till he was cured of it.

Mrs. *Rawlins*. I never said such a Thing. Can you say so, Mrs. *Baynton*?

Mrs. *Baynton*. My Life is upon it, and I will not for my Life say any Thing but the Truth.

L. C. J. *Holt*. Did you express any such Thing to Mrs. *Baynton*, of your Uneasiness till Mr. *Swendsen* had got rid of his Cold?

Mrs. *Rawlins*. No, my Lord.

Mrs. *Baynton*. But, Madam, Did not you seek to tell me these Things by your self? You told me, you had a great deal of ill Usage; and told me, you lived more like a Servant than any thing else: You said, that when there was another Lodger there, because you went to see her in her Room, you were chid severely for it, and charged never to go near her.

Mrs. *Rawlins*. I do not know but that I might do it.

L. C. J. *Holt*. But why did you do it?

Mrs. *Rawlins*. My Lord, I can give you no Account?

L. C. J. *Holt*. Did you bid her tell him, that you knew a Gentlewoman, at her own Disposal, that would make him a very good Wife?

Mrs. *Rawlins*. My Lord, I do not know but that I said to Mrs. *Baynton* I wished her Brother a very good Wife.

L. C. J. *Holt*. But did you say, that you knew a Gentlewoman, at her own Disposal, and a Fortune, that would make him a very good Wife?

Mrs. *Rawlins*.

Mrs. *Rawlins*. My Lord, I did not speak with a Design to marry her Brother, but was resolved to take the Advice of my Friends.

Mrs. *Baynton*. Did not you say, that you wish'd your self Mr. *Swendsen's* Wife, several Times?

L. C. J. *Holt*. Did you ever tell her, that you wish'd your self *Swendsen's* Wife?

Mrs. *Rawlins*. My Lord, I don't know whether I did or no.

L. C. J. *Holt*. How came you to have such a good Opinion of Mr. *Swendsen*?

Mrs. *Rawlins*. Mrs. *Baynton* told me he was a very good-temper'd Gentleman, and never out of Humour.

L. C. J. *Holt*. Would you marry a Man for his good Humour only?

Mrs. *Rawlins*. I never had married, if there had not been a Force put upon me.

L. C. J. *Holt*. Did you tell Mrs. *Baynton*, that you would never marry, but by the Consent of your Friends?

Mrs. *Rawlins*. Yes, I did.

Mrs. *Baynton*. My Lord, I never heard her say so in all my Life.

L. C. J. *Holt*. Did you tell her, notwithstanding what you said of Mr. *Swendsen*, that you would never marry without the Consent of your Friends?

Mrs. *Rawlins*. My Lord, I did often say, that I would never marry without their Consent.

Mrs. *Baynton*. Mrs. *Rawlins*, did not you, when you were acquainted with Mr. *Swendsen*, slight Mr. *Pugh*?

L. C. J. *Holt*. Did you shew any Dislike of Mr. *Pugh*, upon *Swendsen's* Account?

Mrs. *Rawlins*. My Lord, I cannot tell; if I did shew any Ill-will to Mr. *Pugh*, it was not with a Design to have Mr. *Swendsen*.

L. C. J. *Holt*. Hath there been any Courtship carry'd on betwixt Mr. *Swendsen* and you?

Mrs. *Rawlins*. My Lord, no more Courtship to me than to all the Family; my Lord, I did not perceive that Mr. *Swendsen* shewed me more Favour than any in the rest of the Family.

L. C. J. *Holt*. Have you any more Questions, Mrs. *Baynton*?

Mrs. *Baynton*. When Mr. *Swendsen* was walking in the Garden, did not you say, that you would go and walk with him, but that they would take notice of it? But pray, said I, do not, you may make them angry by it. Did not you say, that you would go up, and look out of the Window, with Expectation to have been called down by me? Did not you walk with Mr. *Swendsen*, and discourse with him about the Things of Love, and he said, he would have no body but you, and you likewise said, that you would have no Body but him?

L. C. J. *Holt*. Were you alone with Mr. *Swendsen*, at that Time in the Garden?

Mrs. *Rawlins*. I think I was with him in the Garden at that Time, but not alone.

Mrs. *Baynton*. My Lord, she was alone with Mr. *Swendsen* in the Garden several Times.

Mrs. *Rawlins*. I can speak it upon my Oath, that I was never in the Garden with Mr. *Swendsen*, but that Time.

Mrs. *Baynton*. Did not you say that you would have no body but Mr. *Swendsen*?

Mrs. *Rawlins*. No, I never said any such Thing.

Mrs. *Baynton*. What made you go up Stairs, and cry for an Hour together; and said to my Servant, that you would have your Belly full of

crying, before you went away: *Betty* can testify this, she is in the Court, but must not be heard.

L. C. J. *Holt*. She may be called, if you will.

Mrs. *Baynton*. Pray Mrs. *Rawlins*, did you not once come up to me, and said you had been twice there, and wished that you could see Mr. *Swendsen*, and that you could not be easy without his Company?

Mrs. *Rawlins*. As I am upon my Oath, I never said such a Thing.

Mrs. *Baynton*. Mrs. *Rawlins*, did not you say a Hundred Times, that you loved Mr. *Swendsen*, above any Man in the World?

Mrs. *Rawlins*. I never said any such Thing in my Life.

Mrs. *Baynton*. Did not you peel Walnuts for Mr. *Swendsen*, and desire me to carry them to him;

Mrs. *Rawlins*. I never did so.

Mrs. *Baynton*. My Lord, I would have her asked; whether she consented to be taken away, directly, or indirectly?

L. C. J. *Holt*. What say you to that Mrs. *Rawlins*?

Mrs. *Rawlins*. My Lord, It was all against my Knowledge and Will, I never consented to it.

Mrs. *Baynton*. Mrs. *Rawlins* is not this true, that you pulled your Ring from your Finger, and gave it me to have a Wedding Ring made by it, which discovered your free Consent to the Marriage?

Mrs. *Rawlins*. No, Mrs. *Baynton*, do you think that I would have given any manner of Consent to be married to him, without the Advice of my Friends, if I had not been forced to it?

Mrs. *Baynton*. Did not you send all Mr. *Pugh's* Letters back again, and desired him in your Letter to come no more at you; and that you would have nothing to say to him, and that if he came he would put you to such a Fright that you would not be capable of seeing him?

L. C. J. *Holt*. Did you tell her so?

Mrs. *Rawlins*. I do not remember that I told her any such Thing.

L. C. J. *Holt*. Did you send back Mr. *Pugh's* Letters?

Mrs. *Rawlins*. I do not remember that I spake any Thing to Mrs. *Baynton*, tho' I did send back the Letters.

L. C. J. *Holt*. Why did you so?

Mrs. *Rawlins*. It was not upon Mr. *Swendsen's* Account that I did so.

L. C. J. *Holt*. Do you remember that you repeated to her any of the Contents of a Letter that you had written to Mr. *Pugh*, about sending back his Letters?

Mrs. *Rawlins*. No, my Lord, I did not.

Mrs. *Baynton*. My Lord, I had it from her own Mouth, else how could I have known of it? I did not know it till she told me. Mrs. *Rawlins*, how can you say you told me not these Things?

Mrs. *Rawlins*. No, Mrs. *Baynton*, I did not.

Mrs. *Baynton*. Mrs. *Rawlins*, you do not say true. I never knew nothing but what I had from her own Mouth.

L. C. J. *Holt*. You sent his Letters back again, pray upon what Account did you do so?

Mrs. *Rawlins*. It was upon Things that we heard of Mr. *Pugh*, that was not very handsome. Mrs. *Busby* can tell the same.

L. C. J. *Holt*. Did the Courtship break off?

Mrs. *Rawlins*. My Lord, it was but the Day before this Thing happen'd.

Mr. Serj. Darnel. Mrs. Busby, did you know of the sending back the Letters? And who was it that put Mrs. Rawlins upon sending of them back?

Mrs. Busby. Yes, Sir, it was by our Advice.

Mr. Serj. Darnel. Whose Hand was it that wrote the Letter?

Mrs. Busby. Mrs. Berkley.

Mr. Serj. Darnel. Was it by her Inclination and Consultation of her Friends?

Mrs. Baynton. Had not you a mistrust, that there was Love betwixt Mr. Swendsen and Mrs. Rawlins?

Mrs. Busby. I had no mistrust of any such Thing.

Mrs. Baynton. Why did you tax me with it then?

L. C. J. Holt. When was this?

Mrs. Baynton. My Lord, it was at the Limner's; I heard something as if Mrs. Rawlins should speak Words of Discouragement to Mr. Pugh. Mrs. Busby, when I told her of it, she denied it, and said, Mrs. Baynton, I do not know this. But here is Mrs. Rawlins her self, and she shall answer for her self, if such a Thing is: She thought, if there was any Strangeness between Mrs. Rawlins and Mr. Pugh, it was occasion'd by Mrs. Rawlins's Love to Mr. Swendsen. When they asked my Advice of the Thing, Mrs. Rawlins and Mrs. Busby told me, that Mr. Pugh had Three or Four Thousand Pound Stock: I said, if Mr. Pugh had such a Love for Mrs. Rawlins as he pretended to, that he would do well to have drawn out One Thousand Pound, and given it to the young Woman.

L. C. J. Holt. Mrs. Baynton, have you any thing to ask?

Mrs. Baynton. Perhaps I may have more to say, but I am in Confusion, my Lord: Mrs. Busby, as well as Mrs. Rawlins, was never easy, but when Mr. Swendsen was there.

L. C. J. Holt. Mrs. Rawlins, upon the Oath that you have taken, did you consent to your being taken away after the Manner as you were, or gave any Encouragement to Mr. Swendsen?

Mrs. Rawlins. No, my Lord, I do not know that I gave him any manner of Encouragement.

Mrs. Baynton. My Lord, she gave him all the Encouragement imaginable.

L. C. J. Holt. I pray, Mrs. Baynton, do not put your self into a Passion: I speak in Favour to you; you will not deliver your self so well in Passion, as without.

Mrs. Baynton. She lay baiting of me Night and Day, and always speaking to me of her Love to Mr. Swendsen; and to hear her speak the quite contrary, really it moves me, my Lord.

Betty, Mrs. Baynton's Maid, called.

Mrs. Baynton. Betty, have not you told me, that Mrs. Rawlins said she would fill her Belly with Crying before she went, and that she would enquire for Mr. Swendsen?

Betty. No, I said no such Thing.

L. C. J. Holt. Speak the Truth, without being bias'd by one Side or other. Did you hear that ever Mrs. Rawlins went into the Chamber to cry, or enquire for Mr. Swendsen?

Betty. No, my Lord, I never heard it.

Mrs. Baynton. My Lord, I never was the Woman that asked this Maid any Question any way, but she frankly told me all this; and she often said, that she was sure Mrs. Rawlins had a very great Kindness for Mr. Swendsen: And one Day she hearing of such a Noise of Laughing, and the Doors flinging, that she went down Stairs to see what was the Matter; Mr. Swendsen was there then, and Mr. Pugh. Mr. Pugh was so offended at Mrs. Rawlins's Mirth, that he

went away in a great Distaste; and she said, that Mrs. Rawlins was never easy, but when she was talking of Mr. Swendsen.

Mrs. Baynton. Betty, did not you say, that she asked you several Times of Mr. Swendsen, and wished he would come and dine with them?

Betty. I never heard her but once.

Mr. Swendsen's Jury return to give in their Verdict all Twelve.

Gentlemen, are you agreed in your Verdict?

Ans. Yes.

Who shall say for you?

Ans. The Foreman.

Erasmus Johnson, a Dane, and one of the Jury said, He was not satisfied.

Johnson. If it shall please you, my Lord, I am not satisfied; I do not find, from any of the Evidence that hath been given, that he was privy to the Arrest; my Conscience will not let me comply with the rest, that he is Guilty.

L. C. J. Holt. What kind of a Conscience have you? Do you not believe what the Witnesses have said? Have you any Evidence that Mrs. Rawlins went away with her own Consent?

Johnson. I do not find, my Lord, that it was done by him.

L. C. J. Holt. Did not he go to Hartwell's House, and from thence, while she was under the Force, went with her to the Vine Tavern, where he married her? Which was a forceably taking by him.

Johnson. But, my Lord, it was with her Consent; else how could he marry her?

L. C. J. Holt. Tho' she did consent to the Marriage; yet if she was taken by Force, it is the same Offence.

Foreman. My Lord, he did agree that this was a Point of Law, and would leave it with your Lordship; he believes she was forced, but he thinks he was not privy to the Woman's Actions that he employed.

Johnson. My Lord, I do not see there were any Evidence against him.

L. C. J. Holt. When the Bailiffs were employed to take her, it appears by the Sequel, that it was with an Intent that he might marry her: What can be plainer? Govern your self by Reason.

Johnson. I believe that there was a Force by the Bailiffs.

L. C. J. Holt. Did not he take the Advantage of the Force? And was that to any other Purpose, but for him to marry her? There was no Cause of Action either against her or Mrs. Busby.

Johnson. It proved so, my Lord.

Foreman. My Lord, he would know whether he were in that Statute, in Point of Law, if this Maid did consent to it?

Judge Powel. He was guilty of the Thing; he was consenting to it afterward.

Johnson. They were in Streets and Houses before they married; and so, if she had not consented, she might have cried out.

Judge Powel. Did not he go to Hartwell's House, and to the Vine Tavern?

Johnson. I cannot believe him guilty, as I would answer it before God and the World.

L. C. J. Holt. Pray consider, do not give a Verdict contrary to plain Evidence.

Johnson. By all the Circumstances, she was as willing as he: All that I can say to it, my Lord, is that he had something of Connivance with this Woman.

Foreman. He believed that all along.

Johnson. I say, Mr. Foreman, at the Beginning there was such a Thing, as was done by Mrs. Baynton, without his Knowledge.

Foreman. He did consent before you to take your Lordship's Judgment; that if your Lordship be of Opinion that he was concern'd in the first Force, then that will carry it.

Johnson. I do not know that she complain'd to any body, my Lord: I do not speak for any Favour or Affection, my Lord; but 'tis merely out of a tender Conscience.

Foreman. He agreed, that if the first Force was within the Statute, then he would comply; and that we came away upon, to have your Lordship's Opinion. He believed, Mr. Swendsen did employ the Woman.

L. C. J. Holt. Do you agree?

Johnson. I cannot, but I leave it to your Lordship's Pleasure.

Mountague. The Fact he does agree to; he does agree that she was taken away by Force.

L. C. J. Holt. Was she taken away by Force?

Johnson. She was by the Bailiffs.

L. C. J. Holt. Did not he take the Advantage of this?

Johnson. She was under the Force before.

L. C. J. Holt. Besides, Did not you perceive that she consented for fear she should go to Newgate? The Law of England says, that is a void Consent, which is obtained out of Fear.

Johnson. My Lord, I don't know there was any Violence used by him either in Word or Deed.

L. C. J. Holt. Was not he present when Violence was used?

Johnson. Yes, my Lord.

L. C. J. Holt. Then was Violence used by him.

Johnson. But She was very well satisfy'd both before and after she was married.

L. C. J. Holt. She was under Force, before she was married; and indeed, all that Night, and afterwards.

Mr. Johnson. She was not hindred to send Letters.

Coun. Who would you have carried them, the Bailiffs, or Mrs. Baynton?

Johnson. No, my Lord; but somebody for half a Crown, or a Crown.

L. C. J. Holt. It appears very evident, if you will believe Witneses, that she was under a Force, before she was married, when she was married, all Night after, and the next Day when she was at the Recorder's. If you are not satisfy'd, I'll say no more, not one Word more.

Foreman. We must go my Lord, and have been Fasting all Day, He is prepar'd for Fasting, if it be for a Day, or two or three.

Judge Powel. The Question is now, Whether you do not believe, upon all this Evidence you have heard, whether this Lady was not under an Arrest, and taken by these Bailiffs?

Johnson. Yes, I do believe that; but I do not believe Mr. Swendsen employed them; all that I speak upon is this, that she had her free Liberty.

Foreman. My Lord, he was resolv'd to stand by what your Lordship should say.

Judge Powel. If he did not set them to work, yet his Act afterwards made it as bad as if he had actually employ'd the Bailiffs.

Johnson. I can say no more, I must agree with the rest.

Gentlemen, Are you agreed?

Foreman. Yes, my Lord, we are all agreed now.

Then, Is he Guilty, or not Guilty?

Foreman. He is Guilty, — And so you say all, Yes.

What Goods or Chattles, &c.?

Foreman. We know of none.

L. C. J. Holt. Mrs. Baynton, Will you go on?

Mrs. Baynton. I hope your Lordship will take Notice that my Servant own'd it once.

L. C. J. Holt. What was it?

Mr. Mountague. Only whether he was to dine there.

Mrs. Baynton. That which I said, my Lord, she said to me.

Mrs. Baynton. Mrs. Rawlins, Will you be pleas'd to answer me some Questions?

Mrs. Rawlins. I will.

Mrs. Baynton. Did not you sit down in the great Chair in the Dining-Room, and you said, now I must go to Bed? Did not you pluck off your Things, and gave them to me, and I gave them to Mr. Blake's Daughter?

Mrs. Rawlins. I consider Mrs. Baynton, that you undressed me.

Mrs. Baynton. You sat in the Chair, and undressed your self, How can you deny it?

Mrs. Rawlins. Mrs. Baynton, I can deny it, for I did not.

Mrs. Baynton. Nay, more than that, when you were in Bed, Did not you call to Mr. Swendsen, my dear Husband, Why do not you come to Bed?

Mrs. Rawlins. I said no such thing.

L. C. J. Holt. Where was this?

Mrs. Baynton. My Lord, it was at Mr. Blake's.

Mrs. Baynton. Did not you say, Come to Bed my dear Husband, you must love no Body in the World but me?

Mrs. Rawlins. No, Mrs. Baynton, I did not; I have taken an Oath this Day, and I said no such thing.

Mrs. Baynton. Did not you say, that you loved him above all the Men in the World?

Mrs. Rawlins. No, Mrs. Baynton, I did not tell you any such thing.

Mrs. Baynton. Did not you say these Things?

Mrs. Rawlins. No, Mrs. Baynton.

Coun. Speaking to Mrs. Baynton, said, Do you know that ever Mrs. Rawlins writ any Letters to Mr. Swendsen?

Mrs. Baynton. She would; but I would not let her.

L. C. J. Holt. Why would you not let her?

Mrs. Baynton. I told her I would not carry any Letters to him, but if she desired me to tell him any thing by word of Mouth, I would do it; and, my Lord, when Mrs. Rawlins was Arrested, I going down *Witchstreet*, the Coach that she was in coming along then, and I seeing her in it, that was the only Reason that I went into the Bailiff's House. When I came there, she hung about me, kissed me, and said she desired me to stand by her; when your Lordship hears, you will believe me no other than a Friend to her. She begged me not to leave her. I offered Bail to Mr. Hartwell, but he would not take it; but said I behav'd my self sawcily. And when Mr. Swendsen came in, she said, now she was happy. Besides, my Lord, when he was there, he did not desire her to go out of the House.

L. C. J. Holt. If you had no Design but for her Good, How came you to Mrs. Nightingale's upon

on such a Design with Pretence that you had a Law-Suit, &c. ? And why did you carry her out in the Coach, in order to be Arrested ?

Mrs. Baynton. My Lord, it was not the first Time that they went with me in a Coach, they desired me several Times to set them down, and I did so.

L. C. J. Holt. Why did you this ? You pretended that you had a Law-Suit, and that you came to Town about it, and it appears not that you had any.

Mrs. Baynton. No, my Lord, I did not.

Mrs. Nightingale. My Lord, It was Mrs. St. John that recommended Mrs. Baynton to me.

L. C. J. Holt. We know that.

Mrs. Baynton. If I were such a Woman as they represent me to be, Why did they not warn me out of their House. Mrs. Rawlins, say the whole Truth, and remember that you are upon your Oath, I desire not Favour or Affection. Did not you say to Mr. Swendsen, This is my own dear Husband, and this is the Ring that married us ? Did not he begin to speak, and you said to him, Hold your Tongue, and let me speak ?

Mrs. Rawlins. Mrs. Baynton, you know I was very much intoxicated, I hardly knew I had a Head.

Mrs. Baynton. Mrs. Rawlins, you can drink your Glass of Wine as well as any Body else. Mr. Swendsen was often there at Cards, and she was the most uneasiest Creature in the World when he was not her Partner. Did not you desire me to let you sit by him in particular ?

Mrs. Rawlins. No, I did not.

Mrs. Baynton. Mrs. Rawlins had said this several Times to Mr. Swendsen, to desire him to sit by her. We play'd at Cards, and sav'd the Winnings till it should come to 20 s. and designed it for a Treat. Did not you say you would treat Mr. Swendsen, and would send for Walnuts and Apples ? But I said, No, you shall not ?

Mrs. Rawlins. I did send for Walnuts and Apples ; but it was not with a design to pleasure Mr. Swendsen.

L. C. J. Holt. Mrs. Baynton, Why did you say Mr. Swendsen was your Brother ?

Mrs. Baynton. I never said he was my own Brother.

L. C. J. Holt. You said it.

Mrs. Baynton. No, my Lord, I said he was my Sister-in-Law's Husband.

L. C. J. Holt. How was she your Sister-in-Law.

Mrs. Baynton. By Adoption, my Lord.

L. C. J. Holt. By Adoption, What do you mean by that ?

Mrs. Baynton. Mrs. Rawlins, if you had no mind to him, Why did you give him such Encouragement, as to kiss him, and go betwixt his Legs and kiss him ?

Mrs. Rawlins. I take it upon my Oath, that I never did so in all my Life.

Mrs. Baynton. Did you not love him ?

Mrs. Rawlins. No, not well enough for to make him my Husband.

Mrs. Baynton. My Lord, It is very hard that all these Things that I have said to her, are all true, and she hath made a Resolution to say nothing but No.

L. C. J. Holt. Mrs. Rawlins, Did you design to have Mr. Swendsen for your Husband ?

Mrs. Rawlins. My Lord, I was threatned to be sent to Newgate, if I did not marry him. You know, Mrs. Baynton, that you said, that if I did not marry your Brother, they would carry me to Newgate.

Mrs. Baynton. I never in my Life said any such thing.

L. C. J. Holt. Pray, Mrs. Baynton, give an Account how you have lived ?

Mrs. Baynton. I never run into any Body's Debt.

L. C. J. Holt. Had you a Husband ?

Mrs. Baynton. Yes, my Lord.

L. C. J. Holt. How long hath he been dead ?

Mrs. Baynton. Eight Years To-morrow.

L. C. J. Holt. But you have had a Child lately, within this four Months : Are you married now ?

Mrs. Baynton. Yes, my Lord, I am married.

L. C. J. Holt. How do you prove that ?

Mrs. Baynton. I could give your Lordship an Account ; but it is not proper now, before the whole Court.

L. C. J. Holt. Is it not proper now ?

Mrs. Baynton. No, my Lord, for some Reasons.

L. C. J. Holt. I think it is very proper. Pray give an Account how you have lived ?

Mrs. Baynton. I have a Sister at Barbadoes that hath been very kind to me.

L. C. J. Holt. Was you married to Mr. Baynton ?

Mrs. Baynton. Yes, my Lord.

L. C. J. Holt. Mr. Hartwell, Who directed you to take out this Writ against Mrs. Rawlins, at the Suit of one Jones ?

Mr. Hartwell. My Lord, I was sent for to the Star and Garter Tavern in Drury-Lane, by Mr. Holt.

L. C. J. Holt. Where is he ?

Mr. Hartwell. He is not yet taken. He sent for me twice before I went. When I came to him, I received Money for a Writ against that Lady ; on which I sent my Assistant for a Writ.

L. C. J. Holt. Who was your Assistant ?

Mr. Hartwell. (Pointing to Spurr, said, he was his Assistant). I sent the Writ to Mr. Wakeman, to get him to serve it. He was not at Home, and I went to him the next Morning. I asked him whether he would serve the Writ, he told me he would ; and I told him the same that Mr. Holt told me, that it could not be done till Friday Morning. On Friday Morning Mr. Holt went with me, and these Officers, Wakeman and Spurr. He bid us be ready, and said the Coach was coming. So we served the Writ as we were ordered, and went to the Star and Garter Tavern in Drury-Lane ; from thence I carried her to my House. If I had had any mistrust of any bad Design, I would have carried her back again. But I came forward with her to my House. In a little time after she had been there, came Mrs. Baynton, and one that is gone now [meaning Mr. Swendsen] was sent for, by some Stratagem that I knew not of. They being together, told me, that every thing was agreed of and made easy.

L. C. J. Holt. What was made easy ?

Mr. Hartwell. The Debt, as I thought, my Lord. When I carried the young Gentlewoman first to my House, I left her with my Wife and a young Woman. When I came Home again, I found Mr. Swendsen and this Gentlewoman there, who told me, that every thing was made easy. On which they desired to go to any Tavern, I knew not where : But they agreed to go to the Vine Tavern in Holbourn.

L. C. J. Holt. Why did you take her from her Friend *Mrs. Busby*.

Mr. Hartwell. It is usual with Officers to do with Prisoners as they please.

L. C. J. Holt. That is a barbarous Thing to separate them one from another, when you could apprehend there was no Danger of being rescued.

Mr. Hartwell. My Lord, I beg your Lordship's Pardon, I have no Counsel but my self; I may speak Things in Point of Law that may prejudice my Life; but as to the Purpose I'll speak the Truth.

L. C. J. Holt. You made her put on her Mask; you forc'd her to it.

Mr. Hartwell. Mrs. *Rawlins*, Did I force you to put on your Mask?

Mrs. Rawlins. Yes, he forced me, but I would not at first; but he forced me. When I cry'd out Murder, he said, Put on your Mask, and hold your Tongue, or you shall go to *Newgate*.

L. C. J. Holt. What Writ had you against *Mrs. Busby*?

Mr. Hartwell. There was no such thing, my Lord.

L. C. J. Holt. You said you had a Writ against *Mrs. Busby*, and another against *Mrs. Rawlins*.

Mr. Hartwell. My Lord, as to a Writ against the young Lady, there was one; I know no other positively.

L. C. J. Holt. Why did you refuse *Holt's* and *Swendsen's* Bail.

Mr. Hartwell. It was no such thing, my Lord; I cannot help what the People swear: I hope to prove to the contrary, both from the beginning to the end.

L. C. J. Holt. Why did you part with your Prisoner at the *Vine Tavern* without Bail?

Mr. Hartwell. My Lord, I no sooner came into the *Vine Tavern*, but the Person that employ'd me, gave me the Money; which was this Woman [pointing to *Mrs. Baynton*].

Mrs. Baynton. You said *Holt* employ'd you. I gave him no Money, my Lord; and he declared, that he never saw me before in his Life.

Mr. Parker called.

L. C. J. Holt. Where do you live?

Mr. Parker. I lived at the *Star and Garter* then, and *Mr. Holt* was there, who sent me for *Mr. Hartwell*.

Mr. Hartwell. My Lord, when I came there, *Mr. Holt* was drinking, and it was all out but a Glass. He asked me to drink; which I did. Then we went from the *Star and Garter* down to the *Mitre* in *Westminster*, which was *Holt's* House. Being there, and I smoaking a Pipe, in came this Lady [pointing to *Mrs. Baynton*] and gave me Money for a Writ. I sent my Assistant for the Writ, and the first Person I lit off, which was *Mr. Wakeman*, I made use of to assist me in it. When I serv'd it at the *Star and Garter Tavern*, this Gentlewoman [pointing to *Mrs. Baynton*] ask'd me where I lived? I said in *Witchstreet*. Said she, take care of her (*Mrs. Rawlins*) and take her along with you to your House, or you will lose your Money. So I carried her to my House, and having Business elsewhere, I left her with my Wife, and a young Woman to keep her Company. When I came again, I found *Mr. Swendsen* and this Gentlewoman there drinking a Pint of Sack. They told me if I would go to any Tavern, the Business should be made up. We took Coach and went to the *Vine Tavern*, and there the Matter was made an end of. They told me that they would satisfy me for my Trouble on *Monday*

Night, if I would meet them at *Mr. Holt's*. Away I went, and was taken ill to that Degree that I thought I should have died.

L. C. J. Holt. How can you prove that she employ'd you.

Mr. Hartwell. I believe I shall have somebody to prove that. But, my Lord, the main Witness of mine is not come in, and that is *Mr. Holt*.

L. C. J. Holt. He is fled.

Mr. Hartwell. But, my Lord, I suppose his Wife is here. My Lord, I hope you will allow *Mr. Wakeman* to come into the Court, that I may ask him some Questions.

Justice Powel. A Woman cannot be a Witness for or against her Husband; Then for what reason should she be called?

Mr. Hartwell. What can be more material than my going to *Holt's*? I have no other Persons to appear for me.

L. C. J. Holt. Did *Holt* first employ you?

Mr. Hartwell. He first sent for me, my Lord.

L. C. J. Holt. Have you any other Witnesses?

Mr. Hartwell. My Lord, I thought they call'd for *Wakeman*.

Mr. Wakeman called.

L. C. J. Holt. Ask him what Questions you will.

Mr. Hartwell. *Mr. Wakeman*, Who was it employ'd me.

Mr. Wakeman. He never told me who employ'd him till he came to the *Recorder's*, and then he told me that this Woman [pointing to *Mrs. Baynton*] employ'd him. The *Recorder* ask'd me who it was employ'd me? *Hartwell* made Answer, and said, I employ'd him; and said likewise, that the Woman brought him Money for the Writ.

Mrs. Baynton. I never gave *Hartwell* Money, nor employed him, nor confessed to the *Recorder*.

Mr. Wakeman call'd a Witness, who said for *Hartwell*, that 'twas *Mrs. Baynton* confessed before the *Recorder* upon her Examination, that she gave Money to, and employ'd *Hartwell* to sue out a Writ against *Mrs. Rawlins*, at the Suit of *W. Jones* for 20*l.* and gave for Reason, on farther Examination, that the said *Jones* owed *Mrs. Baynton* 20*l.* And he wrote to *Mrs. Baynton* to get Arrested *Mrs. Rawlins* for 20*l.* due from her to *Jones*; and that on such Arrest, *Mrs. Rawlins* would pay the Money to *Mrs. Baynton*.

L. C. J. Holt. Have you any thing more to say?

Mr. Hartwell. My Lord, I never saw *Mr. Swendsen* before he came to my House with *Mrs. Baynton*, when the young Gentlewoman was there. When I came in, they were drinking a Pint of Sack together. The young Lady was very free to go the *Vine Tavern*. Madam, Were you not free to go?

Mrs. Rawlins. I do not deny but I was free to go.

Mr. Hartwell. Did we offer any Rudeness to you at that Place?

Mrs. Rawlins. No, not then.

L. C. J. Holt. That is the Thing you are to answer to, your taking her away by Force.

Mr. Hartwell. My Lord, I know nothing of it; I cannot help it, my Lord, there is nothing in it.

Mr. Hartwell. *Mr. Wakeman*, Did I know any thing of your being with *Mr. Holt* and *Mr. Swendsen* at the *Five-Bell Tavern*?

Mr. Wakeman. I don't know that you did.

Mr. Hartwell. No, my Lord, I knew nothing of it till last *Thursday* he told me of it.

L. C. J. Holt. Who sent for *Mr. Swendsen*?

Mrs.

Mrs. Rawlins. Mrs. Baynton.

Mr. Hartwell. Mrs. Rawlins, Was I in the House at that Time?

Mrs. Rawlins. No, I did not see you there then.

Mr. Hartwell. My Lord, with Submission to your Lordship, I understand by something I have heard, since I have been in Custody, that this Gentlewoman, Mrs. Baynton, said to Mrs. Rawlins. Shall I send for my Brother?

L. C. J. Holt. Do you keep a Publick House?

Mr. Hartwell. No, my Lord, only a Prison-Room, but sell no Drink: This Gentlewoman was in the Parlour all the while.

L. C. J. Holt. Have you any thing more to say?

Mr. Hartwell. Nothing at all, my Lord; I was rul'd by the Person that employ'd me.

Just. Powel. What did you apprehend by this?

Mr. Hartwell. She told me there was one gone for; and she said she would bring a Gentleman to pay me the Money.

L. C. J. Holt. Mr. Spurr, What say you?

Mr. Spurr. I know nothing more of the Matter, than Mr. Hartwell's giving me Money for taking out the Marshal's Court Writ, and I was employ'd by him.

L. C. J. Holt. When Mrs. Busby cry'd out, did you not say, What have you got by your Bawling?

No Answer made.

Mr. Mountague. We have a few Words to reply, if the Prisoners have done. The Gentlewoman at the Bar insists upon it, that Mrs. Rawlins was consenting to the Matter, was in Love with Mr. Swendsen: We think, not only by the Evidence given, but by what they say themselves, that she was carry'd away by Force. Indeed when she was taken into Hartwell's House, there was no body by at that Time, but those she was not afraid of. To conclude; if there was any Consent by Mrs. Rawlins, it was only to have her bail'd; it was that only that she design'd. Hartwell says, he was only employ'd as a Bailiff by Holt: He carry'd them from his House to the Vine Tavern: Now, what Occasion had he to carry them to the Tavern for Bail? We shall prove further, that when they came to the Vine, Hartwell himself was said to be the Bail for the Action.

Anne Cotchet called, and sworn.

Mr. Mountague. Mistress, pray will you give an Account how Hartwell brought the Prisoner there?

Cotchet. Mr. Hartwell, when the Coach came, ordered a Pint of Wine for the Coachman. The Drawer said, We draw, and draw, but don't know who will pay for it. Mr. Hartwell came to me, and said, it was an Arrest for 120*l.* that he would see us paid.

L. C. J. Holt. Was it the Woman in the White Gown that was Arrested for 120*l.*

Cotchet. Yes, my Lord.

Mr. Hartwell. Did you see me in Company with the Parson?

Cotchet. You came down Stairs, and ordered a Pint of Wine for the Parson, and half a Pint besides; and told me the Parson was the Bail.

Mr. Hartwell. I did not know that the Parson was in the House, till I had just done my Business, and was going away. Did you see me with the Parson Madam Rawlins?

Mrs. Rawlins. I do not tell you so.

Mr. Mountague. All that is to be prov'd in this Indictment is, that she was taken away against her Will, and afterwards compell'd to marry.

Cotchet. I did not see Mr. Hartwell after that.

L. C. J. Holt. Gentlemen of the Jury, these three Prisoners are indicted for Felony, upon the

Statute made in the third Year of King Henry the Seventh; That they with Haagen Swendsen now convicted, and Thomas Holt that is fled, did violently and feloniously assault one Pleasant Rawlins, being seized of an Estate of Inheritance of about 20*l.* per Ann. and possessed of a personal Estate of the Value of 2000*l.* and took her away by Force against her Will; and that he, Swendsen, did marry her. Now the Question is, Whether the Prisoners at the Bar are guilty of this Crime? First, As to Mrs. Baynton, you have heard what an Account is given of her: She was a Person that came to lodge at Mrs. Nightingale's House in Stretton-Grounds in Westminster: She went for a Widow, by the Name of Sarah Baynton. It seems, Mrs. Busby and Mrs. Rawlins did lodge about three Years in Mrs. Nightingale's House. They being all single, were very well satisfy'd one with another. Mrs. Rawlins was plac'd by her Guardian under the Care of Mrs. Busby; and has a personal Estate of 2000*l.* and 20*l.* a Year. About three Weeks before Michaelmas last, you hear of one Mrs. St. John that was an Acquaintance of one Mrs. Nightingale's, came to her and told her of Mrs. Baynton, a well-disposed Gentlewoman, that was come to Town about a Suit of Law, and thought she should stay about a Month, and thought that her House was a proper Place for her Lodging, and gave her a very good Character, that she was a civil religious Woman, of a good Conversation, and desired to be near the Church. After some Time, Mrs. Baynton came her self. She said, as Mrs. St. John had done before, that she came to Town about a Law Business, was a Widow in the West. Mrs. Nightingale, by reason of the Character that was given her, received her into her House. When she was there, she behaved herself very civilly for some Time; so that Mrs. Nightingale and Mrs. Busby were well pleased with her, and thought her to be a Gentlewoman of very ingenious Conversation. She tells them she had a Brother that had Interest in Shipping; and so there was an Invitation of Mrs. Busby, Mrs. Rawlins, and Mrs. Baynton, to go on Ship-board, where they were treated by Mr. Swendsen. Mr. Swendsen used to visit Mrs. Baynton; and she used to call him Brother: While she was there, Swendsen dined 9 or 10 Times. She had not been there long, before they began to have different Apprehensions of her from what they had at first, and were very uneasy at her Continuance. Mrs. Baynton did apprehend there was some Appearance of Uneasiness; and came to Mrs. Nightingale and told her, she had made an end of her Suit of Law, and had no occasion to stay in Town, but would return into the Country. It seems Mrs. Nightingale and Mrs. Busby were well pleased with Mrs. Baynton's Warning. Before she went away, she understood that Mrs. Busby and Mrs. Rawlins used to go to Oxendon Chapel; she came to them and said, she had occasion to go that way with a Band-Box to her Milliner's; told them she went in a Coach, and if they pleased they might go with her, and she would set them down at a Place near the Chapel. They accepted her Civility, thinking nothing of any Design; and as the Coach was driving along, it was stopped by Bailiffs, and all on a sudden Hartwell opens the Coach, and thrusts himself into it. Mrs. Busby and Mrs. Rawlins were not conscious of any Cause of an Arrest, thought the Arrest was upon Mrs. Baynton, they began to be concern'd for her; but it appeared that 'twas upon them, and then Mrs. Baynton seem'd as much concern'd for them when they were both to be carry'd away; but asked Hartwell what

what it was for? He told them it was no great Matter; but if you and I talk together a little, all will be well. Mrs. Baynton express'd her self to be much concern'd for Mrs. Busby; she advis'd her not to talk any Thing with him, without her Friends were nigh. And when they were in the Coach, it was directed to be drove away. Mrs. Busby desired to be carried to Fleetstreet to her Friends; but Hartwell would carry her to the Star and Garter Tavern in Drury-Lane. Mrs. Baynton continued in the Coach until they came thither, and then pretended to go for Mrs. Busby's Friends; and when they were at the Star and Garter Tavern they were carry'd into a Back-Room. Mrs. Busby forced her self with the young Woman into a Fore-Room; then Hartwell laid Hands upon Mrs. Rawlins, and said she was his Prisoner, and carries her away by Violence, forces her down Stairs, and swears at her to put on her Mask, otherwise he would carry her to Newgate. Mrs. Busby, the Prisoner above Stairs, was to go to Newgate, as was pretended; but Mrs. Rawlins was to go to the Marshalsea. Away she was carried to the House of Mr. Hartwell; but Mrs. Baynton who pretended, that as she was going by chance that Way heard Mrs. Rawlins named; thereupon she goes in, and very luckily finds her there, and pretends to pity her Condition, and said she had been with several of her Friends to be her Bail, but could procure none of them to come. Then she said she would go for her Brother Swendsen, who she was sure would be her Bail. Upon that Message he came, and then Mrs. Rawlins was to be carry'd to the Vine Tavern. Mrs. Baynton went with her thither, as they pretended, to make up the Business. Then it was propos'd that Holt and Swendsen should be Bail. Hartwell refused them as insufficient: Upon which she was told she was in danger of going to Newgate, and Bail could not be taken; and the only Way was, that she must be marry'd to Swendsen; and if she did not marry, she should go to Newgate. Mrs. Baynton took the Ring from off her Finger, in order to get a Wedding-Ring to be made by it; which being procured, there was a Parson in the House ready provided with a Clerk to do the Office, who came into the Room where the Marriage was made, and so ended that Arrest. From the Vine Tavern she is carry'd with Mr. Swendsen and Mrs. Baynton to Mr. Blake's House, and there she was forc'd to Bed: Within an Hour and Half they arise again, at Seven a-Clock at Night; and thus the Marriage was consummated. As for Mrs. Baynton there is this further Proof upon her, that she did pay Hartwell for this very Arrest, which is proved upon her by her own Confession, before the Recorder. Then, as to Hartwell, he is affected by these Circumstances. First, there was no Process against Mrs. Busby, but yet she was Arrested and carry'd to the Garter Tavern, where she was kept in Custody until the Evening, and could not procure any Friends to be called to her; and during the Time of her being there, Mrs. Rawlins was married to Mr. Swendsen at the Vine Tavern. And it is further prov'd against him, that when the Parson was come, he told the Mistress at the Vine Tavern, that the Parson was to be one of the Bail. It is also prov'd, that he insist'd upon very good Bail; for he told the Woman of the House the Arrest was for 120 l. when as it appear'd it was but for 20 l. Now you are to consider what hath been said in their Defence. Mrs. Baynton says, that Mrs. Rawlins was in Love with Mr. Swendsen, and did complain of her Confinement and hard Usage; and that she told her she could help Mr. Swendsen to a young Lady at her own Disposal; and

that there was one Mr. Pugh that made Application to Mrs. Rawlins; but she return'd his Letters that she had receiv'd from him: That Mrs. Rawlins did say, that she could help Mr. Swendsen to a Lady that had a Fortune at her own Disposal, which is own'd by Mrs. Rawlins; and that by that Lady she did mean her self; but that she had any familiar Discourse with him in the Garden, or that she was Sick for him, and went up and cried for him, that she denies upon her Oath. And further says, that she never intended to do any Thing against the Advice of her Friends, or that she had set her Love upon him. Then Mrs. Baynton charges Mrs. Busby, that she had a Kindness for her Brother Swendsen, because she said he was her beloved Likeness. Mrs. Busby owns, that he was something like her Husband, and on that Account might innocently call him so. As for Hartwell, he relies on his being a Bailiff, and in Execution of his Office, being employ'd by Mr. Holt and Mrs. Baynton, and that she paid him for the Writ. Mr. Holt sent for him, and he knew nothing but of Arrest, and was not privy to any other Design. It is prov'd indeed, that Mr. Holt did send for him. This is the Sum and Substance of his Defence. I must tell you, that if Hartwell was employ'd in this Design, in order to take her into Custody to carry on this Marriage, and was privy to it, then he is equally Guilty; but if he did only Act as a Bailiff, and did not know the Design, then he is not Guilty. But his Arresting Mrs. Busby, against whom he had no Process, and taking Mrs. Rawlins from Mrs. Busby to his own House, and from thence carrying her to the Vine Tavern; his pretending that the Warrant was for 120 l. when as in Truth it was but for 20 l. and his pretending that the Parson was to be the Bail, though he was not present in the Room where the Marriage was, but hard by; yet he was in the same House, which is all one, if he knew what Design was a-foot: These are the Things you are to consider of. As for Mrs. Baynton, she pretended she was a Widow, and you hear how she proves it; and when she is taxed with having a Child, then she says she hath a Husband. And when she is asked about him, she will give no Account, nor how she supports her self. She said indeed she paid every Body their own, and that she has no Difference with any Body whatsoever. She pretended she was Mrs. Rawlins's Friend in what she did; but it is plain by what she owns her self, that she employ'd Hartwell, and paid him for the Writ. And her pretending to set them down at Oxendon Chapel, there it was her Design to bring them under that Force to effect this Marriage. I must leave it to you to consider, whether from the beginning to the end she was not an Actress and a Manager of this whole Business. She hath been asked how Mr. Swendsen came to be her Brother. First she says, he was her deceased Sister's Husband. Then being asked who was that Sister? She said he was an adopted Sister's Husband. It was very extraordinary for her to go to Mr. Hartwell's Meousto the young Gentlewoman, and pretend that she came by chance, and heard her Name. I must leave it to you Gentlemen of the Jury to consider of the whole Matter: And as for Spurr, he was an Under-Officer, a Bailiff's Follower, and might be ignorant of the Business. You have not Evidence enough to make it appear that he was privy to this Design, and therefore you are to acquit him; but as to Mrs. Baynton and Hartwell, if they were privy to this Design of a forceably taking away of Mrs. Rawlins, with an Intent to marry her to Swendsen, as it is plain that he was an Actor,

Actor, and she Abettor in the Force; then Gentlemen you are to find them Guilty: if you are not satisfied, you are to Acquit them.

The Jury went out for half an Hour, and brought in the following Verdicts.

Mrs. Baynton, Guilty.

Mr. Hartwell, Not Guilty.

Mr. Spurr, Not Guilty.

L. C. J. Holt said to Hartwell, *You have had a very Merciful Jury, let it be a Warning to you for the future.*

Mrs. Baynton. My Lord, I am with Child.

L. C. J. Holt. That will be considered on Saturday November the 28th.

The Prisoners were called to the Bar to receive Sentence of Death.

Mr. Soll. Gen. I pray your Lordship's Judgment against the Prisoners at the Bar.

Cl. of Arr. Haagen Swendsen hold up thy Hand. Thou hast been convicted of Felony done by thee and committed on Mrs. Pleasant Rawlins, and the Jury hath found thee Guilty; What have you to say for your self, why you should not receive Sentence of Death according to Law?

Mr. Swendsen. I could say a great deal, but I shall say but a very little. I do not doubt but the honourable Court observ'd how various she was in her Evidence. What she deny'd in my Trial, she confess'd in Mrs. Baynton's; and so I leave it to the Court, if there may be an Arrest of Judgment till the next Term.

L. C. J. Holt. Unless you can shew us some Cause for it, it will not be granted.

Mr. Swendsen. My Lord, She said those Things in her Trial which she deny'd in mine.

L. C. J. Holt. Some Things she mentioned in your Trial, that she had no occasion for in hers.

Mr. Swendsen. The same Things that were in my Trial were in hers.

L. C. J. Holt. There were some Things in her Trial that was not in yours.

Cl. of Arr. Sarah Baynton hold up thy Hand. Thou hast been Indicted for Felony, and found Guilty. What hast thou to say for thy self, why you should not receive Sentence of Death according to Law?

Mrs. Baynton. My Lord, I am with Child.

L. C. J. Holt. That is no Plea against Judgment.

Mrs. Baynton. My Lord, I desire that it may be taken into Consideration, how that she contradicted her self in her Evidence; that she spoke those Things in Mr. Swendsen's Trial, that she contradicted in mine. I think I have a great deal of Injustice; I am as innocent as any Person in the Court.

L. C. J. Holt. That you did this Thing is most apparent: that you deluded this young Person, and pretended your self to be a Person of Quality, a Religious Woman, and one that came out of the Country about a Law-Suit; that you pretended that this Mr. Swendsen, the Prisoner at the Bar, was your Brother, your Sister's Husband; and all this False Dealing was to bring him in to delude this Woman. It is plain, you had no Suit of Law, as you pretended. It is plain, you took out this Process against the young Gentlewoman. It is plain, that you pretended you would set them down at a Chapel.

Mrs. Baynton. It is not the first time, my Lord, that I set them down.

L. C. J. Holt. But you made use of this Stratagem to accomplish the Arrest. You have deluded the World by these Things; and indeed it is very hard against you.

Mrs. Baynton. My Lord, they desired me to set them down.

L. C. J. Holt. The Licence was taken out before the 6th of November a considerable time.

Mrs. Baynton. My Lord, She cannot deny but she spoke for it to me. She her self ordered it to be done. My Lord, when I was upon my Trial, abundance of People prompted her to speak those Things she knew nothing of; Mrs. Busby in particular; though I do not question but she her self would have married Mr. Swendsen, for she expressed Love for him in calling of him her Beloved Likeness.

L. C. J. Holt. She said he was like her Husband and therefore on that Account she might say so.

Crier, *Make an O Yes.*

Mr. Swendsen. My Lord, my Trial has already made a great Noise in the World; and I do not know but that by this time it may be come to the Queen's Ear, therefore I desire that your Lordship would be pleased to make a favourable Construction of it to her.

L. C. J. Holt. Well, I do not question but Her Majesty hath heard of it.

Crier, *Make an O Yes, while Judgment is given.*

Justice Powell. You that are the Prisoners at the Bar, Haagen Swendsen and Sarah Baynton, you have been both Tried and Convicted of a very great Offence, for which you are brought to receive that Judgment that the Law requires. You have had a very solemn Trial, and have both been Convicted upon very plain and full Evidence. Your Offence is of a very high Nature; and I am glad that you have had such a solemn Trial, that all People may know how great a Crime this of Fortune-stealing is (which is Death by the Law) and may take Warning by you; it may be a great many People do not know how penal this Offence may be, but I hope your Trial may be a Means to deter others from making use of such wicked Practices. Your Offence hath been in a Nation where Property is better preserv'd than in any other Government in the World. Here it is Death for a Man to take away any Thing, though never so small, by way of Robbery: How much worse is it for you to take away the Child of a Man, and with her all that he hath gotten by his Industry all his Life-time, at once? This is most certainly a very great Offence against the Publick, being so great a Violation of Property; and the Injury you have done to this Woman is very great too, and cannot be repaired: All the Satisfaction that can be given, is by taking away the Lives of those Persons that were the Contrivers of it. You Haagen Swendsen have had the Privilege (the Law allows to Foreigners) of a Party-Jury; and I believe, had there been any room for a Jury to bring you in not Guilty, you had not been found Guilty; but the Fact was prov'd so plain upon you that they could not possibly avoid it. It is true, you insisted upon it that you were not present at her first taking, and that she gave her Consent to the Marriage. It is true, that you were not present when she was first taken, but there were strong Presumptions to conclude that you were privy and consenting to it, which will render you equally culpable as if you had been present. For when she was taken in Custody, she was brought to an House where Holt and you were seen together; Holt being the Man that set the Coach, and gave Directions to the Bailiffs when to seize her; and besides, you had a Licence prepar'd for your Marriage to her. These are very great Circumstances of your being privy to the first taking. But admitting you were not privy to the first taking, you were privy to her being in Custody under an Arrest, when you was brought to Bail this Woman; and Word was brought

brought in that they were contented to take Bail, but excepted against your's; and when she was told by *Sarah Baynton* she must go to *Newgate* unless she marry'd you, you were present at all this; and this being done and acted whilst the first Force was continued upon her, is in Law a forceably taking; so that you are plainly guilty of a forceable taking. And then also, if that were necessary, of marrying of her by constraint, she being under Menaces, that if she would not marry you she must go to *Newgate*: You yourself were conscious, this was no such Consent as Marriage requires, since that Evening you made Application to a Justice of Peace to take an Affidavit from her that she had given her Consent. When you brought Witnesses to give an Account of your former Life and Conversation, that some Years since you were an able Merchant in your Country, one in great Credit, an ingenious Man, and of good Interest and Acquaintance there, I confess, I had great Commiseration for you, and thought that this Misfortune befel you upon the Account of your Acquaintance with this ill Woman; the Acquaintance with such a Woman will make a rich Merchant quickly poor, will soon reduce a wealthy Man to a Morfel of Bread. I am afraid that she hath been a very great Instrument in your Ruin.

And you *Sarah Baynton*, when you were ask'd to give an Account of what kind of Life you liv'd, it appear'd to be but a very sorry one indeed, so that I could not but conclude you to be a very lewd Woman. You had Wit and Parts enough which might have been of great Service to you, if you had lived honestly; but you made use of them to another End, and it is not fitting that you should live longer that cannot live better. You contrived and carried on all this wicked Design from first to last; and that you might the better perform it, you went to a civil House under the Character of a Gentlewoman, that came out of the Country about a Suit of Law. There you pretend to be a very good Woman, and seem to be much pleased with the Family, because they were sober People; but your Design was to entice and delude this young Woman. Whether your Design at the beginning was to commit this Fact, I cannot tell; but being not used to this Course of Life, you could not wear your Disguise long without Discovery; you began to be suspected and to be seen through; the Family was very willing to be rid of your Company; which you perceiving, you resolv'd you would Achieve your Design before you went. For that End you invite them into a Coach, promising to set them down where they were going; but instead of that, you employ Bailiffs to Arrest them; for you with your own Hand paid the Bailiff that was to do it; and after they were taken, you pretended to pity them. And when Mrs. Rawlins was at Mr. Hartwell's House, you pretended that you accidentally and providentially over-heard her Name mentioned in Mr. Hartwell's House, as you pass'd in the Street. You go into the House, and pity her Condition, and propose your Brother for her Bail; but instead of that, all your Design was to bring about this Marriage; and for that End you forced her Ring from her to get another made by it. It was you that told her she must go to *Newgate* unless she married your Brother; and after that forced her to Bed. From the Beginning to the End you carried on this wicked Design to the Ruin of this young Woman; you have a great deal to answer for. I have stated this Matter, that you may be satisfied that this Fact

hath been proved against you both very fully, and therefore you can expect no other than an Award of the Punishment the Law requires, that is, Death. I hope you will reflect upon those evil Courses that have brought you to this End. You have but a short Time to live, and therefore it would be well for you to consider your Future State: You may have better Instructions for that than I can give you; therefore I will now proceed to the Sentence, which is,

That you shall go hence to the Place from whence you came, and from thence to the Place of Execution, and that there you severally hang by your Necks until you are dead; and so the Lord have Mercy upon your Souls.

Mr. Swendsen. My Lord, now I am bound to do this Woman Justice. She hath not been the Contriver of it. It was all done by my Direction; and for her sake I desire the Queen may know of it.

L. C. J. Holt. Well, that will clear up the Doubt to some of your Countrymen, who did think that you were not the Contriver of it.

Mr. Swendsen. I desire, my Lord, that the Matter may be represented to the Queen as favourable as you can.

Cl. of Arr. *Sarah Baynton*, Hold up thy Hand. *Baynton*. My Lord, I am with Child.

L. C. J. Holt. Let a Jury of Matrons be sent for. *They are sent for. Upon the bearing of her Sentence she fell into Fits.*

Cl. of Arr. You the Matrons of the Jury, shall view and diligently enquire, and a true Verdict give according to your Evidence, whether *Sarah Baynton* be with Child, quick with Child, or not. So help you God.

The Names of the Jury of Matrons are as follow:

Mrs. <i>Sarah Johnson</i> .	Mrs. <i>Sarah Webb</i> .
Mrs. <i>Christian Walker</i> .	Mrs. <i>Dorothy Mordit</i> .
Mrs. <i>Susannah Goff</i> .	Mrs. <i>Eliz. Guernella</i> .
Mrs. <i>Mary Herbert</i> .	Mrs. <i>Mary Rogers</i> .
Mrs. <i>Sarah Randol</i> .	Mrs. <i>Jane Smithson</i> .
Mrs. <i>Mary Vere</i> .	Mrs. <i>Margaret Leach</i> .

L. C. J. Holt. You the Matrons are to consider well the Oath you have taken, which is diligently to enquire whether this Woman be quick with Child: If she be with Child, but not quick, you are to give your Verdict so; and if she be not quick with Child, then she is to undergo the Execution of the Sentence in convenient Time.

About half an Hour after the Jury of Matrons came in.

L. C. J. Holt. Are you agreed in your Verdict?
Answ. Yes.

L. C. J. Holt. Who shall say for you?

Answ. The Fore-Woman.

L. C. J. Holt. Do you find the Prisoner to be with Child, with Quick Child or not?

Mrs. *Johnson*. Yes, my Lord, she is quick with Child.

L. C. J. Holt. Is this your Verdict?

Mrs. *Johnson*. Yes, Sir.

L. C. J. Holt. And so you say all?

Answ. Yes, my Lord.

L. C. J. Holt. Hark ye, Mrs. *Baynton*! These Women by their Verdict give you longer Time to prepare you for Death, and therefore I hope you will improve your Time, for the Judgment is past, and will be executed soon after your Delivery.

Sarah

Sarah Baynton was reprieved, but Haagen Swendsen was executed.

He made no Speech at the Place of Execution, but referr'd himself to the following Paper, which he left with the two Divines who attended him.

I Do believe the World will expect I should say, something for their Satisfaction. That I had a Design to have Mrs. Rawlins for my Wife is most true. I was told of her by a Neighbour and Friend of hers, and then made a further Enquiry, and found her Quality such as I might, without any Exceptions, presume to, her Father being the Son of a Tradesman; the next was, how to get into her Acquaintance; and not knowing how to be introduc'd, I prevail'd with, and persuaded Mrs. Baynton to take a Lodging in the same House with Mrs. Rawlins, by which Means I found easy Access to my Wishes, and was as welcome to the Family, as if I had been one of themselves. I had their Company on Board a Ship, where I gave them an Entertainment, and was invited to dine with them, and by degrees I possess'd my self of Mrs. Rawlins's Affection so far, that she seem'd uneasy without me, and frequently importun'd for my speedy Return, and oblig'd me to sit next to her at Table, saying, that if I did not, she would not eat, and treated me with many private Caresses, by which Lovers, who have not frequent Opportunity of speaking, do by Signs and Tokens express themselves.

I do declare that I had as good Reception as a Lover could wish for, and all the Encouragement imaginable; infomuch that nothing seem'd disagreeable to my Intentions, but all things did promise to facilitate my Design with Success, she herself having told me that she was at her own Disposal, and would marry to please her self.

My Familiarity with Mrs. Rawlins before my Marriage was so great, that there was no room left for me to practise Violence upon her; tho' I must say I was impatient of Delays, and wish'd for an Opportunity to accomplish my Desire.

But as for the unhappy Contrivance of the arresting Mrs. Rawlins, I had no share in it, but was persuaded to consent to it by Mr. H— and his Wife; and when the Intrigue was brought to Perfection, I comply'd, and laid hold of the Opportunity, in order to marry Mrs. Rawlins, which with little Difficulty, and less Persuasion, I accomplish'd; so having, without any Force or Violence, declar'd to the Minister that she was at her own Disposal, and free to marry me, which the the Minister declar'd in open Court, at my Trial.

After we had been in Bed, comes in one Mr. Bennet, a Constable, with some of Mrs. Rawlins's Relations, who requir'd me to go with them before a Justice of Peace; finding they had no Warrant, I refus'd to give Obedience to their Commands, which created some Dispute; and my Wife hearing the Noise, came out of the Bed-Chamber, desiring me to be quiet, and let her speak to them; which accordingly she did, in these express Words following, viz. *Cousin, I have married this Gentleman with my own free Consent, he is my Husband, and this is my Wedding-Ring, shewing the Ring on her Finger: As for Mr. Busby, I will give him under my Hand he shall come into no Trouble, and what would you have more?*

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Then said they, if it be so, then God bless you both together, and drank a Flask of Wine or two with me, and then departed; they were no sooner gone, but I asked her, whether she would be willing to appear and declare what she had said to her Friends to a Justice of Peace, and she said she would with all her Heart; then we went to Mr. Justice Baber, in York-Buildings, and declar'd the same to him; he told her he would take Notice of her Face, and bid her stick to that.

The next Day, about eleven of the Clock, there came a Constable with a Warrant, and carried us before the Recorder, unto whom she said the same thing over and over. Then said the Recorder, *Alas! Child, they made you drunk, and you did not know what you did.* To which she answer'd, *That there were a great many there present that knew her Life and Conversation, that she did not use to be drunk:* And when the Recorder could not prevail with her, he conceiv'd, that my being personally with her, oblig'd her to stand so firm to her Marriage; he then order'd me to be pull'd away by Force from her, at which she fell a weeping; how she afterwards was lectur'd by her Friends, was sufficiently attested by my Prosecution, Trial, and Sentence; and after I was committed to Newgate, I was remov'd by a Habeas Corpus to the Queen's-Bench Bar, there to be arraign'd, and pleaded Not Guilty to the Indictment. I pleaded for longer Time to prepare for my Trial, but was allow'd but four Days; when I was brought to my Trial, I moved for a Council to plead my Cause, as being a Stranger, and not acquainted with the Laws of England; my Life being thus at Stake, a powerful Interest against me, and the Court not for me, render'd my Case both despicable and deplorable; and as for some of my Evidence, I do verily believe they were bribed by the adverse Party, others taken off by sinister Art, and some hinder'd by Force from appearing in Court for me. As for Justice Baber, he shew'd himself but coldly in giving his Testimony, and said, that my Wife did confess before him, that she was marry'd by her own free Consent; but at the same Time he added, that she seem'd very much disorder'd: As for that Gentleman, I forgive him, and shall leave God to be Judge between him and me.

It is to be noted, That my Wife did not deny, in open Court, that she had made the Declaration aforesaid, of her Marriage, to Mr. Bennet, the Constable, and others, that Night we were married: But said, she did not know what she did when she said so, and many other Things she positively, upon Oath, denied at my Trial; which makes me have Pity upon her poor Soul, considering she confess'd many Things at Mrs. Baynton's Trial, which she denied upon Oath at mine: The World may see what it is to be a Stranger, and unacquainted with the Laws; nay, I my self heard my Wife openly confess in Court, in Mrs. Baynton's Trial, *That there was a young Lady in the World, who was at her own Disposal, that wish'd me a good Wife;* and at last confess'd she herself was the Person.

Amongst my many Misfortunes, I was represented by my Wife's Friends to the Court, to be a Sharper and a Bully; but I call'd in, and produc'd several Gentlemen of Repute, to give Account of my Life and Conversation, who have accordingly attested the Honesty of my Principles by my Practice.

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“ It

"It is further observable how my Jury disagreed about the Verdict. There was one of them, Mr. *Erasmus Johnson*, a Person to me altogether a Stranger; for I declare, in the Presence of Almighty God, that I do not remember to have been in his Company three Times in my Life, except in Church: This Mr. *Johnson* alledg'd, that none of the Evidence did prove, or swear, that I had any Hand in the Arrest, nor used any Force or Violence to the Gentlewoman, but she confess'd the Marriage, which was prov'd by several Witnesses; which render'd my Case so hard, that the said Mr. *Johnson* insisted upon it to have me discharged, according to the Dictates of his Conscience, but at last he was over-ru'd.

"Since my Conviction I have us'd all the Means I could to procure my Pardon; but finding little or no Probability of it, I am now going to beg for Entrance at the Gate of Mercy in Heaven, which I beseech God to open for me.

"I expected my Trial should be published, that the World might see my Treatment; what I have done, and what I have left undone in my Case; but I am inform'd it may not be printed. I have said this only to do my self Justice, altho' I could say a great deal more of Moment to the Purpose; but my Time being so very short and precious, I must employ that little Time to the saving of my most precious Part, my Soul.

"I humbly beseech Mankind to believe me; and that I have said, or shall say, are the Words of a dying Man; this is not the Time for me to equivocate, nor to go out of the World with a Lie in my Mouth: I do therefore declare, and call the great omnipotent God of Heaven to my Witness, that I have asserted nothing, to the best of my Knowledge, but the whole Truth, nor utter'd a Syllable out of Malice, or Bitterness of Heart, against any Person whatsoever; but so far from it, I do frankly forgive all my Enemies, and beseech God to put it in their Hearts to repent of their Sins.

"As for my Wife, I am so much in Charity with her, that I cannot believe the Severity extended to me, did altogether proceed from her self, but her consenting to spill my Blood, makes the Guilt

her own. God of his great Mercy give her a true Sense of her Crimes, that the heavy Judgment hanging over her Head may not descend on her.

"As for Mrs. *Baynton*, who is likewise under Sentence of Death on the same Account with my self, as I have in the Court, so do I now again positively declare she had no Hand in the Intrigue of my Marriage, any more than what she did by my special Direction and Persuasion; for Mrs. *Baynton* was wholly a Stranger to Mrs. *Rawlins*, until the unhappy Contrivance of my Marriage made them acquainted, neither did I know Mrs. *Baynton* till June last past; tho' some have been pleas'd to say that I kept her Company for three Years, and have had two Children by her; all which I declare is a wrong Notion, and nothing of Truth in it. The only Load I have on my Conscience is her Death, of which I am the unhappy Instrument. I beseech God in his Mercy to move the Queen's Clemency to spare her Life, that her Blood may not rise in Judgment against me.

"As for my self, I am now a going to suffer an ignominious Death, for a Crime which my own Conscience doth not accuse me of, but the Rigour of the Law hath made it my unpardonable Crime. And as I forgive all Mankind, so I beg Forgiveness of those, whom, thro' Inadvertency, or otherwise, I have injur'd or offended, beseeching God, of his great Mercy, to vouchsafe them Forgiveness whensoever they shall ask it.

"My great Comfort is, that I have reconcil'd my self with my God, and that I die in my natural Senses, and that short Time I have had since my Trial, I trust in my Saviour, I have not mispent.

"And now, O Lord God! of thy infinite Goodness hear my Petition, pardon my Offences, and forgive me my Sins, forgive mine Enemies, and lay not my Blood to their Charge, but grant that a sincere Repentance may wash away their Guilt.

"I am now going out of this Vale of Calamity and Sin to my eternal Repose, where, thro' the Merits of my Saviour Jesus Christ, I hope to see God in his Glory; and so I conclude, O Lord receive my Soul into thy boundless Mercy, for the Merits of my Saviour Jesus Christ. Amen.



CXXVII. *The Trial of RICHARD HATHAWAY, at Surry Assizes for a Cheat and Impostor, March 24, 1702. 2 Ann.*

Proclamation was made for all Persons concerned to attend.

THE Prisoner being brought into Court, and acquainted what Liberty he had to challenge those Gentlemen that were called; he making no Challenges, the Gentlemen that were sworn on the Jury were,

Charles Bludworth,	} Esqs;	Will. Draper,	} Esqs;
Henry Tendall,		Rich. Nicholas,	
Walter Kent,		Cesar Bradshaw,	
John Burchet,		John Cater,	
John Pettisward,		Sam. Pearson,	
Thomas Lowfield,		Rich. Hammond.	} Gent.

The King against Richard Hathaway, for an Impostor.

Surry ff. *The King's Attorney General* has exhibited an Indictment against the Defendant, by the Name of Richard Hathaway, of Southwark, in the County of Surry, Labourer; and the Information sets forth, That the said Richard Hathaway being a Person of an evil Name and Fame, and an Impostor, and contriving and maliciously intending, one Sarah Morduck, the Wife of one Edward Morduck of Southwark, in the said County, Waterman, who for the whole Course of her Life was an honest and pious Woman, and not a Witch, nor using Witchcraft, Incantment, Charm or Sorcery, to bring into the Danger of losing her Life, the 11th Day of February, in the 12th Year of the Reign of the King, at Southwark,

in the said County, in the Presence and Hearing of divers Persons, falsely, maliciously, devilishly, and knowingly, and as a false Impostor, did pretend and affirm himself, by the said Sarah, to be bewitched, and by the Occasion of that pretended Witchcraft, he could not eat, and by the Space of Ten Weeks to fast, and was affected with divers Diseases; and that he by drawing Blood from the said Sarah, by scratching, should be freed from the said pretended Witchcraft; that the said Richard Hathaway did then, and there, with Force and Arms, scratch the said Sarah, and did draw the Blood of her, the said Sarah, by scratching; and thereupon, he, the said Richard Hathaway, did then, and there, falsely, maliciously, and knowingly, by affirming himself to be freed from the said Diseases, by drawing the said Blood, whereas in Fact and in Truth, the said Richard Hathaway was never bewitched, and had not fasted for the Time aforesaid, nor for any great Time; and that whereas in Truth and in Fact, the said Richard, then, and there, well knew himself not to be bewitched by the said Sarah, to the great Contempt of our Lord the King and his Laws, to the evil and wicked Example of all others in the like Case offending, and against the Peace of our said Lord the King, his Crown and Dignity, &c.

Mr. Raymond. May it please your Lordship, and you Gentlemen of the Jury, the Information sets forth, That the Defendant being a Person of an evil Fame, and an Impostor, and maliciously contriving to take away the Life of one Sarah Morduck, the Wife of Edward Morduck, who always was a good Woman, and not a Witch, nor using Witchcraft, the 11th Day of February, in the 12th Year of the Reign of the late King, at Southwark, in the Presence and Hearing of divers Persons, did falsely, devilishly, and knowingly, and as a false Impostor, pretend and affirm himself to be bewitched by the said Sarah, and that by reason thereof he could not Eat, but had fasted for ten Weeks, and was also affected with divers Diseases, and that by his drawing Blood from the said Sarah, by scratching, he should be freed from his said pretended Bewitching: That the Defendant did thereupon scratch the said Sarah, and did draw the Blood of the said Sarah by such his scratching, and thereupon he falsely affirmed, that by drawing the said Blood he was freed from the said Diseases; whereas in Truth and Fact he was never bewitched, nor had he fasted as aforesaid, and he knew himself not to be bewitched by the said Sarah, in Contempt of the said late King, and his Laws, and against the Peace of his Crown and Dignity.

Mr. Conyers. May it please your Lordship, and you Gentlemen of the Jury: This is an Information against Richard Hathaway, for a Cheat, for endeavouring to impose upon the People a Belief, that he had been bewitched by one Sarah Morduck, and that as an Effect of her pretended Witchery, he vomited up Nails and Pins, and that he could not speak, nor open his Eyes, and that great Noises were heard in the House where he lay, and there could be no Remedy for him, but by his scratching and fetching Blood of this Sarah Morduck; and by this Means the poor Woman has been very much abused by her Neighbours, reputed a Witch, and brought to a Trial for her Life as such; but that there was nothing but a malicious Design in it, will appear by the Evidence that will be produced. This Richard Hathaway was for some Time an Apprentice with one Welling, a Blacksmith, in Southwark. About September last was Twelve-month, he gave out that he was bewitched, and he went to this Woman's

House and scratched her; and the Pretence was, that scratching and fetching Blood of her recovered him. The Minister of the Parish, Dr. Martin, hearing that it was noised about, that the Defendant had been relieved by scratching Morduck, came and visited him. He could neither speak nor see, as he pretended; but understood what was said to him, and gave Assent to what was proposed to him, by holding up of his Hands. Dr. Martin tells him, he heard this Woman had bewitched him, and that his scratching of her was the Means by which he was relieved; and that he desired to see the Experiment himself, and therefore had brought Sarah Morduck there, and desired him to hold up his Hand, if he understood what he said; which he did. Dr. Martin had another Woman there at that time (tho' that was concealed from Hathaway) and Sarah Morduck, by the Doctor's Direction, spoke to him, and came to his Bed-side, and the Defendant was by the Doctor bid to scratch her. When he came to scratch, the Doctor took the Hand of the other Person, and put it into the Defendant's Hand, and as soon as he had scratched the other Person his Eyes began to open, and he could speak; and immediately it was made known to himself and the Company, that the Person he had scratched was another Person, and not Sarah Morduck. But notwithstanding this, he was not satisfied, but still there was a Prosecution of Sarah Morduck for a Witch, and she was forced for some Time to go and reside in London: And there the Rabble got about her and abused her; of which Complaint was made to a Magistrate in the City, and Sarah Morduck was had before him, and then Hathaway was sent for, and there again scratched her; and it was so far credited there, notwithstanding the Account given by Dr. Martin of the Experiment he made, that the poor Woman is committed for a Witch, and afterwards brought to a Trial for her Life; and upon the Trial it appeared plainly, that all this was a Contrivance, and there was no Evidence to charge her with the bewitching this Man; and after a long hearing, upon a full Evidence, the Jury acquitted her, and the Man was committed for a Cheat. But notwithstanding this Acquittal, he still goes on to persuade People, that he was bewitched; that he had fasted several Days together, and could not eat; and then for a further Conviction that he was an Impostor, and only endeavoured maliciously and falsely to impose this Belief on People, he is about the Beginning of last November committed to the Care of a Chirurgion, one Mr. Kensley, where for Two Days he did not eat; but afterwards his Stomach began to come to him, and when he could get any Victuals privately, he had a very good Stomach, and could Eat and Drink till he was drunk. And it was contrived, that Holes were made into the Room where he was, and the Maid that looked after him was directed to give him Notice, that she would help him privately to Victuals; and from the second Day after he was there, till the eleventh Day, he did constantly eat every Day, tho' he pretended he fasted all that Time, and had done so for fourteen Weeks, and he was seen to eat thro' those Holes. All this, and much more, will be fully proved by the Witnesses. So that there has been a great Affront to the publick Justice of the Nation by this Proceeding, many having abetted it, and they have put up Bills in several Churches to pray for him against the Trial, and gathered Money to support him in this false and malicious Pretence.

Mr. Brodrick. My Lord, the discovering and punishing such a Cheat as this, is highly necessary; and

and not only for the vindicating the publick Justice of the Nation, but for the Sake of Religion it self, which suffers by nothing more, than by the countenancing of indirect Practices, made use of upon a Pretence of maintaining and supporting its Credit. Religion has in it self such genuine and native Truth, as must work Conviction upon the Understandings of all Persons, who allow themselves Leisure to consider it without Prejudice: But when Tricks and little Arts are carried on for a Time, and attain a general Credit, and appear afterwards to be what are called *Pious Frauds*, they do far more Mischief than all the Good proposed by such Practices can make amends for. For when Men who are sceptically inclined, find that the Generality of Mankind run away with Stories of this Nature, and those Facts afterwards prove undeniably false, they carry their Doubts on much too far, and are apt to conclude, that they cannot securely rely upon the Relation of others, and general Consent of Mankind, for the Certainty of any Fact whatsoever. It is therefore the Duty of all Persons, that are concerned for Religion in general, to endeavour to detect such Practices which weaken one of its most solid Foundations.

And, my Lord, we conceive this Prosecution very necessary, in order to the vindicating the Justice of the Nation. Here was a Woman that underwent a solemn Trial, and upon a full Hearing was acquitted, yet afterwards, notwithstanding the thorough Examination of the Fact, and such an Evidence given as convinced every unprejudiced Hearer of the Innocence of the Defendant, and the Malice and Hypocrisy of the Accuser, such a Spirit did reign, that it was represented that the Accuser had hard Measure; and not only the Jury, but the Court too, were reflected on: Nay, it went so far, that after the Innocence of the Woman appeared by her Acquittal, a Magistrate (whose Name the Witnesses will disclose in their Evidence) gave publick Countenance to this Impostor (for by that Name I will venture to call him) and so far gave Credit to him, that when the poor Woman was abused by the Rabble, and her Life being in Danger, she made Application to that Magistrate for Protection; who, instead of affording it to her, encouraged her Prosecutors, as if she had really been guilty of the Witchcraft laid to her Charge; and considerable Collections were made for this Man, to support his Spirits under the Disappointment he met with in her being acquitted.

This Prosecution was necessary too, upon the Account of the poor Woman, who, unless some Check be put to the unruly Proceedings of unthinking People, is not yet safe in her House, but in Danger to be torn in Pieces: And it was thought most proper, that this Matter should be thoroughly examined in this Place, where the Scene of his counterfeiting, for the most part, did lie; that prepossessed People might be Ear Witnesses of the Fairness of the Proceeding, and that all Persons might have an Opportunity, if they thought fit, of offering any thing fit to be offered in his Defence.

My Lord, we need not trouble the Court with Evidence tending to prove, that the accused Person is not guilty of Witchcraft: She is acquitted of that, and it ought not to be suffered to be made a Dispute. But our Evidence will go beyond that, not only that there was no Colour or Foundation for the Charge on her of being a Witch; but that the Defendant did maliciously, without any Ground, and contrary to his own Knowledge, charge her with

the having bewitched him. And I think our Evidence, all through, will prove this Matter fully upon him, that he was not bewitched, nay, that he did not believe himself to be so, yet charged and prosecuted her.

The first part of his pretended Witchcraft shewed it self, by his vomiting Pins: How that Business was managed, and how he was detected in it, the Witnesses will declare. And though we are not obliged to endeavour the giving an Account of what it was that induced him first to undertake this Imposture, I think it will appear by the Evidence, that he had some Aim and Prospect of Gain to himself. For, upon his first pretending to vomit Pins, we shall prove he had prepared a *Narrative of his own being Bewitched*; and he himself carried it to a Printer, that so he might bring a Concourse of People to him: But the Printer being a Man of some Understanding, look'd on him to be a Cheat, and would not meddle with the Copy. He practised this Trick of vomiting Pins several Times; but pretending to it once, before one who did not take every thing upon Trust, but was curious enough to observe nicely, and search him; after some Resistance, several Rows of Pins were found in his Pocket.

The next Discovery of his Imposture, was the Affair wherein Dr. Martin was concerned; who brought two Women to him: The Particulars of which having been already opened, I'll not repeat them. The Doctor put an innocent Deceit upon him, but it was in order to disclose a vile Imposture. When the Woman was brought to him to be scratched, being conscious to himself, how little real Effect the barbarous Experiment would have upon him, the whole Company observed, that he felt three or four Times from her Hand to her Elbow, before he scratched, that he might be sure it was a Woman's Hand: And when he had scratch'd, and felt Blood, his Eyes were opened, tho' it was the wrong Woman.

Another Instance of his acting a Part, with Design to impose upon the World, was, when he was carried from the *King's-Bench* to Mr. Kenfey's. It was necessarily to be imagined, that if he eat or drank nothing, nothing would come from him, either by Stool or Urine. He considered this, and for fear it should be taken notice of, that he discharged himself after so long a Fast as he pretended; having Occasion to make Water, he found the Lid of a Box, and making Water in it, put it out of Sight, on the Bed's Tetter; and the first Discovery of his Counterfeiting at Mr. Kenfey's, was by the dropping of that Water on the Cloaths of the Bed. After he had been two Days there (during which Time he really did not eat) Mr. Kenfey not knowing but that his Complexion might incline him to such a Sullenness, as to starve himself, rather than directly confess his Cheat, having first examined his Mouth and Throat, and finding nothing there but as it was in all other Men, and that he had not only all other Organs, but that of swallowing, without any Obstruction, as other People had, thereupon he framed this Design: He took Occasion to pretend a Quarrel with the Maid-servant who lived in his House, within the hearing of the Defendant, and told her, she was as very a Hypocrite as this Fellow; and after warm Words on both Sides, and a seeming Resolution by her that she would quit her Service, the Master went away, leaving the Maid and the Defendant together. She, to insinuate her self into the Defendant, said, Her Master was an odd Kind of a Man, a dangerous Man, therefore she would not have the Defendant

Defendant take any thing from him ; and said, she would take care to supply him whilst he staid in the House. Then his Stomach came to him very readily, and he was so far from being unable to drink, that he drank Brandy and other Liquors to Excess, and this for several Days. But still those in the House being wary, thought it might be pretended by People who were very willing to believe him, that this happened by the Charin's being dissolved, and that he was unable to eat before ; and therefore it was thought advisable to bring in several Persons of Reputation, who should observe him through a Hole fit for the Purpose : Who, after they had seen him eat, examined him how long he had been a Faster ? And he made Signs, *that he had fasted twelve Weeks, and clung up his Belly as a Proof of his Emptiness, according to his common Practice, though he had in their Sight, just before, eaten a plentiful Meal.* So that, Gentlemen, it is evident, that what he did was done maliciously, and with a Design to deceive and impose upon the World. After this, there being sufficient Proof of the Imposture, it was thought fit to bring him before a Court of Justice ; thereupon this Information was exhibited against him : And if we prove it, I doubt not but that you, Gentlemen of the Jury, will do that Right to the Government, and to Religion, as to find him guilty of it, that he may be brought to the Punishment that such a Crime deserves.

Mr. *Phipps*. My Lord, I humbly pray your Lordship's Indulgence of the same Side ; and beg Leave to observe, this Man was formerly troubled with Fits, and there was a Design laid by him and his Friends to create a Belief in People, that those Fits were the Effect of Sorcery and Witchcraft ; but whether to get Money, or take away the Life of the Woman, or both, I submit to your Lordship's Judgment upon the Evidence. 'Tis certain, they proceeded so far as to bring her to a Trial, and did what they could to take away her Life. And the better to carry on their Designs, and to prepare the World to believe the Impostor, we shall shew, that when he had these Fits, it was industriously published, that he was bewitch'd, and that it was by this Woman ; and if he could but scratch her, he would be well. Dr. *Martin*, the Minister of the Parish, hearing of it, came to him ; and to make an Experiment to discover the Imposture, brought another Woman with the pretended Witch, and said to *Hatbaway*, if you think the scratching this Woman, meaning *Morduck* the pretended Witch, will do you any good, hold up your Hand : Which he did. Then the Doctor put the other Woman's Hand into his ; and although at that Time he pretended to be Blind and Dumb, and he and his Friends would have had it thought, that he lay under the strongest of the old Woman's Charms ; yet he was apprehensive of what he did, and so jealous lest he should be imposed upon, and thereby his Imposture discovered, that he felt several Times from the Wrist to the Elbow, to discover whether it was the Arm of the pretended Witch or no, before he would begin scratching ; and then believing it to be hers (it being much about the same Size) fell to scratching, and being told he had fetched Blood, his Eyes were immediately opened, and his Speech restored.

The Doctor thinking every body was convinced of this Imposture, and believing the poor Woman would be quiet for the future, went away.

But notwithstanding this Detection, the People were dissatisfied ; and *Welling*, the Master of *Ha-*

ibaway, and others, being angry at the Discovery, pursued the Woman with more Malice than before : Where-ever they found her, they cried out, *A Witch*, and used her so barbarously, she was forced to leave *Southwark*, where she had lived many Years, and all her Employment, which had been profitable to her, and to go live in *London*.

Their Malice pursued her thither ; and there *Hatbaway*, with Soldiers and others, in a riotous Manner, got into the House where she lodged, and would have broke open the Door where she was ; but a Constable being called in, the Soldiers went off, and *Hatbaway* was carried before an Alderman of the City ; and the poor Woman and her Friends acquainted the Alderman of the riotous and illegal Proceedings, and prayed that Justice might be done upon them. But instead of punishing them, he was pleased to say, there was too great Provocation for what they had done ; and giving Credit to the Accusation of *Hatbaway* against the Woman, ordered her to be carried up Stairs to be searched, to see if she had any Teats, or other Signs of a Witch, and permitted her to be scratched by *Hatbaway*, and then committed her for a Witch ; refusing 500 l. Bail, and dismissed *Hatbaway*.

The Woman afterwards was brought to a Trial at *Guilford* Assizes, and was acquitted, and he was committed for a Cheat. And to make more ample Discovery of the Imposture, he was taken to the House of Mr. *Kensley* a Chirurgeon, and there he was obstinate, and would not eat for the first two Days ; and a Quarrel was feigned between Mr. *Kensley* and his Maid, he saying she was as bad an Hypocrite as *Richard Hatbaway*, and gave her Warning to be gone. The Maid seemed very angry with her Master, and said to *Hatbaway*, Whatever you do, do not eat any thing that is given you by my Master or his Brother, for they are your Enemies ; and promised she would help him privately to what he wanted. Whereupon he thinking she had been his Friend, and that he was safe in her Hands, took Meat and Drink from her from Day to Day, and eat heartily, and drank so very plentifully of Strong Beer and Brandy, and was so merry, that he play'd on the Tongs, and Danced, and shew'd Tricks before the Maid ; but when any body else offered him Meat or Drink, he refused it, making Signs that he could not swallow, and signify'd to them, that he had fasted all the fourteen Days that he had been at *Kensley's*, and that he had fasted many Weeks before. And as to vomiting Pins, it will appear to you, that he carried Papers of Pins in his Pocket, to make use of on Occasion. But when he vomited in a Basin, and his Hands were kept down, and he not permitted to carry them up to the Basin, there was not one Pin in the Basin.

I will not trouble your Lordship with a Detail of all the particular Instances of this Cheat, but will call our Witnesses ; and when we have proved the several Matters that have been opened, there will be no Room to doubt but that the Defendant is an Impostor, and the greatest this Age hath produced.

Mr. *Conyers*. We will first call Dr. *Martin* (who was sworn) we will go on with our Evidence in the Course of Time. The first Time that Notice was taken in the Parish of this Business, was in September was Twelve-Month. Dr. *Martin*, pray give my Lord and the Jury an Account, Whether you know *Richard Hatbaway*, and when was the first Discourse of this Witchery.

Dr. *Martin*. February last was Twelve-Month, (the ninth Day, to the best of my Remembrance) I came

came to Church in the Afternoon, and after the Curate was gone into the Desk to read Prayers, I was going into the Pew ; but hearing a great Hurly-burly in the Church, I sent the Sexton to know what was the Occasion of it. He brought Word that there was a Witch in the Church ; so the Curate could not go on in reading Prayers ; and the Sexton went and brought in one *Sarah Morduck* to me, and after her came a great many of the People into the Vestry ; so that tho' it be pretty large, it was presently filled. And this *Sarah Morduck* came up to me, and told me what was the Occasion of her being brought there. I ask'd her how she had behav'd her self amongst her Neighbours, that should give such Occasion to deal thus with her. She began to cry, and said, she had given no Occasion for it. I told her, I had nothing to do to enquire into the Business, but bid her continue in the Vestry, the whole Congregation being so much disturbed, that they would go out of the Church if she staid in it. So I turned every body out of the Vestry, and locked her in. And Sermon being ended, I came into the Vestry, but found she was gone ; and upon Enquiry, I understood the Reason was this, The Sexton told me, that she said, if she staid till all the People went out, she should be torn in Pieces, and begg'd of him to let her out while the Psalm was singing after Sermon, that she might go away undiscerned, and accordingly she went. Afterwards many of my Parishioners made Application to me to go to *Richard Hathaway*, who was supposed to be bewitched ; and told me, that it was taken very ill that I had deferr'd it so long. Upon this I went to him the next Day ; and meeting his Master below Stairs, I asked him what Condition his Servant was in. He said, he was Blind and Speechless, and was a very dismal Object. I said, I desired to be excused, for I did not love to see any dismal Sight. But he said, he was very sensible, and knew every one by their Voice. And with that, I went into the Room, and his Master (speaking to *Richard Hathaway*) said, Mr. Martin is come to see you. Says I, *Richard*, I am come to see you, and if you know me hold up your Hand : He did so, and took me by the Hand and kiss'd it. I ask'd him whether I should pray with him in the Prayers of the Church, and if he desired it, I bid him hold up his Hand : He did so, and I prayed with him, and he did seem to be affected with it, and lifted up his Hands several Times. Afterwards I took my Leave of him, and went down ; and I discoursing with his Master for some Time, I asked him what he thought was the Reason of it ; he said, an evil Tongue ; and a bad Woman, *Sarah Morduck*, had bewitched him. But how do you know that ? His Master then told me he had scratch'd her, and found Good by it ; and said, he was utterly undone by it, and if he did not speak to the Church-wardens to take him off his Hands, he should be ruin'd. And hearing of this Scratching, it came into my Head to try an Experiment too ; so I went away, but without discovering my Intentions. And about Ten a-Clock at Night, to prevent Jealousies, I went to the House where *Sarah Morduck* lodged, and found she was gone to Bed. I left Word that I desired to speak with her the next Day : But instead of her coming to me, her Brother, Mr. *Hearne*, came to me, and thanked me for preserving his Sister from the Mob. I gave him the Reason why we did that, and I told him then what I intended to do. He answer'd me, I am afraid my Sister will be so silly that it will fail in the Execution. I bid him leave that to me, I would give such Directions in

the Matter, that it was impossible for it to miscarry : So he left me to my Liberty to do what I thought fit. Then, says I, when I send for her, do you come with her. I went to the House where *Hathaway* lay, and went into the Room, where he lay with his Eyes fast shut, and seemingly Speechless. I spoke to him, *I am informed you have received Benefit by scratching Sarah Morduck formerly, now if I can get this Woman for you to scratch her, Do you believe by scratching her you shall receive any Benefit ? If you do hold up your Hand* : So he did ; and by and by there came a Message that Mr. *Hearne* and the Witch were come. I then desired Mr. *Bateman*, whom I brought with me for that Purpose, to sit by the Bed-side while I went down, lest any might inform him what was said, or he might over-hear any thing spoken below. So he sat there, and I went down, and I bid them let in as many as would come in ; and when the Room was full, the Door was lock'd. I had before met with a poor Woman, whom I ordered to follow me, who received Alms of the Parish, designing she should be the Person the Experiment should be try'd on. I told them I design'd to try another Woman, and I will make him believe he scratches the Witch. The Answer was, This will signify nothing, *Wellings's* Wife said, he had scratched another Woman, and it signified nothing. Now this was, to the best of my Remembrance, one *Willoughby*, who is a very big Woman, and very much unlike *Sarah Morduck* : But I desired the Satisfaction to see it done my self ; upon which it was consented to. Then I ask'd the Woman I brought about it ; I told her I would give her a Shilling if she would let this Man scratch her : She flew off, and said she would not suffer it for all the World. At last somebody said, here is a Woman will suffer her self to be scratch'd ; and this was one *Johnson*. I ask'd her if she would suffer her self to be scratch'd ; she said she would, if there would come no Damage by it. Says I, whatever Damage you sustain, I will make it good to you ; and you being about the Size of *Sarah Morduck*, are a very fit Person. She did decline it for some Time, but at last she consented ; and after some Instructions given to her and *Morduck*, we went up together with many of the Neighbours. *Tho' you cannot see*, says I, *to Richard Hathaway, you can hear that there are many People in the Room ; now, before all these People, Do you believe that Sarah Morduck has done you this Mischief ? If you do, hold up your Hand*. He did so. *Do you believe you shall be relieved by scratching her ? If you do, hold up your Hand*. He did hold up his Hand. *Sarah Morduck, do you speak to him, that he may know you are the Person*. Says she, *What is the Matter with you ? Do you believe this Woman, said I, to be the Person that has bewitched you ? If you do, hold up your Hand*. He held up his Hand. Then ask'd *Sarah Morduck*, are you willing this Man should scratch you ? *Yes, with all my Heart, he shall have my Heart's Blood, if it will do him any Good*. Then, says I, pray give me your Hand. *Here it is*. And instead of taking her Hand, I took *Johnson's*, and clapt it into his ; and I did observe, that two or three Times he felt from her Wrist to her Elbow ; and I said, I have something else to do than to wait on you (and I spoke to him somewhat eagerly) if you will not scratch, I will be gone. Then he scratch'd her, and she whisper'd me in the Ear, she believ'd she should faint. I saw he had razed her Skin, and I said, you have drawn Blood, and you may be satisfy'd. With that he left off, and turned on his Back in his Bed. I turn'd out *Johnson* immediately

mediately, and I and *Morduck* stood together, and he lay still for some time; but I saw nothing would do, if I did not work him up. Now, says I, I would fain see how his Eyes are now; come some of you, look, do not his Eyes twinkle? With that both his Eyes were open as mine are now, and he caught hold of the Apron of *Sarah Morduck*, and look'd her in the Face. Then I told him his Mistake; and *Johnson* came in with her Arm bleeding. Says I this is the Woman you scratcht, you have not touch'd *Sarah Morduck's* Arm, not fetch'd one Drop of Blood from her. The Fellow upon this seem'd very much cast down. Now, says I, give way to no Humours, and go about your Business, and serve God and your Master. Then I went down, and several People were satisfy'd. Well, says I to *Welling*, your Man's Eyes are open now. It's well, says he, if his Eyes continue open. He can speak and see too now. I do not know, says he, it is strange if he should do well after this. Farewel, said I; and I went into *London*. Upon my Return, about Five-Clock, I enquir'd about him, and found there was a greater Mob in the House than before; and I was accosted at my first coming in by the Master and Mistress of that Fellow: What have you done? you have ruin'd both me and my Family—

L. C. J. Holt. Who said so?

Dr. Martin. The Master and Mistress of this Fellow. Why, What Hurt have I done you? You have given it out to be a Cheat. Did you get any Money by it? No, I never did expect it. But pray go and look on him now, he is in a worse Condition than he was before. Here hath been two Doctors, and they will take their Oath that he is bewitch'd. So I went away; but as I went out, I was stop't by *Johnson*. She cries out, What have you done? What is the Matter, said I, Does your Arm fester? No; but this wicked Woman has spread abroad that by scratching me he was relieved, and she is not the Witch, but I am the Witch; and it had reach'd her Husband's Ear, and he was become so jealous of her, that he would not have any thing to do with her. I went away after this, and going home, met her Husband, and gave him all the Satisfaction I could, that his Wife was no Witch. And I was inform'd the next Day, that *Sarah Morduck* had been dragg'd again to the House, some time after I went away, and brought to *Hathaway's* Bedside, and he scratch'd her, and his Eyes were open'd, and he eat and drank, and walk'd about. Upon this, I sent one Evening to him to come to me; and I took him into my Study, and said, What is the Meaning of it, that you make such a Trouble in the Parish, to condemn this Woman for Witchery? I see no Reason for it. Says he, she has done me a great deal of Hurt; said *Hathaway*, she has bewitch'd me. He said, that was the Woman had done him all the Prejudice he labour'd under. Then says I, you are a poor sort of Fellow, you must get your Living by your Labour; now you had better go into the Country out of her Reach. No, Sir, says he, I am bound Apprentice to my Master; and if I go, I shall be as bad there as I am here: And seeing I was bound here, this Parish must keep me; and if I should go into the Country, they will send me back again. Why will you not try? No, I will not. Do you not believe I am bewitch'd? No, I do not. Then, says he, I may as well not believe what you say in the Pulpit; I may say to you, as our Saviour said to the Jews, *Tho' you see Miracles, you will not believe.* Whereupon, I turn'd him

away, and did not think I should have had any thing more to do with him. But about *Easter* last, *Sir Thomas Lane* sent to me, to desire me to come to him; the Witch being then got into *London* for Shelter.

I went accordingly, and when I came, I found *Hathaway*, his Master, and several others there. I found him looking briskly, and eating heartily, and I ask'd the meaning of it. It was answer'd, That before *Sir Thomas Lane*, he had drawn Blood of *Sarah Morduck*, and that had brought him to himself. I sent in my Name to *Sir Thomas Lane*, and he sent for me in. There was *Sir Owen Buckingham*, and I think, *Dr. Hamilton*. There were several People examined, while I was there, about this Person; and after all *Sir Thomas Lane* desired me to tell what I knew in this Matter. I gave an Account of what I have done here. Says *Sir Thomas Lane*, *Richard Hathaway*, Do you know that Gentleman? Yes. How? I have seen him in the Pulpit. What, no where else? Did not you see him by your Bedside? No. Was not I with you at your Bedside? No. All this while he was eating Bread and Cheese; till *Sir Thomas Lane* spoke to him, Lay by your Bread and Cheese, and be not so unmannerly. Says I, this is very unaccountable, that he should not know me; and yet he had said, that after *Mr. Martin* was gone, I was a great deal worse than I was before. This is a very unaccountable Thing, and I desire to know how this is consistent; therefore I do desire that his Master may be called in. And his Master was sent for, and *Hathaway* was going out to call him. No, says I, I desire he may not go out, I will call his Master myself. When *Welling* came in, I asked him whether he did not tell me that *Hathaway* was sensible from the Time I came to him? Yes, he was. Now I desire to know how these Things are consistent? And to put this out of doubt, that this Man did see me, the Woman stood at the side of the Bed by me near the Feet, and he took hold of her Apron readily. How can he come off in this Matter? Says *Sir Thomas Lane*, They tell you he had a most violent Fit after, and that made him forget what was done before. Another Question was ask'd *Mr. Welling*, You know you desired me to get this Servant of yours off your Hands, and that I would speak to the Churchwardens about it. Now I am inform'd, this Servant of yours was going to *Goodman's-fields*, and as he was going, the Press-masters met him, and he being a likely Fellow, they whipt him aboard. Is this true or no? Yes. And then you got a Letter, and went down and fetch'd him up. Yes. Then, says I, How come his Master to be so much concern'd to be rid of him as he pretended; and yet when he might have been rid of his Servant, would not take the Opportunity? To that *Sir Owen Buckingham* answer'd, It was only his Charity for him to fetch him from aboard; he could do no less considering his Condition: So I came away. In a little Time after, I heard that this *Sarah Morduck* was bound over to the Assizes, and I was subpoena'd to give my Evidence the last Assizes at *Guildford*.

Then the Indictment was read, upon which *Sarah Morduck* was Tried and Acquitted of Bewitching *Richard Hathaway*.

Mr. Coniers. *Dr. Martin*, pray go on.

Dr. Martin. I was subpoena'd to go to the Assizes, but before the Assizes came on, there were Bills put up in several Churches, and particularly at *Christ-Church*, where I hapned to preach. I read the Bill, *A poor Man being afflicted by an evil Wo-*
man,

man, now coming to her Trial, desires the Prayers of this Congregation. I went down to Guilford to the Trial; and when I came up, I thought all People would be satisfy'd with the Justice that was done. But when I came to Town, I was abused by many People, both openly and privately: *You have the Blood of that innocent Man to lie at your Door; The Woman had been bang'd, if you had not saved her; The Judgments of God will fall on you.* One Woman followed me to the Water-side, and said, I was the Occasion of the Ruin of that innocent Man; for she her self —

L. C. J. Holt. Who is this?

Dr. Martin. I do not know her, I only give Evidence of the Abuses I underwent.

Mr. Conyers. Do you know any thing after the Affizes, how he behaved himself?

Dr. Martin. No, Sir, I know nothing of that.

Mr. S. Jenner. What was done by other People, ought not to be given in Evidence.

Mr. Broderick. If this Man does prove an Impostor, it will aggravate his Crime, if the Consequence be mischievous, and the World be still abused with a Persuasion that he was bewitched.

Mr. S. Jenner. What was done by other People signifies nothing to us.

Mr. Broderick. This is very material, for it is a Confirmation that there was a Design carried on — *(being interrupted).*

L. C. J. Holt to Serj. Jenner. What other People did, must not affect this Man. But hear what Answer can be given, you that are the Queen's Council?

Mr. Broderick. The Charge of the Information is, That he, as an Impostor, pretended himself to be bewitched by *Sarah Morduck*, to deceive the World, and prejudice the Woman. And what can be more proper Evidence of that Charge, than that altho' he really was not bewitched, yet he had so prevailed upon the Opinions of the People, that they still believe him bewitched, and affronted *Dr. Martin* for being instrumental in her Acquittal: 'Tis all of a Piece, a Continuance of the same Imposture.

L. C. J. Holt. This Evidence is proper. He is indicted for a Cheat, for endeavouring to beget an Opinion in People by his fraudulent Practices that he is bewitched. Now, *Dr. Martin* says, the People were still possessed with such a Belief; and thereupon affronted him, because they thought he was instrumental in having the Woman acquitted. Now, Is not this an Evidence that his pretending himself to be bewitched, begat that Opinion in the People.

Mr. Serj. Jenner. What the Doctor has said all along, has been of what others have done.

L. C. J. Holt. No, it has been what he saw himself. You say this Man's Evidence is most of what others have said. Not so, He has by himself prayed with him, and tried an Experiment with him upon a wrong Woman.

Mr. Serj. Jenner. He tells you what *Welling* said, and others; How does this affect my Client, what another Man, or another Woman said?

L. C. J. Holt. He was insulted upon the Account that *Hathaway* pretended himself to be bewitched, blind, speechless, and not able to eat.

Mr. Serj. Jenner. My Lord, with Submission, other People's censuring the Doctor cannot be brought as Evidence against my Client, unless they make it appear that he had a Hand in it, unless he put them upon it.

L. C. J. Holt. What other People have said, ab-

stractedly considered, ought not to affect *Richard Hathaway*; but if there be Evidence that *Hathaway* hath been guilty of Deceit, and a Design to deceive People, Will you not allow it be given in Evidence, that the People have been deceiv'd? And how came they to be deceiv'd, but by his feigning himself to be bewitched?

Juryman. Mr. Serjeant, If you have any Thing to object, we desire to hear what you say, for you speak so low we cannot hear you.

Mr. Serj. Jenner. I object to what the Doctor says by hearsay only.

Juryman. I believe that will be little considered by the Jury.

L. C. J. Holt. The Information is for an Impostor and Cheat: Now what is that? A Cheat is a Design to impose on the Credulity of others, to induce them to believe a Thing that is not true. Now *Dr. Martin's* Evidence is what *Hathaway* did, and that People did believe him to be bewitched; and they abused *Dr. Martin*, and told him he had done very ill in the Case of this Woman; and if it had not been for him she had been condemned.

Dr. Martin. I have only one Thing more to say; it was reported that I had been bribed; I was told I had received several Guineas; that the Judge was bribed and the Jury bribed, and the Judge would not suffer the Woman to be searched, he being bribed.

Mr. Conyers. Doctor have you done?

Dr. Martin. I have.

Mr. Conyers. We will next call *Mrs. Johnson* who was scratched.

Mr. Broderick. Sir, I think you mentioned a Gentleman that you sent for up? Where is he?

Dr. Martin. He is here.

Mr. Broderick. What is his Name?

Dr. Martin. Mr. Bateman.

Mr. Broderick. We will call him to give an Account of that.

Mr. Conyers. We will first call this Woman. *Mrs. Johnson*, Were you at any Time with *Dr. Martin* at such Time as *Hathaway* pretended to be bewitched?

Mrs. Johnson. Yes.

Mr. Conyers. Then pray give my Lord and the Jury an Account of what you know about it.

Mrs. Johnson. I went into the Room to see *Sarah Morduck*.

Mr. Conyers. What Room?

Mrs. Johnson. I was in the Room where *Dr. Martin* fetched her to be scratch'd; and *Dr. Martin* told me, he designed that he should scratch some other Woman; and he desired me to let him scratch me; but I denied him, and said, I was a Wife, and was not willing; at last I consented, and he told me I must not speak when I came into the Room where *Hathaway* was; and he brought me to the Fellow; and he said to him, If you think the Blood of this *Sarah Morduck* will do you any good, hold up your Hand. Which he did. Then he bid *Sarah Morduck* speak to him; which she did. Says he; Are you willing this Man should scratch you? She said, Yes: My Heart's Blood, if it will do him good. So with that he scratch'd me, and *Sarah Morduck* cry'd out. He had razed the Skin of my Arm, but no Blood came presently. *Dr. Martin* desired me not to speak, and I did not; the Blood came afterwards, but none then.

Mr. Conyers. Were you in the Room when the Doctor spoke to him?

Mrs. Johnson. I went into the other Room; *Dr. Martin* put me out before him.

Mr. Conyers.

Mr. Conyers. Was not you brought in again?

Mrs. Johnson. No, I went in of my own accord.

Mr. Conyers. In what Condition was he then?

Mrs. Johnson. He looked in this manner, his Eyes staring open.

L. C. J. Holt. Were his Eyes shut, when you first came and was scratch'd, or open?

Mrs. Johnson. No, they were fast shut.

L. C. J. Holt. Did he speak then?

Mrs. Johnson. No, he said nothing when I came back, till his Eyes were open, and then he said, O Christ Jesus, or O Lord Jesus.

Mr. Phipps. But did he feel your Arm before he scratch'd you?

Mrs. Johnson. Yes, over and over.

Mr. Conyers. Call William Bateman (Who appeared and was sworn). Pray give an Account what you know of this Defendant's vomiting Pins.

William Bateman. About a Twelve-month ago I went to see Richard Hathaway.

Mr. Conyers. Were you desired to go to him by Dr. Martin?

William Bateman. I can't remember that.

L. C. J. Holt. Where do you live?

William Bateman. In Pembroke-shire.

Mr. Conyers. Then you do not remember any thing that past then?

William Bateman. I do not say I do not remember any thing, but I do not remember whether Dr. Martin desired me to go to him.

Mr. Conyers. Give an Account of what you know about his vomiting Pins.

William Bateman. About this Time Twelve-month, on a Sunday Night, a Woman came to Dr. Martin's House to enquire for him. I went to the Door; and the Woman said, If Dr. Martin would but come now, he might see Hathaway vomit Pins. Can I see him, says I? Yes, says she. So I went immediately; and in the House there were little Chinks that I could see through; and I saw him walk about the House, and heard him talk to the People, and I stood some Time to hear him. At last I knock'd, and he came and let me in; and seeing me, he seemed to be troubled, and feigned himself to be in some Pain.

Mr. Raymond. You say you look'd through the Chink, How was he then? Repeat that.

William Bateman. He seem'd to be as well as he is now.

Mr. Raymond. What did you do then?

William Bateman. I knocked, and he let me in; and when I came where the Light was, he knew me; and I said to him, I hear you spew Pins. Yes, says he. Says I, Prithee let me see thee. So he sat on a low Seat, and they gave him something in a Cup; and by drinking this I was to see him vomit Pins; and he took some Drink, but as far as I could perceive he did not swallow any.

Mr. Conyers. What was the Effect of it?

William Bateman. He pretended then to be in an Agony, and vomited several Times, and there were Pins on the Ground. I had the Room swept very clean, and gave him the same again. He vomited again, and there were abundance of Pins on the Ground again. I believe he vomited fourteen or fifteen Times, and I believe there were some hundreds of Pins on the Ground; but I thought the Pins were dropt from one or other; and I took up some of them, and they were dry; and I took up two or three in a Chain; and I said, I believed those were the Pins that were shewn at our House.

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No, no, says his Master, these are not the same; and he did endeavour to satisfy me that he did vomit these Pins; so I desired he might have a Pot to vomit in; and I had a Pot brought and made very clean, and I searched his Mouth and found no Pins there; and I held the Pot to his Mouth close, and he often endeavoured to put his Hand to the Pot, and I would not suffer him, for I perceived his Hands often moving to his Pocket. He vomited several Times, and there were some Pins scattered on the Ground, but none in the Chamber-pot. Says I, these Pins do not come out of his Mouth; but the People were very pressing on me to believe they did.

L. C. J. Holt. Who were they?

William Bateman. They were all Strangers to me. Upon this I told them, I believed he had a Slight of Hand to convey them there, and I took hold of his Pocket. He stop't my Hand, and would not let me put my Hand into it. But after some Time, says one, Let him, let him search your Pocket. So I did, and took out several Things, and among the rest several Parcels of Pins, and I believe these were they that he convey'd on the Ground.

L. C. J. Holt. Did you see him take them out of his Pocket?

William Bateman. No, but I took out several Hundred.

Juryman. What sort of Shape were they of?

William Bateman. They were of a very odd kind of Shape.

L. C. J. Holt. Were they strait or crooked?

William Bateman. They were crook'd in strange Figures, like them on the Floor.

Mr. Broderick. And he made a great Difficulty of letting you meddle with his Pocket?

William Bateman. Yes.

Mr. Phipps. And when you would not let him put his Hand to the Pot, there were none in the Pot, but only on the Ground?

William Bateman. Yes, Sir.

Juryman. Did you see any Pins come out of his Mouth?

William Bateman. No, Sir.

Mr. Serj. Jenner. What became of the Pins you saw on the Ground; you say you saw abundance, what became of them?

William Bateman. They were swept away.

Mr. Serj. Jenner. Who swept them away?

William Bateman. Some of the Family.

Juryman. I think he said that several of the Pins were taken up dry, were any of the Pins that were on the Ground dry?

William Bateman. Yes; and I said, these Pins did not come from him.

Mr. Serj. Jenner. When was this?

William Bateman. About a Twelve-month ago?

Mr. Broderick. Now, my Lord, we will shew your Lordship that he drew up a Narrative for the Press, giving an Account of this Business. [Call Richard Ball, who was sworn.] Mr. Ball, Pray give an Account of what you know of Richard Hathaway's endeavouring to print a Story of his vomiting of Pins.

Ball. About a Twelve-month ago, in December, Richard Hathaway brought a Writing, and withal a Dish-full of crooked Pins, and told us, those Pins he had vomited, and that he had been afflicted by a Woman in Southwark, and I think he said he had not eat any thing from my Lord-Mayor's Day.

R.r.r

Mr. Bro-

Mr. *Broderick*. What did he desire you to do ?

Bail. To print this Paper. And after he had told this Story, he said he had been with a Woman in *Goodmans-Fields*. There was a Boy with him. And he desired us to print his Paper. It related the Story of his vomiting of Pins. He said he had taken *Quicksilver*, and it would not move him ; and *Madam Goodwin* was mentioned several Times in the Papers, that she had cured him.

Mr. *Conyers*. How came it that you did not print his Paper ?

Bail. My Master stood by ; says he, You look very well ; I will have nothing to do with it ; I believe you are a Cheat. I believe no such thing, says he ; and upon that went away. But the next Day there was a Paper printed by somebody ; and *Richard Hathaway* comes to us afterwards, and says, You have printed a Paper, tho' you would not have it of me : But it is not true, says he ; I can give a better Account.

Mr. *Broderick*. Then he talked very freely to you, tho' he had not eat in six Weeks before ?

Bail. Yes, Sir.

Mr. *Broderick*. And he looked very well ?

Bail. Yes, Sir ; and we wonder'd at it.

Mr. *Conyers*. Call Mr. *Hearne* (who was sworn).

Mr. *Hearne*, pray give my Lord, and the Jury, an Account of what you know of this Matter.

Hearne. About September was Twelve-month, my Sister was fall'n upon by this *Hathaway*, and scratched and abused in a barbarous Manner ; and about six Weeks after she was scratched again. After this we went before Justice *Riches*, and Justice *Riches* persuaded them to be quiet, and not to trouble this Woman ; and he persuaded her to remove to some other Place. After this there was a Tumult made about her in *Newgate-street*.

Mr. *Conyers*. Were not you present when Dr. *Martin* was with the Defendant ?

Hearne. Yes, Sir.

Mr. *Conyers*. Then give an Account of that.

Hearne. I went to Dr. *Martin* ; and Dr. *Martin* told me that he would try a Stratagem (to see whether he was bewitch'd) by making him scratch another Woman. I told him, I was afraid we should be betray'd. Says he, Let me alone to manage it : So I said no more. Says he, Do you go and fetch *Sarah Morduck* to me, and I will go before. So I came with my Sister to *Welling's* House, where Dr. *Martin* was, and there was a House full of People : And then he ordered the Door to be shut ; and then Dr. *Martin* left me at the Bed-side, and he got a Woman that was willing to be scratch'd. She refused at first, but afterwards consented. And then Dr. *Martin* brought them into the Room where *Hathaway* was ; and he ask'd him if he did believe that scratching *Sarah Morduck* would do him any good ; if he did he should hold up his Hand ; and he held up both Hands. Says he then to *Sarah Morduck*, Are you willing to be scratch'd ? Yes, her Heart's Blood to do him good. Then give me your Hand, says he ; but instead of hers he took Mrs. *Johnson's* Hand, and gave it into *Hathaway's* Hand. And *Hathaway* took her by the Wrist, and felt her several Times. Then says Dr. *Martin*, If you will scratch her, scratch her, I cannot wait on you always. Then he fell to work, and Dr. *Martin* said, he will open his Eyes presently, there is Blood enough ; and he presently opens his Eyes and catches *Sarah Morduck* by the Apron, and holds her as fast as he could, and the Woman that was scratch'd was gone into another Room ; with all the Strength I

had I could hardly loosen his Hands from *Sarah Morduck*. Now, says Dr. *Martin*, You are mistaken, this is not the Woman you have scratch'd ; and then his Countenance chang'd, and he looked like a Fool, he was so surprized. Then says Dr. *Martin*, Where is the Woman that he scratch'd ? And I fetch'd *Johnson* out of the other Room, and shew'd him her Arm, that she was the Woman he had scratch'd. Says Dr. *Martin*, I see what you are ; go and mind your Business ; or to that effect ; and then we went away. This was about Twelve or One a-Clock the 11th of February. And when we were gone, the same Day, as soon as it was dark, they got half a Dozen lusty Fellows to go to *Sarah Morduck's* House, and there they abused her.

L. C. J. *Holt*. How do you know that ? Did you see it ?

Hearne. My Lord, I will tell you presently. When she had had this Mischief she sent for me ; and when I came, her Shift on her Back was as wet as muck. She sent for me, because she had none to assist her but me, and I found her that Night in that pickle. They said, as soon as we were gone, the Fellow was bad again, and they have put this Trick upon us ; but we will have the right Witch to scratch her.

L. C. J. *Holt*. Who was at the House that Night that you say she was in an ill Condition.

Hearne. There were several at the House then, Mrs. *Sarah Hays* the Landlady was there, and others.

L. C. J. *Holt*. You say they were in a Hubbub, and would have the right Woman scratch'd. Who was it that would have it so.

Hearne. I heard so. But when I came to her, I found her in a lamentable Condition. Then I went to Justice *Riches*, and desired his Warrant to take some of them ; and he granted it, and I took up one *Osborn* ; and when I came with him to Justice *Riches*, we had no Body to swear that she was lame a Bed, and so he was discharged ; and Justice *Riches* said, if there be no other to prove it on the Trial you will spend a great deal of Money to no Purpose, and therefore he let him go. So she was moved to *Paul's Wharf*, but a Company of Fellows followed her thither.

L. C. J. *Holt*. How do you prove that ?

Hearne. I heard of it, and desired the Landlord to send for a Constable ; he did so ; and when we came there, all the People made their Escape, except *Hathaway* and another Person. So then she was carried before Sir *Thomas Lane* ; and they telling him that he had vomited Pins, and other things, Sir *Thomas* was persuaded to believe it. I told him, these Fellows had disturbed this Woman's Peace, and very much abused her. Sir *Thomas*, will you not let me know who this Man is ?

L. C. J. *Holt*. What Man do you mean ?

Hearne. *Jones*. I begg'd, Pray let me know this Fellow's Name. Says he, It is no matter, there was Provocation enough. And then when we were talking of the Pins, Dr. *Hamilton* look'd in *Hathaway's* Mouth, and found his Mouth very well ; and he gave him Beer ; and he, when he had taken it, struggled with all his Might to keep it out ; then he cry'd out. Let her be scratch'd, said Sir *Thomas*. Dr. *Hamilton* said, Forbear a little, let us see the Effect of this Beer ; and so they forbore a little longer. Then they talked again of the Pins, and Dr. *Hamilton* would have her scratch'd again ; so he spake to the Woman about it, but she would not consent ; for she said she had been abused, and would

would not be scratch'd, unless they would secure her for the future. But Sir *Thomas* would have her scratch'd; and so she was; and then when she was scratch'd, and he had drawn her Blood, the Fellow brustled about like a Cock-Sparrow; and then they call'd for Bread and Cheese; and so he that before pretended he could not swallow any thing, shew'd like an Antick to the People, for he was very greedy. And when he had eaten that, he call'd for more; and *Welling* said, Pray let him not have it, it will do him hurt, because he has not eat so long. Then Sir *Thomas Lane* ordered her to be stripped, and she was stripped above Stairs, and then he would commit her to Prison.

L. C. J. Holt. Why? Did any body say she had any thing extraordinary about her?

Hearne. No. Dr. *Hamilton* said she had nothing about her; I offer'd a Hundred Pounds Security for her; and Sir *Thomas Lane* would not take it. But when Dr. *Martin* had been with her at Night I Bail'd her out.

Mr. Bar. Hatfell. Was this *Hathaway* dumb when he was at Sir *Thomas Lane's*?

Hearne. He spoke before, and when Sir *Thomas Lane* bound her over to the *Old-Baily*, and all that time he was as well as could be.

Mr. Ser. Jenner. Was you at the Affizes at *Guilford*?

Hearne. Yes, and gave Testimony for her there.

Mr. Conyers. My Lord, we have a great many others that were present with Dr. *Martin*; but we have proved that Matter sufficiently, Now we will shew how he behaved himself at Mr. *Kenfy's*. [*Call Mr. Kenfy, who appeared and was Sworn.*] Mr. *Kenfy.* Do you know *Richard Hathaway*?

Mr. Kenfy. Yes.

Mr. Conyers. Was he not committed to your Care?

Mr. Kenfy. Yes.

Mr. Conyers. When was it?

Mr. Kenfy. It was in *November* last.

Mr. Conyers. Now pray give my Lord and the Jury an Account of what you know of his Fasting.

Mr. Kenfy. He was brought to my House the First of *November* last about Noon. I went to see him at the *Kings-Bench*, where about Nine in the Morning I found him in Bed. The Servants in the Prison told me his Tongue was swell'd. At my Request he put out his Tongue, which I found in a very good State and Colour, free from any Induration or Contraction. I observ'd the Glands under the Tongue, also his Throat, so far as I could see, free from any preternatural Accident or Impediment. He was brought to my House about Twelve the same Day. I kept him in the Room where we dined, and offered him Meat and Drink several Times, which he refused. About Eight at Night we put him to Bed, and took his Cloaths out of his Chamber. The next Morning we offered him Meat again, and he refused to eat; and we brought him his Cloaths, and he was furly and would not rise. At Night I offered him a Glas of Cordial, which he also refused. At the same Time we found his Rug wet, which we discovered to be his Urine dropping through the Tester of the Bed, he having hid his Urine upon it in the Cover of a large Box, through which it drained. And I threatned to discover him, and said, Pray discover who set you to work in this Matter: I look on you as a poor innocent Fellow, and that you are set on by others that have more Wit; but he would discover nothing. The next Morning I forced him to rise, and I found him resolute in his Humour of Fasting:

I found Persuasions and Promises of a Pardon could not prevail, nor Threatnings that I would starve him if he would not confess; so I feigned a Quarrel with my Maid, and railed at her in his Presence, saying, she was as very a Hypocrite as *Richard Hathaway*, and that I would be troubled no more with her. And I order'd her, so soon as my Back was turn'd, to rail against me as bad as she could, and charge him not to take any thing from me or my Brother, for she alone would take care to feed him. After this we took him up every Day, and contrived Places and Holes, whereby we discovered him to eat and drink heartily, sometimes three Times a Day, he thinking no body was Witness to it but the Servant. Particularly one Day I had Fish and Oysters for Dinner, and I ordered the Maid to give him some, and to give him strong Beer and Brandy too, and he eat and drank freely. And afterwards he brought up his Dinner, and I coming in, told him I was glad the Witch was found out at my House, and I told him to-morrow I would find out the Pins and Needles. He took the Poker, and raked the Ashes over it, that it might not be seen what he had vomited.

L. C. J. Holt. But did he know that you saw him eat?

Mr. Kenfy. No, my Lord. The next Day I offer'd him something to eat, to see if I could make him speak. But he pretended to be so faint that he could not get off his Chair; this was after he had eat several Days. And he danced and play'd on the Tongs.

L. C. J. Holt. But did you not see him drink?

Mr. Kenfy. Yes, my Lord.

L. C. J. Holt. But did he know you saw him;

Mr. Kenfy. He thought no body saw him but the Maid; but I saw him drink.

Mr. Broderick. How did you see him?

Mr. Kenfy. I hid my self in a dark Place in my own Buttery, and did see him eat and drink several Times. I did not see him eat every Day. But the eighth Day he endeavoured to make his Escape. My Brother and my Sons went into his Chamber with his Cloaths, and *Hathaway* having dress'd himself, watch'd his Opportunity, and jump'd out of the Room, and bolted them in. But they staying so long, I sent the Maid up, and she met him stealing down Stairs, and then he went back again and let them out. On *Monday* the 10th I gave him his Cloaths, and I being alone, he had not Patience to dress himself, but immediately seized me; but struggling with him, he pretended Feebleness, and fell on the Bed.

Mr. Conyers. Can you give account of any thing afterwards?

Mr. Kenfy. Yes.

Mr. Conyers. What Discourse had you with him then?

Mr. Kenfy. I will tell you. He was very furly. That was the first Day he spoke. I came to him, and told him he was a Fool; that his Friends were in Custody, and had not been true to him, but had discovered the whole Matter; and advised him to make a Discovery himself; and if he would, I would go with him to my Lord Chief Justice. Upon that, he cried passionately, and said he would tell the Lord Chief Justice the whole Truth. But my Lord not being at his Chamber, he in about an Hour recanted, and said he was bewitch'd. When he cried, he ask'd if his Mother was safe.

Mr. Conyers. Did he at any Time tell you how long he had fasted?

Mr. Kenfy. Yes. He made Signs that he had fasted several Times when we had seen him eat, and he took his Cloaths and wrapt them over him. And I said unto him how long hast thou fasted before you came to my House? He made Signs that he had fasted ten Weeks.

L. C. J. Holt. Did he pretend to be Dumb?

Mr. Kenfy. Yes. And I asked him how long he had fasted at my House; and he pointed Two more.

Mr. Conyers. You say he made Signs that he had fasted ten Weeks before he came to your House, and two Weeks while he was there. Now how often did you see him eat at your House after the two first Days?

Mr. Kenfy. I saw him eat several Times at Noon and Night. And after I had seen him eat. I would have persuaded him to eat, and he made Signs still as if he could not eat, and shook his Head.

Mr. Serj. Jenner. How did you know what he meant by shaking his Head?

L. C. J. Holt. How did you know what he meant by his counting? How did you know that he meant Weeks?

Mr. Kenfy. He counted upon his Fingers, my Lord. I ask'd him how many Weeks he had fasted before he came to my House, and he counted Ten Fingers; and how long he had fasted at my House, and he counted Two more. And I ask'd him whether he had fasted Twelve Weeks then, and he made Signs of Twelve.

Mr. Serj. Jenner. You say he was dumb, and yet could hear.

Mr. Kenfy. Yes.

Mr. Serj. Jenner. How is that likely, that he should hear, and yet was dumb?

L. C. J. Holt. Cannot a Man hear, tho' he be dumb?

Mr. Conyers. Call *Elizabeth Baker*. Where is she? [*She was Sworn.*] Were you a Servant to Mr. Kenfy when this Man was at his House?

Eliz. Baker. Yes, I was.

Mr. Conyers. Then pray tell my Lord and the Jury what you know of him.

E. Baker. Richard Hathaway came to my Master's House about twelve a-Clock on *Saturday*. When we went to Dinner at one a-Clock, my Master offer'd him Meat and Broth, and he refused it; he was ask'd to eat several Times, but still refused it. They ask'd him again at Night, and he shook his Head, and would not eat. And when he went to Bed, we took his Cloaths, and lock'd him in. And the next Day he refused to rise, and at Noon they went to see if he would eat any Thing, and offer'd him a Glass of Sack, and he refused it. And on *Monday* Morning he was ask'd to rise again, and he would not; but my Master would have him rise; and would have him come down and sit by the Fire; and when he was come down, ask'd him to eat, but he would not. And at last he look'd in his Mouth, and said he saw nothing but that he might eat and drink if he would. And my Master said to me, When I am with him I will call you up, and take an Occasion to fall out with you, and when I am gone, do you rail at me, and tell him he should take nothing of me or my Brother. And so I did; I said my Master call'd me Presbyterian Jade, but I said I did not know what Religion he was of; and that he was not more willing to have me go, than I was to be gone. And I told him he should take

nothing of my Master or his Brother, I would look after him while I stay'd. So I went out of the Room, and fetch'd a Glass of Brandy, and gave it to him. But there was a Child with me, and he refused to drink it, with a Sign pointing to the Child; so I said I would hide the Child, and I stood between him and the Child; and then he drank it. And the same Day I gave him some Pudding and Small Beer; and at Night I carried him a Pint of Ale and a Toast, but found he had not eat the Pudding: I saw him eat the Toast and drink the Ale; but I did not see him eat the Pudding, tho' I suppose he eat it afterwards, for I saw it no more.

Juryman. In what manner did you convey this Provision to him?

E. Baker. My Master gave me the Key, and I went in and staid while he eat and drank, and I made him believe I had got the Key by Stealth. And I gave him a Glass of Brandy on *Monday* Night, and he drank it. And the next Day he eat and drank; he drank some Broth, and eat boil'd Mutton at Noon; and at Night he eat a Chop of Mutton, Bread and Cheese, and drank Beer and Brandy. On *Wednesday* we had a Shoulder of Mutton roasted, and after they had dined, I gave him a Plate of Meat, and he eat it in the Kitchen with me, and drank freely. And so he did every Day after while he was at our House.

Mr. Conyers. Did any ever see him eat besides your self.

E. Baker. Yes. That Day that we had fish, he was in the Kitchen; and being there, he went and wash'd his Hands, and I gave him a Plate of Fish, and set it by him; and he took it, and eat it. And I gave him a Bottle of Stout, and told him it was my Birth-day, and he must drink my Health; and after he had drank it, he pointed to his Forehead, signifying it was got into his Head; and about two Hours after, he was very merry, and danced about, and took the Tongs and play'd upon them. But after that he was mighty sick, and vomited sadly. And, says my Master's Brother, we shall see the Pins and Needles now. And to hide it, he falls a pulling the Fire over it.

Mr. Conyers. Did any of the Neighbours see him eat?

E. Baker. The 11th Day of the same Month, we had a Shoulder of Veal for Dinner; and after Dinner, my Master bid me set by some for him, and he would have some Gentlemen to see him eat it. They were accordingly hid in the Buttery and Coal-hole; and Richard Hathaway was brought down, and he took his Bread and Meat, and eat heartily, and drank with it.

Mr. Raymond. Who were those Gentlemen that saw him eat?

E. Baker. Mr. Collet. Mr. Norberry, Mr. Page and Mr. Stanton.

Mr. Conyers. These Persons are here.

Mr. Serj. Jenner. My Lord, all this is of what was done after the Trial, this Evidence ought not to be given; the Record bears Date the first Day of the Term, and all this is said to be done in *November*; it is all after the Record.

L. C. J. Holt. It is to prove the Imposture committed before now. What Mr. Kenfy says of his pretending to fast twelve Weeks, tho' two or more be not within the Time of the Information, I hope they may give it as Evidence subsequent to prove what was done before,

Mr. Serj.

Mr. Serj. Jenner. But I oppose all this of eating at their House.

L. C. J. Holt. It is an Evidence of his cheating since that Time, and that out of the Information ; but it is an Evidence also to prove that his pretended fasting before was a meer Deceit ; for he then pretended to have fasted ten Weeks before he came thither, and after pretends to continue fasting in the same Manner ; if that be proved to be a Fraud, it is strongly to be inferred, that this pretended fasting before was so too.

Mr. Serj. Jenner. But then they may not give Evidence in Matter after.

L. C. J. Holt. Matter afterwards that proves a Thing done before ; for if a Confession be made subsequent to an Indictment for a Crime, Shall not that Confession after be brought as Evidence of the Thing done before ? Sure it may.

Mr. Serj. Jenner. And will that prove what was before ?

L. C. J. Holt. It is certainly so. The Thing is, Whether I can give in Evidence any Thing after to prove what was done before. If he pretends to fast twelve Weeks, ten Weeks before he came there ; and the two Weeks after, he did not fast but only pretended it : Whether what he did after be not Evidence of what he did before ? Sure it is. For he that cannot hold out fasting two Weeks, but was glad to eat, tho' he pretended to fast, may strongly be presumed to have eaten during the ten Weeks, tho' then he pretended to fast.

Mr. Conyers. Call Mr. Stanton. (*Who appeared.*) Was you at Mr. Kenfy's House to see Richard Hathaway eat ?

Mr. Stanton. Yes. Mr. Kenfy came to me the 11th of November, and desired me to come to his House, to see whether he eat or drank or not ; and I went, and was put into a dark Place, and I saw the Victuals before he was brought ; there was five Slices of Meat, and Bread, and Beer. And he was brought where it was, and he looked about him earnestly to see if any one saw him, and then he fell to, and eat as heartily as any Man could. And hearing a Noise whilst he was eating, he run away with it, and set it on the Dresser. The Maid said, there is no body coming ; and then he went to it again, and eat it up, and drank the Drink, and sat down by the Fire. And afterwards we went to him, and carried a Bottle of Drink with us, and drank to him ; but he made Signs that he could not drink, and shew'd us that his Belly clung to his Back, which we thought was very strange.

Mr. Conyers. Call Matthew Shipps, and — Baxter. (*They did not appear.*) Jo. Hunt. (*He was sworn.*) My Lord, we call this Man to give you an Account of the strange Noises that they pretended were heard in Mr. Welling's House ; and we will make it appear how that Noise came. Mr. Hunt, pray give an Account what you know in this Matter.

Jo. Hunt. My Lord, an Acquaintance of mine, one Kelpin, told me that he had watch'd with Richard Hathaway one Night ; and the next Day he came to me, and told me he fell a-sleep, and had not watch'd him as he ought ; and desired me to sit up with him, and to observe him as narrowly as I could, and see if I could find any Deceit in him. Accordingly I did so ; and when I came into the Room, I sat down on the Bed-side. There were two Gentlemen in the Room, Mr. Pocock, and Mr. Butler, and Thomas Welling. He lay as if he were almost dead. In a little Time his Master, Tho. Welling, brought

in some Pins in a Coffee-dish, and said he had brought them up that Day, and that he believed he would bring up more. And after this seeing of the Pins, I went to Mr. Pocock, and said, I did imagine the Pins might lie in his Mouth, rather than in his Stomach ; and therefore it was very proper to have his Mouth search'd. And Mr. Pocock replied, Who will venture to do it ? And I said, If they would wash the Fire Poker clean, and put it into his Mouth, to prevent his biting my Finger, I would do it. Immediately upon this Hathaway raised himself, and began to make a Reaching, as tho' he would vomit ; and then Welling and his Wife said, now he is going to bring up Pins. Thereupon I kneeled down by the Bed-side with a Candle in my Hand to observe his Motions ; and after he had strain'd some Time, he made a Motion with his Tongue at each side of his Mouth, but I could not perceive any thing come up his Throat, tho' his Mouth was wide open ; and by and by he drew up his Mouth, and turned out two or three bright Pins, and presently after two more, which I catch'd in my Hands, and shew'd them to the Company, saying, they are bright and new ; and his Master said he believed they came out of some Chandler's Shop. Afterwards Hathaway lay down very quiet, and so continued for some Time. And Welling's Wife coming into the Room, ask'd why the Charms were not put on ? I replied, I have been told the Charms have been always taken off from him by the Witch ; but was resolv'd to watch so narrowly that Night, that they should not be taken from him. Then Welling and his Wife offering to put on the Charms, Hathaway made a struggling, as tho' he was unwilling to have them on ; and Welling said, you have always found Benefit by it, Why will you not ? They are order'd by Mr. Butler.

L. C. J. Holt. What are those Charms ?

Jo. Hunt. Three little Things in black Bags, I did not know what they were. And they ask'd him whether he was willing they should be put on ; if he was, he should hold up his Hand ; but he was unwilling. But I said, I was minded to have them put on ; so he lay still, and Mrs. Welling, or some other Woman, sew'd them to the Bosom of his Shirt. After the Charms were put on, I watch'd to see what would become of them ; and perceiving Hathaway to make several Motions with his Hands about them, I struck his Hands. I bid him either keep his Arms straight in the Bed, or else put them out of the Bed, for that the Charms should not be taken off that Night. Then I and the Company sitting still about the Bed, Welling said, Harken, you will not believe ; hear what a Noise there is, the like is heard here almost every Night. Whereupon all were silent. At last I heard a small scratching or rubbing at the Bed's Feet ; and putting my Head close to the Bed's Feet, listning, I heard something shriek ; and perceiving the Bed-cloaths stir, I took hold of the Fellow's Foot, and said, I have caught the Witch that made the Noise. I thought it had been Mice at first ; but seeing the Cloaths move, I catch'd his Foot. Thereupon Hathaway rose up, and in a Passion made a Motion towards me with both his Hands ; but I lifting up his Foot, he fell back upon his Pillow, and lay still, and the Noise ceased ; and about Five a-Clock in the Morning I left him, and the Charms upon him.

Mr. Conyers. Call Elizabeth Brand (*who appeared*). Pray give an Account what you know of any Collection of Money for Richard Hathaway.

Eliz.

Eliz. Brand. There was betwixt six and seven Pounds gathered.

L. C. J. Holt. How was it gathered?

Eliz. Brand. We went about to get Money for him to bear his Charges to *Guilford*, and we got betwixt six and seven Pounds.

Mr. Broderick. Do you know of any other Sums that were gathered for him?

Eliz. Brand. Yes, but I know not how much.

Mr. Conyers. Who employ'd you to do this?

Eliz. Brand. A great many of the Neighbours.

L. C. J. Holt. Who was the Money paid to?

Eliz. Brand. To *Mrs. Welling*.

Mr. Conyers. Do you know any thing of his scratching *Sarah Morduck*?

Eliz. Brand. I over-persuaded her to let the Fellow scratch her.

L. C. J. Holt. Did she consent to it?

Eliz. Brand. Yes, my Lord, I call'd her, and said to her, Let me persuade you to let this Fellow scratch you; and she bid me go and fetch him. And he came, and sits him down on a low Seat. Says she, Will you engage he shall not scratch my Eyes out? At last he scratches, and there came no Blood; and he scratches again, and then the Blood came; and he cry'd, O my Eyes, O my Eyes. And I said, now the Blood comes, and he stared. Says I to him, Can you see me? Yes, says he, as well as ever I could.

Mr. Conyers. *Mr. Hearne*, you was at *Guilford* Assizes, How long did this Fellow pretend he had fasted?

Mr. Hearne. I cannot be positive what he said at the Trial as to that; but they said he had fasted six Weeks, before *Dr. Martin* tried the Experiment with him.

Mr. Conyers. Call *Matt. Shipps* (he was sworn). Was *Richard Hathaway* under your Custody?

M. Shipps. Yes; He was brought from *Guilford* Assizes upon the 31st of *July* last. He came home at Eleven a-Clock at Night, and they told me he was come a Prisoner from *Guilford* to the *Marshalsea*, where he continued four Days, and he was ordered to lie with me; and every Night that he lay there, he slept very well to my thinking: And several Times I ask'd him how he did, he answer'd, he was pretty well; and every Day while he was there, he eat and drank with me, as the rest of the Servants of the House did, and was not in all that Time in any Fit as I could perceive, but went very well out of the Prison.

L. C. J. Holt. What did he say at the Assizes about his Fasting?

M. Shipps. I was not at the Assizes.

Mr. Conyers. Then we must leave it here.

Mr. Broderick. My Lord, we have the Woman here that they pretended was the Witch; but it may be, they may think it not proper, and therefore we shall let her alone.

Mr. Serj. Jenner. My Lord, and you Gentlemen of the Jury, I am Council for the Defendant, *Richard Hathaway*, who is indicted for a Cheat and Impostor; and it is for pretending himself to be bewitched, and that he has used indirect Arts and Means to make People believe he was so bewitch'd; and that this *Sarah Morduck* was the Person that had bewitch'd him; and that this was contrived by him, in order to bring Mischief and Damage on this *Sarah Morduck*, and to the evil Example of the Queen's Subjects. You have heard the Evidence that has been given, and therefore I shall not repeat it, but only observe some good Things to you. The

Doctor has taken a great deal of Pains in this Cause; but that which he does tell you by Hearsay, what other Persons have told him, is not such Evidence as you are to take any notice of, that is, what *Johnson* told him, and likewise what other Persons told him concerning this Man; for what they have said to him of this Man, tho' it may be true, is not to come under your Consideration. There are several others that have given Evidence of what other Persons have said, and they have given it as their Opinions that what this Man did was the Cause of their Doings; of which you are to take no notice. But, my Lord, that which seems to bear most hard upon us, is, That because the Doctor, and several others have been abused, both before and after the Trial, for what they endeavour'd to do; therefore they would insinuate as if my Client had had a Hand in it. But if a Man be doing any thing, and another takes the Advantage of it, to do another a Mischief, I hope that Mischief shall not be laid to his Charge. My Lord, there is one Man that has given a great deal of Evidence as to his Vomiting of Pins, and says that he was by, and he swept the Ground, and after he had vomited, there were Pins upon the Ground; and when he had a Chamber-pot to vomit in, he could not find any Pins there, but there was some upon the Ground again. So likewise for his Fasting, you have had Evidence to prove that a Cheat. And this seems to affect him most, that all this Pretence to be Bewitch'd, and Vomiting of Pins, and Fasting, was a Cheat. This is the Matter that they accuse him of. Of which if he be really guilty, I come not here to defend him; but I am to defend him as far as Witnesses will do. And now, my Lord, if my Brief be true, we shall satisfy you that my Client was in a very lamentable Condition, such as one would think no Man could be in and live; and I will lead you by these Steps. When he was thus disabled, could neither speak, nor take Sustainance, his Master, after he had served him two Years, and he had lived very civilly, and behaved himself well in his Master's Service, till he fell thus ill: Then he was so ill, that after the Master had spent a great deal of Money with Doctors and Apothecaries, he could get no Cure for him; then he got him into the Hospital, and there he continued a long Time, and at last they gave it in that he was incurable, and they turn'd him out. But his Master made Interest, and got him in again, and he continued some time there again; and there it was that he was first thought to be bewitched: For they had him twice, and could do no good with him, and the Tenders told him he must lie under some evil Tongue; and thereupon he was turn'd out as incurable, and with that Instruction that it was an incurable Disease. So he came Home again, and his Master and Mistresses were acquainted with it; and they consider what Person it should be that should have any evil Design against him. And at last they recollect, that his Master had taken a Room over the Head of this *Sarah Morduck*, and she had gone to the Shop often, and had given them very ill Words, and she should be even with him one Time or other; and therefore they concluded this Woman was the Person. Upon this there were many Things contrived, what Course they should take to do him good, and there was one Thing concluded upon in order to his Ease (which I think none should advise) that is, the Business of scratching. But this Woman, when she was accused by them of bewitching him, offered her self to be scratch'd, and she was scratch'd, and

and from thence this Man found Ease. But afterwards he fell ill again, and he went into London, and was examin'd at Sir Thomas Lane's; and upon Examination they thought that this Man did lie under such an Affliction. I cannot say it is an irreligious Thing to say there are Witches in the World; but this Man lay under such a Distemper, that no Doctor could know what to do with it. And they could not imagine who should do it but this Woman, and she was there scratch'd by him, and he did find Relief by it. My Lord, this being the Matter of Fact, we shall call very substantial Witnesses to prove it. As to his Fasting, we shall prove that he was put under the Care of very substantial Persons, and that he did not eat or drink for three Weeks or a Month; so that it will appear we had no Contrivance in the World, but only would get Ease if we could. We have twenty Witnesses to call.

L. C. J. Holt. Let them all be call'd. Call as many as you will.

Mr. Serj. Jenner. Call *Anne Eaton* (*She appeared*). Do you know *Richard Hatbaway*?

Anne Eaton. Yes, Sir.

Mr. Serj. Jenner. How long have you known him?

Anne Eaton. Ever since he came to his Master.

Mr. Serj. Jenner. How long is that?

Anne Eaton. About five or six Years.

Mr. Serj. Jenner. Do you know what Condition he was in two Years ago?

Anne Eaton. Yes.

Mr. Serj. Jenner. Then pray give my Lord and the Jury an Account of it.

Anne Eaton. I watch'd with him several Nights.

Mr. Serj. Jenner. Where did you watch with him?

Anne Eaton. At his Master's House.

Mr. Serj. Jenner. In what Condition was he then?

Anne Eaton. He was in a very bad Condition, he was dumb and blind, and his Senses were gone, and he seem'd as if he were dead; and when his Senses have come to him, he has burn'd like a Flame of Fire.

L. C. J. Holt. How long did you watch with him?

Anne Eaton. About nine Weeks.

L. C. J. Holt. Did he fast all that Time?

Anne Eaton. Yes, my Lord.

L. C. J. Holt. Might he not eat in that Time and you not see him?

Anne Eaton. I was with him constantly at Nights, but not in the Day; I have been with him four or five Days and Nights together, and did not see him eat or drink.

L. C. J. Holt. What Time was this that you watch'd with him?

Anne Eaton. From the Time that he came from Madam Davenport's, till your Lordship confined him.

L. C. J. Holt. Who put him to Madam Davenport's?

Anne Eaton. I had nothing to do with that.

Mr. Serj. Jenner. Can you not tell what Month that was in?

Anne Eaton. I can't tell that.

Mr. Raymond. Did you observe him all that Time?

Anne Eaton. When I went out, I left one always in my Room.

L. C. J. Holt. You say you were with him four or five Days and Nights together.

Anne Eaton. Yes, my Lord.

L. C. J. Holt. Were you with him all Night and all Day?

Anne Eaton. My Lord, some Days I had Occasion to go out, but then I left some Neighbours with him.

Mr. Serj. Jenner. Call *Gibson* (*Who appeared*). Do you know this Man, *Richard Hatbaway*?

Gibson. I have seen him in a deplorable Condition.

Mr. Serj. Jenner. When was this that you saw him?

Gibson. About two Years ago. His Master asked me to go and see him, and when I came up I saw him foaming at Mouth; I thought he would not live till Morning. The next Day his Master desired me to watch with him at Night; and I did, and he was so bad that I thought he would not live till Morning. Afterwards I saw him again, and he was blind and dumb, as it appear'd to me. And he had a strange Motion, he threw himself forward, and afterwards threw himself backward, as if his Head lay in the Reins of his Back; and I said to this Woman then, I believe he has broke his Back. I believe this was after he came from Madam Davenport's, about the Time that he appeared at the Bar at Westminster.

L. C. J. Holt. The first Time that you speak of, when you say he was blind and dumb, you say that was two Years ago; was he blind and dumb when you saw him the second Time?

Gibson. Yes, the second Time I saw him he was blind and dumb. I saw him in a deplorable Condition three Times.

Juryman. We desire to know the Circumstances of his Condition.

L. C. J. Holt. The Jury desire to be satisfied of the Circumstances of his Condition. You say you saw him two Years ago, and he was then in a deplorable Condition, and you saw him twice after; the Jury would have you describe the Circumstances of it as plain as you can.

Gibson. His Master desired me to go to him, and I was willing to oblige him; and when I came to him, he was both blind and dumb.

L. C. J. Holt. How long was this after you saw him the first Time?

Gibson. About half a Year after.

L. C. J. Holt. Are you a Neighbour?

Gibson. Yes, my Lord.

L. C. J. Holt. You say you saw him two Years ago, and you say he then foamed at Mouth and Nostrils; was he blind and dumb then?

Gibson. No, my Lord; but he was when I saw him the second Time.

L. C. J. Holt. When did you see him after?

Gibson. It was about a Twelve-month after that I saw him.

L. C. J. Holt. And not before?

Gibson. He was seven Weeks in the Hospital.

Mr. Broderick. Then you did not see him in the Hospital.

Gibson. I did; but he went almost double.

Mr. Broderick. Did you hear any thing of Mrs. Morduck then?

Gibson. No, Sir.

L. C. J. Holt. What Trade are you?

Gibson. I am a Glazier.

Mr. Conyers. Have you no other Trade?

Gibson. Sometimes I work at the Custom-House. One Sunday we went to hear Dr. Pead, and Richard Hatbaway went with us. And when we were gone out a-Door, he could not speak; and when we came upon the Bridge, his Face was drawn a-wry

so strangely that it astonished me; he stagger'd the Length of this Table, and his Face was drawn back again, and he fetch'd a Reel; but in a Quarter of an Hour he spoke, and his Speech continu'd till he came to *Grace church-street*, and there we met Mr. Fox, and so he continued till we came to *Bishopsgate*: But coming to *Houndsditch*, he made Motions that his Speech was gone again.

L. C. J. Holt. Did you hear him speak at *Westminster*?

Gibson. No, my Lord.

Mr. Serj. Jenner. Call *Flummery* (*who appeared*). Do you know this Man?

Flummery. Yes, I am a Neighbour.

L. C. J. Holt. What is thy Name?

Flummery. *Flummery.* After *Guilford Affizes* I went to see him, and he was in a lamentable Condition; he was like a Stock or Stone, Blind and Dumb. I went to see him —

L. C. J. Holt. Did you ever see him before?

Flummery. I saw him several Times, but took no Notice of it; but then his Eyes stood wide open.

L. C. J. Holt. And yet you say he was blind, How could that be?

Flummery. My Lord, I will tell you how; I tried him, I wagged the Hair of his Eye-Lids, and put the Candle to his Eyes, and he took no Notice of it.

L. C. J. Holt. How could you know that he did not see?

Flummery. I tried him.

L. C. J. Holt. How did you try him?

Flummery. I tried him with my Fingers, and his Eyes would not wag.

L. C. J. Holt. Did he not look then as he looks now?

Flummery. No.

Mr. Broderick. Did you speak to him then?

Flummery. Yes, but I could not make him hear nor answer me.

L. C. J. Holt. Could he speak then?

Flummery. No, may it please your Lordship.

Anne Pearse, sworn.

Mr. Serj. Jenner. *Anne Pearse,* Pray tell my Lord, what you know of this *Richard Hathaway*.

Anne Pearse. I belong to the Hospital. When he came into the Hospital he was very bad.

L. C. J. Holt. Was he blind and dumb when he came in?

Anne Pearse. After he was brought in he was put to Bed, and he was taken with a Fit, and I was call'd to him; and I came to him, and he did not stir much, and turn'd up his Eyes. And afterwards one of his Master's Journeymen came to him, and he raised him out of his Bed; and one came to me and said, Sister, he is come to the Fire, but he is very bad still. Says I, What did you raise him out of his Bed for? He went upon his Ankles almost; he went very weakly, and continued so for some Time.

Mr. Serj. Jenner. How long was he in the Hospital?

Anne Pearse. About five Months.

Mr. Serj. Jenner. Was he out, and came in again?

Anne Pearse. Yes, he was. He complain'd he could not go to stool; and the Doctor gave him *Quicksilver*; and when it came from him, I heard the Apothecary made him take it again, and swallow it again.

Mr. Serj. Jenner. When he came in the second Time, Was you there then?

Anne Pearse. Yes.

Mr. Serj. Jenner. How long was he there the second Time?

Anne Pearse. How long he was there the second Time, I cannot tell.

Mr. Serj. Jenner. Can you tell when he was put in the second Time?

Anne Pearse. No.

Mr. Serj. Jenner. What was your Opinion of him?

Anne Pearse. I apprehended him to be in a very strange Condition; he lay seven or eight Days, and did not eat or drink; he had taken *Quicksilver*, and it did not come from him, and the Doctor wonder'd it should lie so long in his Body.

Mr. Broderick. Did the Doctor or you apprehend any thing of Witchcraft in the Case?

Anne Pearse. No, Sir. But at this Time his Eyes were set in his Head.

Mr. Broderick. When he was recover'd out of those Fits, did he pretend that he was bewitch'd?

Anne Pearse. No.

L. C. J. Holt. Did you never here him complain that he was bewitched?

Anne Pearse. No, my Lord, I did not hear of that.

Mr. Serj. Jenner. Call *Jo. Smith* (*who appeared*). *Mr. Smith,* Do you know this Person, *Richard Hathaway*?

Smith. Yes, Sir.

Mr. Serj. Jenner. How long have you known him?

Smith. About five or six Years.

Mr. Serj. Jenner. How far do you live from him?

Smith. I believe about two Stones-throw.

Mr. Serj. Jenner. Were you well acquainted with his Condition two Years ago?

Smith. Yes, I have done Business for the Family several Years. About five Years ago, I found him much afflicted with Convulsion Fits at his coming to his Master.

Mr. Serj. Jenner. How was he about two Years ago?

Smith. He was in a very strange Condition; and I advis'd his Master to get rid of him, and to get him into the Hospital.

Mr. Serj. Jenner. What did he ail?

Smith. He lay in a very strange Condition.

Mr. Serj. Jenner. How did he lie?

Smith. He lay struggling and striving often, and sometimes like a Man that was dead; and once when he lay in that Condition I laid Cupping-Glasses to him, and that enliven'd him.

L. C. J. Holt. What did you imagine ail'd him? Did you think he counterfeited or not?

Smith. Indeed, my Lord, I can't tell that.

Mr. Serj. Jenner. Why did you advise his Master to put him into the Hospital?

Smith. I can't tell.

Mr. Phipps. You say you have known him five Years, and that he has been troubled with Fits. Did he ever talk of being bewitched till within this two Years?

Smith. No, not till within this two Years.

Mr. Bar. Hatsell. When he lay seemingly dead, you do not know whether he counterfeited or no?

Smith. No, my Lord.

Mr. Bar. Hatsell. Do you think a Man can be in such a Condition as he seem'd to be, and yet only counterfeit?

Smith. Indeed, my Lord, I know not. I examined him whether he was subject to those Fits formerly; and he told me, he was very much troubled with them in the Country.

L. C. J. Holt. You do not answer the Question. Cannot a Man counterfeit in such a Case? What do you think of that?

Smith. Without doubt it may be counterfeited.

L. C. J. Holt. You say, when he was in those Fits, you put Cupping-Glasses to him, and it enliven'd him; now, if he were in a real Convulsion, do you think it would have enliven'd him?

Smith. Sometimes it may be so.

Mr. Serj. Jenner. Call *Elizabeth Willoughby* (she appear'd). *Mrs. Willoughby*, pray give my Lord an Account whether you know *Richard Hatbaway*, and what you know of him.

E. Willoughby. Sir, I have seen him since the Affizes at *Guilford*.

Mr. Serj. Jenner. Did you never see him before?

E. Willoughby. Yes.

Mr. Serj. Jenner. Then give an Account of what Condition you have seen him in.

E. Willoughby. I have seen him when the Breath came out of his Mouth like the Barking of a Dog. I had a Child that was troubled with Fits, and I was above Stairs, and I heard a great Noise; and I went out of the Door to see what was the Matter, and over the Hatch lay *Richard*. Lord bless me, says I, is it you makes this Noise? And I could not fancy any thing, but that it was like the Barking of a Dog.

L. C. J. Holt. How thick was it? Was it not like other Folks?

E. Willoughby. No.

Mr. Serj. Jenner. What ailed him?

E. Willoughby. I cannot tell what ailed him.

L. C. J. Holt. Do you think he was bewitched?

E. Willoughby. I believe he was, my Lord.

L. C. J. Holt. I suppose you have some Skill in Witchcraft. Did you ever see any body that was bewitched before?

E. Willoughby. My Lord, I have been under the same Circumstances myself, when I was a Girl, in *Sir Edward Bromfield's* Time.

L. C. J. Holt. How do you know you was bewitch'd?

E. Willoughby. There was a Woman taken up upon Suspicion for it.

L. C. J. Holt. For bewitching thee?

E. Willoughby. Yes, my Lord.

L. C. J. Holt. Did you scratch her?

E. Willoughby. My Lord, I had no Power to do any thing. I flew over them all.

L. C. J. Holt. You say you were in the same Condition with this Man, and you say you flew; did you fast too?

E. Willoughby. One held me by one Arm, another by the other, and another behind, and I flew sheer over their Heads.

L. C. J. Holt. Woman, can you produce any of these Women that saw you fly?

E. Willoughby. It was when I was a Child; they are dead; it was in old *Sir Edward Bromfield's* Time.

L. C. J. Holt. What became of that Woman that made thee to fly?

E. Willoughby. I cannot tell, I have been well ever since I was married.

Mr. Serj. Jenner. How was you cured of that Witchery?

E. Willoughby. How do I know?

Mr. Conyers. Did you scratch her?

E. Willoughby. How should I scratch her, when I had not Power to see her?

Mr. Conyers. And yet you believe this Man was

bewitched as well as you. What Condition was this Man in? How long did he lie in this Condition?

E. Willoughby. Night and Day he has lain over the Hatch, and over the Bed, and made a great Noise with his Breath.

Mr. Serj. Jenner. Who did you suspect had done him this Harm?

E. Willoughby. I know not that.

Mr. Broderick. Are you a Widow?

E. Willoughby. No, Sir.

Mr. Serj. Jenner. Call *Keeling* (who appeared). Do you know any thing concerning this *Richard Hatbaway*?

Keeling. I watch'd with him 9 Nights.

Mr. Serj. Jenner. What did he eat or drink all that Time?

Keeling. He did neither eat nor drink, nor had he any Stool all that Time.

L. C. J. Holt. Did you watch with him 9 Nights and Days?

Keeling. There was another Man that watch'd with him in the Day; as I came out, he was let in; and as he came out, I was let in.

Mr. Serj. Jenner. How long was this before the Trial?

Keeling. Two or three Days before he came before *Sir Thomas Lane*.

Bridges sworn.

Mr. Serj. Jenner. Did you watch with *Richard Hatbaway*?

Bridges. Yes.

Mr. Serj. Jenner. How long?

Bridges. Nine Days.

Mr. Serj. Jenner. Did you watch with him the same Days that he watch'd with him in the Nights?

Bridges. Yes.

Mr. Serj. Jenner. Did you not stir from him till he came?

Bridges. No.

Mr. Serj. Jenner. Did you see him eat or drink all that Time?

Bridges. No.

Mr. Serj. Jenner. Where was it that you watch'd with him?

Bridges. In an old empty House.

L. C. J. Holt. Where was this House?

Bridges. By a Dock on the Bank-side in *St. Mary Overy's* Parish.

L. C. J. Holt. How came you to put him into that House?

Bridges. The Masters of the Parish put him in it.

Mr. Webb sworn.

Mr. Serj. Jenner. *Mr. Webb*, did you get a House to put *Hatbaway* in?

Webb. Yes.

L. C. J. Holt. How came you to do so?

Webb. His Master used to work for me, and he came to me, and said, I cannot tell what to do with my Man, unless the Masters of the Parish take some Care of him; and I did speak with some of them about it; and they said, we will not trouble the Parish about it, we will spend a Crown a-piece, and put these Men into the House with him.

L. C. J. Holt. You took the House then?

Webb. We borrowed the House, it being empty, and put in these two Men. There were four or five Neighbours more, and I said to him, They say you vomit Pins, I will be satisfied whether it be true or no; and we stript him, and could find none about him; we search'd his Shirt, his Stockings,

his Breeches, and his Hat, but could find no Pins about him.

Mr. Serj. Jenner. Did he eat or drink all the Time you were there.

Webb. No, my Lord.

Mr. Serj. Jenner. Did he vomit?

Webb. Yes, I went to him on *Thursday* Morning, and he had a husky Cough, and I thought he would have been choak'd; and at last he made a Crumb of Spittle out of his Mouth, and there were three Pins came from him in the Spittle, as rusty as if they had lain in a Ditch seven Years. About *Saturday* following, he had I believe four Pins more came from him; I took them, and I think the Hands of Man could not join them as those Pins were. On *Sabbath*-day in the Morning, a Gentleman came and desired him to go to Church with him, and desired him to drink a Pint of Ale, but he did not drink half; and about five a-Clock in the Afternoon came Mr. Sutton the Apothecary, and I stay'd with him till six on *Monday*, and heard not a Word from him.

Juryman. What People came in to see this Fellow while you watch'd him?

Keeling. No Man, Woman, or Child came to him the Time I was there, but only that *Sunday* Night that my Masters were there, and I said, you do not put him here to starve him; and they bid me ask him if he would eat any thing; if he would eat any thing, he might have it.

Mr. Conyers. Did not you use to carry him out sometimes?

Keeling. We never carried him out.

Mr. Conyers. Just now you said he was out on *Sabbath*-day.

Keeling. Yes, but never otherwise.

Mr. Broderick. Was he in a Ground-room, or up Stairs?

Keeling. He was in a Ground-room.

L. C. J. Holt. Were there any Windows in it?

Keeling. Yes.

L. C. J. Holt. Was there any Casement?

Keeling. Yes, there was.

Juryman. We desire to know of this Witness, whether he never was asleep in that Time while he watch'd with him?

Keeling. No, I sat just at his Head. I slept in the Day-time.

L. C. J. Holt. You that watch'd with him in the Day, did you not sleep all Day?

Bridges. No.

L. C. J. Holt. How came you to concern yourself in this Business? Are you one of the Masters of the Parish?

Webb. No, I am not; but it was my Turn to be Overseer, and his Master spoke to me to speak to the Church-wardens; and I did, and they said they would not put the Parish to the Charge, but do it themselves.

L. C. J. Holt. What Trade are you?

Webb. A Lighter-man, my Lord.

Dell sworn.

Mr. Serj. Jenner. Do you know this *Richard Hathaway*?

Dell. Yes.

Mr. Serj. Jenner. How long have you known him?

Dell. Ever since he was an Apprentice.

Mr. Serj. Jenner. Did you know him two Years ago?

Dell. Yes.

Mr. Serj. Jenner. What Condition was he in then?

Dell. I was at the Affizes at *Guilford*—

Mr. Serj. Jenner. What did you know of him before that Time?

Dell. I took no notice of such Things.

Mr. Serj. Jenner. Can you say any thing of him?

Dell. I can say, that the Night before he was before *Sir Thomas Lane* I watch'd with him, and he went to Stool, and his Excrements there was a Lump of Hair, loose Pins, a Stump of a Nail, half a Nut-shell, and two or three Pieces of Stone.

Mr. Serj. Jenner. And this you saw?

Dell. I saw him in a very deplorable Condition.

L. C. J. Holt. How? In what Condition?

Dell. This is all I have to say.

Mr. Serj. Jenner. What do you call a deplorable Condition?

Dell. He lay in such a Condition as if he were dumb; and if he was not, I believe he is the greatest Villain in the World.

L. C. J. Holt. How do you know those Excrements came from him?

Dell. I was one of the three Men that watch'd with him that Night. We had two Chamber-pots; these Things were in the first Stool, and when he had the second Stool, he sat on the Pot, and when he had done, we look'd, and there was nothing in it.

L. C. J. Holt. And were these Things in the first?

Dell. Yes, in the first; in the other there was none. And there were twenty Neighbours more that saw them.

Mr. Serj. Jenner. Was *Benn* there?

Dell. Yes, he was there.

Mr. Serj. Jenner. Mr. *Benn*, was this so?

Benn. Yes.

Mr. Serj. Jenner. Did you help watch with him?

Benn. Yes.

Mr. Serj. Jenner. And are you sure those Excrements came from him?

Benn. Yes, I am sure. I stood over him with a naked Sword.

Mr. Serj. Jenner. Why did you stand over him with a naked Sword?

Benn. Because People said he was bewitch'd.

L. C. J. Holt. Who employed you to watch with him?

Benn. I went into the House, and I told his Master, if they would watch him in the Day, I would in the Night.

Powel called.

Mr. Serj. Jenner. What do you know of this Matter?

Powel. This Man and I went up one Night—

Mr. Serj. Jenner. When?

Powel. February was Twelve-month. We went up and look'd upon him, and he lay as one dead, and he did not wag his Eyes; and presently he hook'd his Neck about in such a manner that I thought he had broke it; and he foamed, and we took the Foam from his Mouth, and in it were five Pins, the crookedest Rams-hornest Things, that I believe no Man could do them so.

Mr. Serj. Jenner. That was one Night, did you see the same at any other Time?

Powel. Yes, Sir.

L. C. J. Holt. But you did not see them come from him?

Powel. I took it from his Mouth, and they were rusty.

L. C. J. Holt. How should they be rusty?

Mr. Serj. Jenner. The Stomach will make them rusty. Call *Madam Davenport* (*she appears*).
Madam,

Madam, pray give my Lord and the Jury an Account what you know concerning *Richard Hatbaway*, when he came to your House, and how he was managed there.

Mrs. Davenport. My Lord, one Saturday I accidentally went to Dr. *Hamilton's* to visit his Wife, and I saw with the Doctor this Fellow's Master standing there; and I perceived he was come to desire the Doctor to perform a Promise he had made to him formerly—

L. C. J. Holt. Was this before the Trial, or after?

Mrs. Davenport. It was after the Trial. I came accidentally to the Doctor's, and saw the Fellow's Master with the Doctor.

L. C. J. Holt. Was the Fellow there himself?

Mrs. Davenport. No, my Lord, I never saw him there. But standing there, I perceived him expecting the Doctor to make good a Promise he had made him about this Fellow. I found the Doctor demurr'd upon it, not knowing where to put him. At last, says he to me, *Mrs. Davenport*, will you let me have a Garret in your House? Doctor, says I, you shall have my whole House at your Service, if you have Occasion for it: I thought nothing of this Fellow, till the Doctor told me it was for him. And the Doctor told me he should come that Night. Says the Fellow's Master, I will not send a Bed, that the Doctor may be satisfied there is no Cheat. And the Doctor, to prevent any Cheat, desired me to go and buy an old Bed. So I went and got a Bed in *Long-lane*, and at Night he was brought by his Master and some of his Neighbours. And truly I was surprized when I saw him, he seemed very weak.

Mr. Serj. Jenner. What did you do with him?

Mrs. Davenport. They said he had Fits, and I found I must take other Measures with him than I thought of. His Master desired he might be search'd; and my Son and two Men more search'd him. So he went to Bed, and was watch'd with that Night, and in the Morning he was struck blind.

L. C. J. Holt. At your House?

Mrs. Davenport. Yes, my Lord.

Mr. Serj. Jenner. Did you appoint any Persons to watch with him?

Mrs. Davenport. Yes.

Mr. Serj. Jenner. Did you watch with him yourself?

Mrs. Davenport. Yes, several Times.

L. C. J. Holt. How long at a Time did you watch with him?

Mrs. Davenport. But one Night at a Time myself.

L. C. J. Holt. When you did watch with him, did you watch the whole Night?

Mrs. Davenport. Yes, several Nights; and this Gentlewoman or myself took care of him always.

Mr. Serj. Jenner. What did he eat or drink while he was there?

Mrs. Davenport. Nothing. As for his Fasting, the Doctor gave me a great Charge, and said he knew I would do it.

Mr. Serj. Jenner. All the Time you watch'd with him, you say he did neither eat nor drink.

L. C. J. Holt. How many Nights did you watch with him in the seventeen?

Mrs. Davenport. But two.

L. C. J. Holt. How many Days?

Mrs. Davenport. Every Day.

L. C. J. Holt. Did you watch with him every Day yourself.

Mrs. Davenport. Either myself, or this Woman, or the Servant, or my Son *Davenport*. He is now gone to Sea. My Lord, I do not tell you I kept him in the Garret all this Time.

Mr. Serj. Jenner. When you left him, who reliev'd you?

Mrs. Davenport. This Gentlewoman, or my Servant.

Mr. Serj. Jenner. What is that Gentlewoman's Name?

Mrs. Walker. Walker.

She was sworn.

Mr. Serj. Jenner. *Mrs. Walker*, did you watch with him in this Place?

Mrs. Walker. Yes.

Mr. Serj. Jenner. Did he eat or drink while he was there?

Mrs. Walker. He did neither eat nor drink.

Mr. Conyers. How often was it that you watch'd with him?

Mrs. Walker. I cannot tell whether one or two Nights.

L. C. J. Holt. I would be satisfied in some Things. Is that *Davenport* you speak of your Son?

Mrs. Davenport. Yes, my Lord. He is now gone to Sea.

L. C. J. Holt. How long has he been gone to Sea?

Mrs. Davenport. But a Week.

Mrs. Dorman sworn.

Mr. Serj. Jenner. *Mrs. Dorman*, did you watch with this Man at *Mrs. Davenport's*?

Mrs. Dorman. Yes.

Mr. Serj. Jenner. Within the seventeen Days that he was there, did he eat or drink?

Mrs. Dorman. No.

Mr. Phipps. How many Nights or Days did you watch with him?

Mr. Serj. Jenner. Give an Account of the Time when you watch'd with him, and no longer.

Mrs. Dorman. Two Nights, and every Day.

L. C. J. Holt. He might have eat, and you not see him, might he not?

Mrs. Dorman. But the Time I saw him, he did neither eat nor drink. And he made Water, and I believe five times more came from him than he took.

Mrs. Dean sworn.

Mr. Serj. Jenner. *Mrs. Dean*, do you know *Richard Hatbaway*?

Mrs. Dean. Yes.

Mr. Serj. Jenner. How long have you known him?

Mrs. Dean. Not till he was at *Madam Davenport's*.

Mr. Serj. Jenner. Was you there all the seventeen Days?

Mrs. Dean. Not all the Time. I sat up with him two Nights.

Mr. Serj. Jenner. Who sat up with you?

Mrs. Dean. *Madam Davenport*.

Mr. Serj. Jenner. While you were there, did he eat or drink?

Mrs. Dean. No.

Mr. Serj. Jenner. Call Dr. *Hamilton*. (He was sworn). Doctor, pray give an Account of what you know concerning this *Richard Hatbaway*.

Dr. Hamilton. My Lord I have very little to say upon my own personal Knowledge. But happening to be at *Sir Thomas Lane's* when he was brought before him, I heard what pass'd, and I desired *Sir Thomas* to let me try his Throat, — and I did try it,

it, and found nothing amiss. But at last I found there was nothing to be depended upon, for there are abundance of Legerdemain Tricks, therefore his vomiting Pins, and other Actions, were not to be trusted to; and therefore there was nothing to be depended on but his Fasting; and if you would discover whether he be an Impostor or no, he must be lock'd up in a Room for a Fortnight, and watch'd. And then I said to the Fellow's Master, for my Curiosity, If you please, I will lock him up in a Room a Fortnight, and I shall find out whether he counterfeits or no. And he came to me afterwards, and said, Doctor, you promised you would make this Trial of my Man. I did so, says I, and if I can I will. I had Thoughts of putting him in the Garret; but then I consider'd, if I should put him in the Garret by himself, he might die. But at the same time Mrs. *Davenport* happen'd to come to my House; and I said to her, I dare trust you with an Experiment, for I believe he is an Impostor; and I desired her to let me have her Garret to put him in, and she consented. And I desired her either to go herself, or send to *Long-lane*, and buy Things for him; and that she should strip him, and see that nothing may be about him to hide Bread or any thing else in; and, said I, let none come to him, and let one or two of your Family sit up with him every Night. And she promised me she would. Accordingly she bought a Bed for him and other Things, and he was sent to her; and the next Day they sent me Word that he had strange kind of Motions; but I said, there is nothing to be depended on as to these Things; but I would fain know whether he fasts or no. I have heard of many that have fasted many Weeks, but they have taken Water, or some such thing, which, tho' they are very weak things, yet may keep one alive; but none can live without taking something: And if he should live to the End of the seventeen Days without eating or drinking any thing, I should have something to take hold of. They told me—

Mr. *Serj. Jenner*. That is no matter what they told you. Did you see him afterwards?

Dr. *Hamilton*. I was mightily concerned for the poor Creature when I saw him at Sir *Thomas Lane's*; and I was willing to try him.

Mr. *Serj. Jenner*. Did you see him after that?

Dr. *Hamilton*. Yes, when he was blind for several Days. And I sent to Dr. *Martin*, and desired the Favour of him to call upon me; and I said—

Mr. *Serj. Jenner*. Did you see him after he had been at Madam *Davenport's*?

Dr. *Hamilton*. Yes.

Mr. *Serj. Jenner*. Did you see him while he was there?

Dr. *Hamilton*. Yes. The thing that I depended upon was purely his Fasting. I saw him myself several times, and I could not believe but that he had eat, because his Pulse were strong; that was one Reason that I thought he must eat.

Mr. *Serj. Jenner*. Did you see him the last Day of the Fortnight?

Dr. *Hamilton*. I was just going to Dinner when Dr. *Martin* came to me; and I said to him, Doctor *Martin*, let us try every thing: Will you go along with me to him? Says he, if I go he will fall in a Passion. But after I had dined I went, and enquired about him, and they told me he had strange Motions.

Mr. *Broderick*. You say you reject every thing but that of his Fasting.

Dr. *Hamilton*. Yes.

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L. C. *J. Holt*. Doctor, do you think it is possible in Nature for a Man to fast a Fortnight?

Dr. *Hamilton*. I think not, my Lord.

L. C. *J. Holt*. Can all the Devils in Hell help a Man to fast so long?

Dr. *Hamilton*. No, my Lord, I think not; and that made me to suspect him.

Mr. *Phipps*. Do you think the Pulse of a Man can be strong when he has fasted eight Days?

Dr. *Hamilton*. I think not.

Sir *Thomas Lane* called and sworn.

Mr. *Serj. Jenner*. Sir *Thomas*, be pleased to tell my Lord and the Jury what you know of this Man.

Sir *Tho. Lane*. It was above a Twelve-month ago that his Master brought a Woman before me, upon Suspicion that she was a Witch, and that she had bewitch'd his Man; but there having been a Trial, I shall wave that. I enquired what kind of Life he had lived; and his Master said he had behaved himself very civilly, and gave him a very good Character. He told me how grievously he had been afflicted, and that he had been six or seven Months in the Hospital, and had fasted a great while, above eight Weeks, and had voided and vomited Pins; and two Witnesses swore to Chains of Hundreds of Pins that came from him in his Excrements. And it seems they had a Fancy that scratching *Sarah Morduck* would give him Relief, and they were earnest with me that I would command this Woman to be scratch'd; and I appeal to them, whether I did not refuse it. I said, if I should order this, it would be an Assault; but if she will consent, you may do it. Says she, If I may be secured for the future, I will let him. Says I, if you do it, do it in your own way; there are several here that know it was so. And she did give her Consent; and he scratch'd her, and I pull'd away her Arm from him. The Fellow had Bread and Cheese brought him; and as soon as he had scratch'd this Woman, he took the Bread and Cheese and eat prodigiously; and he had about a Quart of Drink, and he drank it up at a Gulp. I ask'd Mrs. *Morduck*, and her Friends, whether they did ever know that this Fellow had got any Money by these Tricks? No, they could not tell of any; so that there appeared to be neither Profit nor Revenge in the Case? And I thought he could not be such a Fool to pretend all this for no End, and run the Hazard of being whipp'd.

L. C. *J. Holt*. The Question is not whether he shall be punish'd for a Fool, but whether he be a Knave; whatever Punishment he may suffer, if convicted, does not belong to you to determine.

Sir *Tho. Lane*. I sent for Mr. *Martin*, and I sent for him, and I sent for the Woman, and I examined them both; and Mr. *Martin* told me he suspected the Fellow might be an Impostor, for he had got a Woman to be scratch'd for *Sarah Morduck*. And he ask'd the Woman that Mr. *Martin* had hired, and she said, in her Opinion he could see no more than a Post.

L. C. *J. Holt*. Call *Johnson* again. This Man scratch'd you. When he had done it, did you see him afterwards?

Mrs. *Johnson*. Yes.

L. C. *J. Holt*. Were his Eyes open?

Mrs. *Johnson*. Yes.

L. C. *J. Holt*. But could he see?

Mrs. *Johnson*. No. When he scratch'd me they were shut.

L. C. *J. Holt*. Every body can see when their Eyes are open.

Sir

Sir Tho. Lane. This Woman said, she believed he could neither see nor hear, any more than a Post.

Dr. Martin. It was after I was gone, I heard nothing of it.

Sir Tho. Lane. I sent for him after the Examination; all the Evidence that was before was of his fasting.

L. C. J. Holt. *Anne Eaton,* How long did you watch with him?

Anne Eaton. Nine Weeks.

L. C. J. Holt. Was he dumb and blind so long?

Anne Eaton. No, my Lord.

L. C. J. Holt. How long did he fast?

Anne Eaton. Thirteen Weeks in all.

Mr. Serj. Jenner. Did you watch with him all the Time?

Anne Eaton. Sometimes by Night, but not by Day.

Heycock Sworn.

Mr. Serj. Jenner. What do you know of this Man?

Heycock. I saw this Man in a very dreadful Condition since the last Affizes.

Mr. Serj. Jenner. Where did you see him?

Heycock. At Mr. *Welling's*. I saw him blind and dumb, and his Eyes were ready to start out of his Head.

Mr. Serj. Jenner. How long since was it that you saw him thus?

Heycock. I saw him several times in that Condition. And I was once in Company, when there were four or five to hold him in his Bed, whereas at another time he had not half the Strength of a Man.

L. C. J. Holt. When was this?

Heycock. Since the Affizes.

Spurling Sworn.

Mr. Serj. Jenner. What did you see of this Person?

Spurling. I saw him at Madam *Davenport's*.

Mr. Serj. Jenner. How often did you see him?

Spurling. Three Times.

Mr. Serj. Jenner. Did you watch with him there?

Spurling. I went to see him, because I heard he was under a supernatural Power.

L. C. J. Holt. What do you think that was, was it an infernal Power?

Spurling. A diabolical Spirit.

L. C. J. Holt. Did you ever hear the Power of a diabolical Spirit described?

Spurling. But I suppose those that are under Witchcraft are under such a Spirit.

L. C. J. Holt. But can a diabolical Spirit enable a Man to fast forty Days?

Spurling. I can't tell that. I was acquainted with one that was under a supernatural Power, that was in such a Condition as this Man was.

L. C. J. Holt. Did he fast too?

Spurling. I know not that?

L. C. J. Holt. I never heard that the Devil ever made such a bold Attempt.

Spurling. That Person, the Devil, acted him so subtilly, that it was impossible to prosecute him.

L. C. J. Holt. How could you know that?

Spurling. Because when his Eyes were shut, he could tell any Man's Name that was coming up.

L. C. J. Holt. Was not he very well pleased to be bewitch'd?

Spurling. No, he was actually possessed.

L. C. J. Holt. Was he sick, or out of order?

Spurling. No, my Lord; but he had crooked Pins came from him.

L. C. J. Holt. Did he accuse any body of bewitching him?

Spurling. Yes.

L. C. J. Holt. What is become of that Person he accused?

Spurling. He accused several.

L. C. J. Holt. How many did he accuse?

Spurling. Five Women; especially one.

L. C. J. Holt. Where is that Woman?

Spurling. She is deceased.

L. C. J. Holt. Gentlemen of the Jury, you have heard a very long and tedious Evidence. The Information is against this *Richard Hathaway*, for that he with an evil Design to take away the Life of *Sarah Morduck*, pretended to be bewitch'd, and to have fasted for a considerable Time, being not able to take any Sustainance for divers Days; nay, for, several Weeks, which he pretended to fast. And his fasting was imputed to this Woman's bewitching him; that he did not pretend to fast a considerable Time; that he did procure this Woman to be committed for being a Witch; that she was Indicted, Tried, and Acquitted, is plainly proved to you, without all manner of Question. The only Question that you are now to try, is, whether this Man did do this by reason of any Disability of his Mind, or Delusion that was upon him; or did counterfeit (what was the Reason to induce him to counterfeit, does not appear, whether to get Money, or what else, will not be material); but if this Man was under a Delirium of his Mind, and did fancy himself to be bewitch'd, then there will be no Reason to convict him.

Now it is urged, that he did this maliciously, and with a Design to take away the Woman's Life. First they tell you, that this Man had been a Servant to one *Welling* a Blacksmith: He came to him about four or five Years ago; then he had Fits, and was put into the Hospital; and being there, he pretends he could not eat. After that, he was dumb; and after that, he began to be blind; and being blind and dumb, and fasting, these were look'd upon to be the three Tokens that he was bewitch'd. Then the Man had a fancy that he was bewitch'd by this Woman, but for what Reasons does not appear; but his Fancy appear'd to be very strong, that she brought him into these Mischiefs. Therefore he must go and scratch her; which he did, and presently he could see and eat. This was look'd on as very strange, and People concluded that this Woman was the Cause of these Maladies that were upon this Man. It seems that this scratching was thought to be so effectual, that he was well for about six Weeks; after which he appeared to be ill again, and his Sight and his Stomach were gone again, and then it was proposed he should scratch her again. It seems that before that, *Dr. Martin* was desired to come to him, and pray with him, and he did: And to try whether he was sensible or not, he took him by the Hand, and by the Signs he made, found he was sensible; and therefore he did pity his Condition, but could not tell what to make of it. But *Welling* his Master told the Doctor he had received great Benefit by scratching the Woman before; and thereupon desired she might be scratch'd again. But he suspecting this might be a mere Counterfeit, and that it could not have that Effect, he thereupon gets the Woman seemingly to consent to be scratch'd, being resolved to try whether this was

an Impostor or no. And *Hathaway* pretending himself to be blind, gave him an Opportunity to make the Experiment ; for he procured another Woman to represent *Sarab Morduck*, and she consented to be scratch'd in her stead ; *Hathaway* was laid up in a Bed, and *Sarab Morduck* was in the Room, and spake to him. It was observ'd, when this other Woman, whose Name was *Johnson*, was brought to represent this *Morduck* to *Hathaway*, she put her Hand into his, and then he examin'd it, and her Wrist, and her Arm ; and so it seems he had some Apprehensions of a Design to impose upon him. And then he proceeds to scratch that other Woman, who takes it patiently, till the Blood was ready to come ; and then she was suddenly taken away ; and some of the Company said the Blood is come, and presently his Eyes opened, and he laid hold on *Sarab Morduck*, and seizes her, and did not only appear to see, but to speak. This is proved to you by other Evidence besides *Dr. Martin*. Upon this, says *Dr. Martin*, you are mistaken ; you have deceived the World, you have not scratch'd *Sarab Morduck*, but another Woman. When he understood that, he was very much concern'd, and seem'd to begin to be ill again ; and *Welling* said, he will not be well till he hath scratch'd the right Woman ; so to appearance he fell ill again. You have heard how the Matter had been carry'd on afterwards ; for many looked on this Blindness and Fasting as an errant Imposture. *Welling* and his Wife complained to *Dr. Martin*, saying, you have undone us all, and our Family too. What should be the meaning of that ? What, because he had discovered a Cheat, therefore they were undone. It seemed likely, that if it were a Cheat, and *Welling* not conscious to himself of carrying it on, he need not have been concern'd at it. But they rest not here, the Woman, *Sarab Morduck*, must be scratch'd again ; which was perform'd with Violence, against her Consent ; and the Woman being pursued by the Rabble, not able to live quietly in *Southwark*, was forced to go on the other side of the Water, and take a Lodging there for her Security ; where she was again pursued, and assaulted by *Hathaway* and others, in a riotous Manner, in order to scratch her again ; and tho' Complaint on her Behalf was made of this Violence to *Sir Thomas Lane*, he did not think fit to give her any Relief, being (as it seems upon some Evidence) possessed with an Opinion that there might be some Grounds for pursuing this Woman in that manner. She was carried before him, and he being informed that this Fellow could not eat nor drink, thereupon it was thought convenient by *Sir Thomas*, in order to make a full Discovery, that she should be scratch'd again ; and accordingly she was persuaded to submit to be scratched, and presently after the scratching, *Hathaway* did eat, and drank very greedily, and thereupon this Woman was committed to Prison. This was thought a great Evidence of this Man's being bewitched by this Woman, *Sarab Morduck*. What Rule they have for it either in Philosophy or Divinity, I cannot tell. There was a Trial, and the Woman was acquitted, and upon full Evidence. He then pretended to have fasted for a long Time. That of our Saviour's fasting forty Days, is mentioned in Scripture as miraculous, and an Effect of divine Power, being one Evidence of the Truth of the Christian Religion. Who can imagine, that without such Assistance, a Man can fast forty Days, or above, and yet continue in Health ? It is not within the Compass of my Understanding to conceive it ; I must leave you

to consult your own, and to consider with yourselves, whether you have any Evidence to induce you to believe it to be in the Power of all the Witches in the World, or all the Devils in Hell, to enable a Man to fast beyond the usual Time that Nature will allow ; they cannot invert the Order of Nature : And if the Thing be impossible, and he endeavour all this while to make the World believe he has fasted so long a Time, it is most evident he is a Cheat ; for he must contrive to have some Victuals some way or other secretly convey'd to him ; of which the Impossibility of his being able to fast so long is a Demonstration. But notwithstanding this Trial, and that this Woman was acquitted, yet this Matter must be carried on still. He was bailed out, and then returns to his Fits again ; and tho' then he was not blind, or pretended to be so, yet he seemed to fast, and to be dumb again for a long Time. This made a great Hubbub about the Town, and the People clamour'd that the Man had Injustice done him in the Trial at the Assizes ; and Reports were spread, that the Woman was acquitted by Favour or Corruption both of Judge and Jury. Upon this Account, the Woman was pursued by a Rabble, and came to be in imminent Danger of her Life. Wherefore it was thought highly necessary that the Prosecution against this Man, and others concern'd with him, should be speedy ; and thereupon he was apprehended, and bound to appear in the *King's-Bench*, and there he pretended still to be dumb. His Bail deliver'd him up, and he was sent to the *Marshalsea*. There he lay without eating or speaking for some short time, till it was consider'd that if he was under any real Affliction, it was proper he should be under the Care of some proper Person : Therefore he was put to the House of *Mr. Kenfy* a Chirurgeon in *Fetter-Lane*, who was order'd to take care of him, and use him well ; also to watch him, and endeavour to make a Discovery of the Truth of his Condition. He was deliver'd into his Hands the first of *November* last. The People of the House took care of him, and he fasted from *Saturday* till *Monday* ; and *Mr. Kenfy* asked him how many Weeks he had fasted, he counted on his Fingers twelve : But *Mr. Kenfy* thought he did not deal truly, but had a mind to impose upon the World, and therefore he locks him up. He eat nothing all *Saturday* and *Sunday* : But *Mr. Kenfy* found he had made Water, for he discovered the Rug or Counterpane of the Bed to be wet ; and that it appear'd to come from the Tester of the Bed : He made Water it seems in an old Box, and set it over the Bed. Drink was offered him, but he refused it. After this *Mr. Kenfy* makes use of this Stratagem : He pretends to quarrel with his Maid, and gives her reproachful Language, in the hearing of *Hathaway* ; calling her Hypocrite, like unto him. At which the Maid seemed to be provoked ; and out of Revenge, to prevent her Master's Design in making a Discovery, she takes an Opportunity and says to him, Take heed of my Master, he will betray you. And she had insinuated her self so far into him, that he began to trust her. She gave him on the *Monday* a Glass of Brandy, which he drank, and a Piece of Pudding, which he received and put into his Pocket ; and afterwards a Toast and Beer, which he eat and drank, and afterwards he entirely trusted this Woman. And Day by Day he did eat plentifully for several Days together in her Presence, from *Tuesday* to *Friday* Se'ennight following, thinking *Mr. Kenfy* did not see him ; but he being in a secret Place, undiscovered by

Hatha-

Hathaway, did see him eat and drink several Days, sometimes he drank so much, that he was perfectly drunk; and all this while he pretended to fast, tho' divers others besides Mr. *Kensy* and the Maid were Witnesses to his eating and drinking. Then it was thought to be time to discover this to the World; and he was told plainly by Mr. *Kensy*, that he was discover'd, and if he would tell the Truth, he should be pardon'd, seeing he could carry it on no longer. Now it is plain this Man had counterfeited during the Time he was at Mr. *Kensy's*; tho' that particular Time be not laid in the Information, yet it is a Continuance of that Time which is laid therein.

And if he was an Impostor by pretending to have fasted while he was at Mr. *Kensy's* House, I leave you to consider whether he was not so all the while before. You hear what Management there has been, how he was at *Welling's* Home, how Pins were pretended to come from him, how they were made use of, and Charms sewed to him. You hear how some Time ago one Mr. *Bateman* came to him, hearing at the beginning of this Business, he vomited Pins: He saw some on the Ground; when he vomited a considerable Number, they were linked up together; for it is hard to manage so many loose Pins; but when they are linked together, they are the easier to manage in the Mouth. Here he pretended to vomit Pins, and would be still putting his Hands to his Pocket, and Mr. *Bateman* fancied he pulled them out from thence. Therefore he took the Chamber-pot, and would not let his Hands come near it; then he vomited no Pins there; and he search'd his Pockets, and there were great Quantities of Pins found therein; neither did he at any Time seem to vomit any Pins, until he had drank a Draught of Ale. But notwithstanding all this, there are People that come and tell you that he was sick; he was disturbed, and had these Fits. One Woman tells you she has watched with him several Times; sometimes by Night: Another Woman tells you that she watched with him, when the other did not, and sometimes by Day; and that he did not eat, but was sick, and out of Order. And another tells you, he saw him; that he was in great Disorder, threw himself backward and forward, and would turn his Face round towards his Back; and that he was blind, tho' his Eyes were open. But how could he tell that he was blind? Said he, when I pulled him by his Eye-lids, his Eyes did not stir; and therefore he infers, that he was blind. And then they give you an Account that he was in the Hospital five Months; and that he was weak, and went upon his Ancles, and had Quicksilver given him; and that he lay seven or eight Days, and did not eat; but then there was no Apprehension of Witchcraft. And one Mr. *Smith* an Apothecary, a Witness, called on his part, and a Neighbour, said, he knew him four or five Years ago; and that *Hathaway* was then with his Master, and had Fits, and would fall down, and seem to be dead; whether he was really sick, or counterfeited, he cannot tell; he applied his Cupping-glasses to him, and presently brought him to himself. This is one of his own Witnesses. And then there is Mrs. *Willoughby*; she saw him in his Master's House, and she said his Breath made a Noise like the Barking of a Dog, and she believed he was bewitched, for she herself had been bewitched, and was made to fly, and she fancies he was bewitched because of his breathing in that manner. And then they tell you what Care was taken of him, and he was put

into an empty House about nine or ten Days, and one Man watch'd with him by Day, and another by Night, and how they came to do that: And they swear they never saw him eat or drink all that time; but they say he did several Times vomit Pins in that time; but it seems he was put there merely out of Charity, the Parish would not be charged with him: Then they tell you there were People appointed to watch with him, there were two Chamber-pots; and in one there were Excrements, and there were Pins in it, and Hair, and a Piece of a Nail, but after he sat on the second Pot, there was nothing found therein; but they conclude him bewitched. Then there are others that say he lay as dead, and that they took out of his Mouth several Pins. And then you have an Account after the Trial, what happened at Mrs. *Davenport's*, where he was sent by Dr. *Hamilton* to be tried whether he was an Impostor or not. She says she watched with him herself sometimes, another Woman at other times, and another at other times, and that they could never perceive that he eat any thing. But there is one Mr. *Davenport* that was with him some other times, but he is gone to Sea, and could not appear. Then comes in at last Dr. *Hamilton*, and he tells you he was by when this Matter was brought before Sir *Thomas Lane*, and he could not tell what to think of his Fasting, but as to his Fits and the Pins, he says those may be easily counterfeited by Legerdemain Tricks, but, says he, fasting for so long, as some People did believe he did, is more than Nature can bear; no body can think the Devil has such a Power to enable a Man to undergo it. Tricks the Devil may play, but not work a Miracle, it is not to be thought that God should let him loose so far. This is the Sum of the Matter, his pretending to be dumb and blind, and to fast, and to be restored to his Speech, his Sight, and Stomach, by scratching this Woman, is fully proved. You are to consider whether he did labour under these Infirmities, or counterfeited them, and whether scratching and drawing Blood of the old Woman, could be effectual to cure him of them, if they had been real? If not, then it is a strong Argument that these Infirmities were counterfeited. His scratching and drawing Blood of a strange Woman, instead of *Sarah Morduck*, did seem to avail him, as much as if he had scratch'd her, until he understood he was imposed upon; then he seemed to relapse to his former Condition. You will remember what passed at Mr. *Kensy's*, and the Manner of vomiting of Pins as was pretended. You are to consider whether this Man was *non compos mentis*, or under a Delusion; therefore I shall spare the troubling you with more Words, but leave it wholly to you. If you do believe, upon the whole Matter, that this Man has imposed upon the Magistrate and on the World, or endeavoured by counterfeiting these Infirmities, to persuade People to believe that this Woman was a Witch, and had bewitched him, then there is all the Reason that can be, to find him guilty. But if you believe he did not counterfeit, or that he was *non compos mentis*, or under any kind of Delusions, you must acquit him.

The Jury consulted, and without going from the Bar, brought him in Guilty.

A short Account of the Trial held at Surrey Assizes, in the Borough of Southwark, March 26. 1703.

In an Information, against Richard Hathaway, Thomas Welling and Elizabeth his Wife, and Elizabeth Willoughby, Wife of Walter Willoughby, upon an Information for a Riot and Assault, &c.

THE Information sets forth, That the Defendants, with divers other Persons, the 25th of September, in the twelfth Year of King William, at Southwark, in a riotous and unlawful Manner assembled themselves, and made a great Affray and Riot; and upon one *Sarah Morduck*, the Wife of *Edward Morduck*, being an honest Woman, and not a Witch, nor ever using Witchcraft, Inchantment, Charm, or Sorcery, did make an Assault, and under a wicked Colour, against the Law, to try whether the said *Sarah* was then a Witch (the Defendant *Hathaway* then falsely and maliciously affirming himself to be bewitched by her the said *Sarah*, though in truth he was never bewitched, and well knew himself not to be so) her the said *Sarah* did then, and there scratch, wound, &c. against the Peace, &c.

The Information further sets forth, That the said Defendants, the 11th of February, in the twelfth Year of King William, at Southwark aforesaid, assembling themselves together riotously and unlawfully, did then and there make a great Affray and Riot, and also assaulted the said *Sarah*, and beat, scratch'd, and wounded her, in Contempt of the King, and against the Peace, &c.

The Information further sets forth, That the said Defendants, the said 11th of February, did Assault the said *Sarah*, and wounded her the said *Sarah*, against the Peace, &c.

The Defendants pleaded, Not Guilty, and Issue was taken thereupon. The Council for the King opened the Case to this Effect: That the Defendant's Case was the same in the other Information. *Hathaway* pretended himself bewitch'd, and the Contrivance was carried on by the other Defendants and divers others; but whether for the Hopes of getting Money by it, or out of malice to take away the poor Woman's Life, or what the Design was, was not then known; but it was certain that several Riots and Assemblies were made, and great Numbers of People came together in a Body at several Times to *Morduck's* House, and in a violent Manner enter'd the same, and by Force took her out and carried her away to the Defendant *Welling's* House, where the Defendant *Hathaway* scratch'd her; and the other Defendants also in a very barbarous Manner beat her, pulled out her Teeth, tore her Face, Hair and Cloaths, threw her on the Ground, stamp'd upon her Belly, and threw her into the Street, where she lay as murdered, until taken into a Neighbour's House; which the Defendants and others in a riotous Manner beset, and threatned to pull it down, unless *Morduck* (the pretended Witch) was again delivered to them. These Riots and Assaults happened to be encouraged by an Accident, which fell out as *Morduck* was going through *Newgate-Market*, where the People crying out, A Witch, the Rabble seized her, and threatned to throw her into a Horse-pond; that one of these Rioters being taken away, was carried before a Magistrate in the City, but he was so far from taking notice thereof, that he de-

clared that there was Cause enough for it; and being desired to ask the Person's Name, refused it; but the same Magistrate afterwards ordered the Defendant *Hathaway* to scratch *Morduck* in his Presence, where were also present some of the Aldermen of London. These Matters being acted by publick Authority, gave the licentious Mob such a Confidence, that even after the Woman was tried and acquitted, and the Defendant *Hathaway* committed for an Impostor, yet he with the other Defendants, did again in a riotous manner Assault, Scratch, and Wound the said *Morduck*, and pursued her after a cruel Manner from Day to Day, till they were taken into Custody, in order to be punished for the same. For which several barbarous Facts the Defendants where then to be tried.

Then the Council for the King called their Evidence to prove the several Branches of the Information.

Sarah Morduck being called and sworn, deposed to this Effect: That in September last, *Richard Hathaway* came to this Informant in Surrey, as she was opening her Window, and being behind, scratch'd her Face in a very cruel Manner, and forc'd out one of her Teeth, and carried away her Cloaths. And upon the 11th of February last, *Thomas Osbourn*, *Thomas Hatton*, with four other Persons unknown, all in Disguise, came to this Informant's House in Surrey, and forced her out of her House, and carried her to the House of *Thomas Welling*, who is Master to the said *Richard Hathaway*; and there the said *Hathaway*, by the Encouragement of the said *Osbourn* and *Hatton*, and the rest of the Company, did again scratch this Informant in a most barbarous Manner; and afterwards *Elizabeth*, Wife to the said *Thomas Welling*, fell upon her and scratch'd her in a most cruel Manner; and tore her Face, and tore off her Head-cloaths and Hair; and then the said *Thomas Welling* gave this Informant two or three Kicks on her Belly, and threw her on the Ground and stamp'd upon her, and so much bruised her that she was forced to keep her Bed for about a Fortnight. And this Informant further deposeth, That in September last, one *Elizabeth Willoughby*, the Wife of *Walter Willoughby*, came to this Informant's House in Surrey, and brought a great many Persons unknown to this Informant with her; and the said *Elizabeth* gave this Informant several Blows with her Fist, and would have pulled her out of her House, for him the aforesaid *Richard Hathaway* to have scratch'd her, he standing at a Corner hard by, but was prevented by Mrs. *Sarah Hall*. And further saith, That in the Month of September last she having occasion to go into *Newgate-Market*, a Boy, his Name is *John Hopkins*, called out, saying, *There goes the old Witch*; whereupon a great Company of People in a riotous Manner, flock'd about her, and threatned to throw her into a Horse-pond; and this

this Informant being got into an Ale-House by the Assistance of some Women, avoided the Fury of the Rabble, otherwise she had been Murdered, as she verily believes; and afterwards Mr. Burrel her Landlord, with others his Assistants came and conveyed her home.

Sarah Hall was the next Witness, who said, That in *September 1700*, about 8 in the Forenoon, the Defendant *Willoughby* came with *Hathaway* and others, pretending to buy Fruit of *Morduck*, and told *Morduck* she came to have her out, that *Hathaway* might scratch her; and *Willoughby* struck *Morduck* several Blows, and forced her out of Doors, before *Hall* could come to her Assistance, who with difficulty got *Morduck* into her House again; upon which the Defendants *Willoughby* and *Hathaway*, and others, beset her House and threatened to pull it down, unless they had *Morduck* deliver'd to them; but *Hall* calling up her Husband, who was a Bed, the Person went away.

Robert Adams, and *John Boxer*, both Watermen, declared, That plying for their Fair at *Mason's* Stairs, they saw the Defendant *Hathaway* come behind *Morduck* as she was opening her Window, and took her about the Neck with one Arm, and pulled her almost to the Ground, and scratch'd her Face in several Places till the Blood came, and tore her Mouth, and tore her Hood and Headcloaths from her Head; and being taken off, *Morduck* got into a Neighbour's House, whom *Hathaway* would have pursued in at a Window, had not *Adams* stoppt him.

To prove the Riot and Assault in *February 1700*.

Sarah Morduck declared, That the 11th of *February, 1700*. *Thomas Osbourn*, *Thomas Hatton*, with four others unknown, all disguised, came to and forced her out of her House, and carried her to the House of the Defendant *Welling*, *Hathaway's* Master; where *Hathaway*, by the Encouragement of the Company, scratch'd her barbarously; and after that *Welling's* Wife scratch'd her, and tore her Hair, and Face, and pulled off her Headcloaths; then *Welling* kick'd her two or three Times on the Belly, and threw her on the Ground, and stamp'd on her, and bruised her so much, that she was forced to keep her Bed for a Fortnight,

Mrs. Hall said, That in *February 1700*, in the Evening, several Persons unknown came to her House, and forced *Morduck* from thence, and carried her to *Welling's* (as she was told): That about half an Hour after, *Morduck* was cast into the Street, and being received into a Neighbour's House, *Hall* went to her, and found her Face much torn, in a most barbarous Manner, and her Legs, Arms, and Body cruelly bruised and black.

Then the Council called Witnesses to prove the Third Part of the Information.

Samuel Burrel being sworn, depofed, That *Edmund Jones*, in Company with Two more, came to his House, and desired to speak with *Morduck*, who lodged there, who being called to *Jones*, he ask'd her to go over the Water to be scratch'd by *Hathaway*, who declared he was bewitched by her; but she refusing to go, *Jones* said, if she walked *London* he would have her scratch'd; and further, that about *Easter* or *Whitson* Week last, the said *Jones* came to his House with about fourteen Strangers, among whom was *Hathaway*, and would have forced into *Morduck's* Chamber; but a Constable coming, they

all but *Jones* dispers'd, who the Constable took, and carried before *Sir Thomas Lane*; but *Sir Thomas* would take no Notice of it.

Thomas Knowlton being sworn, depofed, That in *Easter* Week last, *Jones* and *Hathaway*, and several others, went into *Burrel's* House, and asked for *Sarah Morduck*, who was called down to them, when *Burrel* desired them to go up Stairs into the common Drinking-Room, and desired *Knowlton* to see *Morduck* had no Harm done her. That soon after came in about fourteen Persons, one of which said, they came to give *Hathaway* Ease, and that they would do it before they went, upon which *Morduck*, at *Knowlton's* Desire, retired into her Chamber.

Thomas Noon being sworn, declared, That all the Time aforesaid he saw Three or Four Persons, who were of *Jones's* Company, endeavouring to get into *Morduck's* Chamber; and upon *Noon's* asking them their Business, they cry'd they would speak with *Morduck*, but upon his threatening them they went into the Room below Stairs from whence they came.

Henry Armstrong declared, That in *September* was Twelve-month he saw a great Number of People following *Morduck*, calling her Witch; and going home afterwards, he saw a Crowd of People at an Alehouse Door, near *St. Paul's* Church-yard, who declared *Morduck* a Witch; and that he assisted *Burrel* in securing *Morduck* from the Rabble.

James Hearne being called, depofed, that in *Easter* or *Whitson* Week last, one *Jones* was apprehended for a Riot by him and others committed in *Burrel's* House, and carried before *Sir Thomas Lane*, who discharged *Jones*, saying there was Cause enough for the Riot and tho' often intreated by *Hearne*, yet *Sir Thomas* refused to let him know *Jones's* Name. And the said *Hearne* further declared, That the Day after *Jones* was carried before *Sir Thomas*, he and *Burrel*, by *Sir Thomas's* Directions, carried *Morduck* before him, where were present *Sir Owen Buckingham* and *Dr. Hamilton* and the Defendant *Hathaway*. That *Sir Thomas* would have had *Morduck* scratched by *Hathaway*, which she refused, unless she might be at Peace for the future: And after *Dr. Hamilton* had given *Hathaway* some Beer, *Sir Thomas* would have had *Morduck* scratch'd; but the Doctor said, Let her alone a little, to see what Effect the Drink would have on *Hathaway*; and said, if she was scratch'd it would be said that the Scratching, and not the Drink made the Alteration. And when *Sir Thomas* had heard some more Discourse of *Hathaway's* vomiting Pins, &c. *Sir Thomas* said again, let her be scratch'd; but *Hearne* opposed it; saying, she had been too much abused already, notwithstanding which, *Sir Thomas* ordered *Hathaway* to scratch her, and ordered her to be stript and search'd by some Women in his own House. That *Hearne* seeing *Sir Thomas's* Resolution, bid him satisfy himself. After which *Sir Thomas* committed *Morduck* to *Wood-street-Compter*, and refused 500 *l.* Bail for her Appearance: But upon Application made to him by *Dr. Barton* and *Dr. Martin*, *Sir Thomas* accepted *Hearne's* and his Brother's Bail for *Morduck*.

The Witnesses for the Defendants being called and heard, and the Right Honourable Lord Chief Justice Holt having spoken to the Jury, they withdrew, and soon after brought them all in Guilty.



CLXXVIII. *Proceedings against JAMES BOUCHER, * Gent. at the Queen's Bench for High-Treason, February 28. 170³. Hil. 2 Ann.*

THE Court being set, the Prisoner was called, and the Clerk of Arraignments ordered Proclamation to be made, for the Under Sheriff of *Suffex* to return the Precept, and the Keeper of *Newgate* to bring into Court the Body of *James Boucher*. Accordingly the Precept was return'd, and the Prisoner set to the Bar.

Clerk of Arr. *James Boucher* hold up thy Hand. (Which he did).

Then the Grand Jury of *Suffex's* Presentments were read.

Suffex ff. "THE Jurors for our Lady the Queen, upon their Oaths do present, That *James Boucher*, late of *London*, Gent. who was a Subject of the late King *William* the Third, and now Subject of Queen *Anne*, after the 11th Day of *December* 1688, viz. the first Day of *August* 1689, was in the Kingdom of *Ireland*, and after and before the Third Day of *December* 1697, viz. the first Day of *December* 1694, the said *James Boucher* did voluntarily go into the Kingdom of *France*, without Licence from the late King *William* the Third, or from the late Queen *Mary*: And that the said *James Boucher*, on the said third Day of *December* 1697, was not within the Dominions of the late King *William* the Third: And that he the said *James Boucher*, not having the Fear of God in his Heart, nor weighing the Duty of his Allegiance towards Our said Lady the Queen, that now is, his Supreme, True, Legitimate, Lawful and undoubted Lady; and as a false Traitor against our said Lady *Anne*, the Queen that now is, after the 14th Day of *January* 1697, viz. the tenth Day of *December*, in the second Year of the Reign of our Lady *Anne*, the Queen that now is; did Traiterously return and come into the Kingdom of *England*, viz. at *East Bourne* in the County of *Suffex*, without Licence from the late King *William* under his Privy Seal, or from our said Lady the Queen under her Privy Seal, obtained; against the Duty of his Allegiance, and against the Form of the Statute in this Case provided, and against the Peace of our said Lady the Queen, her Crown and Dignity, &c."

Clerk of Arr. What sayest thou, Art thou guilty of the said Treason, whereof thou art indicted, or not guilty?

J. Boucher. Guilty.

L. C. J. Holt. What say you? Speak out.

J. Boucher. Guilty.

Clerk of Arr. *James Boucher* hold up thy Hand. (Which he did.)

Then the Second Presentment was read.

Suffex ff. "THE Jurors of our Lady the Queen, upon their Oaths, present, That

"*James Boucher*, late of *London*, Gent. who was a Subject of the late King *William* the Third, and now a Subject of her present Majesty; after the 13th Day of *February* 1688, and before the 3d of *February* 1697 (viz.) the first Day of *August* 1689, was in Arms in the Service of the late King *James*, in *Europe*, viz. in the Kingdom of *Ireland*; and that the said *James Boucher*, afterwards and before the said third Day of *December* 1697 (viz.) the first Day of *December* 1694, did voluntarily go into the Kingdom of *France*, and the Third Day of *December* 1697, was not within the Dominions of the late King *William*. That the said *James Boucher*, not having the Fear of God in his Heart, and not regarding the Duty of his Allegiance to our Lady the Queen, his Supreme, True, Lawful and undoubted Lady, and as a false Traytor against the said Lady the Queen, after the 14th Day of *January* 1697, viz. the 10th Day of *December*, in the second Year of the Reign of our said Lady the Queen, did Traiterously return and come into this Kingdom of *England*, viz. at *East Bourne* in the County of *Suffex*, without Licence from the late King *William* under his Privy Seal, or from our said Lady the Queen, under her Privy Seal obtain'd; against the Duty of his Allegiance, and against the Form of the Statute in this Case made and provided, and against the Peace of our said Lady the Queen, her Crown and Dignity, &c."

Clerk of Arr. How sayest thou, art thou Guilty of the said Treason whereof thou art indicted, or not guilty?

J. Boucher. Guilty.

J. Boucher. My Lord, I humbly beg that I may have leave to speak Two or Three Words.

L. C. J. Holt. What would you say?

J. Boucher. My Lord, I humbly beg leave to speak Two or Three Words.

L. C. J. Holt. Ay, let us hear what you have to say.

J. Boucher. My Lord, it is very well known, that I have solicited this Two Years for Leave to come over into *England*. And while I have been in *France*, I have done all that I could to subside the *English* that were brought Prisoners to the *French* Camp, and have to my Power assisted them with Money, and other Necessaries, especially one Troop of Horse. I apply'd my self to Colonel *Lumly*, and he promised to lay my Case before the Queen. But not hearing from him, I went to his Son, and he told me he had no Opportunity to acquaint the Queen with it. Afterwards I was taken going for *Holland*, and then I sent to Colonel *Lumly*, and he promised to Remember me. And I continued still to solicit the Service of Her Majesty's Subjects, and have procured their Horses that have been taken from them, to be restored to them. I spoke to Colonel *Godfry*, and he promised to speak to—

who promised to make it their Interest to procure my Return. And after the Camp was over, I came over into *England* at Noon-day, with my Children, and sent up a Letter to my Lord *Nottingham* to acquaint him where I was. It's true, I followed King *James* into *Ireland*, but had no Commission, only served the Duke of *Berwick* as *Aid du Camp*. And afterwards I went into *France*, but never served there with any Commission, but as Master of the Horse to the Duke of *Berwick*. And I did hope that the Articles of *Limerick* would take off a great Part of my Offence. My Lord, I hope you will represent my Case favourably to the Queen.

Dr. *Sandys*. My Lord, I beg leave to speak a Word or two on Behalf of the Prisoner. My Lord, I solicited —

L. C. J. *Holt*. What you can say to us will signify nothing; but if you have any thing to say for the Prisoner, you must apply yourself elsewhere.

Mr. *Att. Gen.* My Lord, as it is my Duty, I demand Judgment against the Prisoner, upon his Confession of the two Indictments.

Clerk of Arr. *James Boucher*, thou hast been indicted on two Indictments, and confessed thyself Guilty of both. What hast thou to say why Sentence of Death should not be pronounced against thee?

J. *Boucher*. I hope your Lordship will be pleased to intercede for me to the Queen.

Clerk of Arr. My Lords, the Queen's Justices do strictly command all Persons to keep Silence while Judgment is giving, on Pain of Imprisonment.

L. C. J. *Holt*. Mr. *Boucher*, you are, by your own Confession, convicted of High-Treason, for which Judgment of Death is to be pronounced upon you, and which you are to suffer under those Circumstances which the Law hath appointed.

The Fact of which you were Accused, and have now Confessed, is, That since the Eleventh Day of *December*, 1688, you went into *France* without Licence either from the late King or Queen, and have returned since the Fourteenth of *January*, 1697, without any Licence under the Privy Seal, either from the late King, or her Majesty that now is; which Fact is made High-Treason by the Statute of the ninth Year of the late King.

The Wisdom and Justice in making that Law, will be very evident to any one that will but reflect upon the Posture of our Affairs at that Time: For in the Year preceding to that of the making thereof, there was an horrid Conspiracy formed from among that Party of Men who had so left the Kingdom, to assassinate the late King; to introduce a *Popish* and *French* Power, for the Subversion of the *Protestant* Religion, and the Liberties and Properties of the People of *England*: Which was managed with that Privacy, carried on with that Secrecy, that it was not discovered, nay, not so much as suspected, until it arrived to that Maturity, that it was come to the very Point of being put in Execution.

The Truth of which is very clear, as well as by the Proofs produced at the Trials of several of the Malefactors, as even by their own Confession.

In the following Year the Peace of *Ryswick* was made, whereby the Intercourse was restored between *England* and *France*. From thence it was evident, that divers of that Party of Men would return into the Realm, and thereby have an Opportunity to revive and carry on that horrid Design, in the Success whereof they had been so disappointed; for which, no doubt, they were not a little enraged, and it could not be otherwise expected but they would make use of it: For those of the same Principles will be guilty of the same Practices.

Therefore it was necessary to make a Returning into *England* by any of those who were under these Circumstances, to be so very penal, unless they should first give Satisfaction to the Government, either of their Innocence or Repentance, and obtain a Licence and Approbation for their Return, under the Privy Seal; for their Returning in any other Manner, is a Danger to the Queen's Person, and her Kingdom.

This Treason, tho' it seems, and is new in the Form, yet it is compounded of an old Treason, known in the antient Law of the Kingdom, which is, that of adhering to the King's Enemies. For what can be thought of those who, in Time of War, shall abandon their own Country, be harboured and protected in any Enemy's Country, for being of an Interest inconsistent with, even repugnant to, that of their own?

What your Design might be in returning in this Manner, whether to revive and pursue those wicked Practices, your own Conscience is your Witness, and will be your Judge; and if that shall acquit you, it will be for your Advantage in the World to come. But you are an Offender against the Law of the Land, which hath made this your Offence to be High-Treason, and therefore that Judgment appointed for one guilty thereof must be pronounced; the Court therefore doth award, *That you be conveyed from hence to Newgate, the Prison from whence you came, and from thence you are to be drawn upon a Hurdle to Tyburn; where you are to be hanged by the Neck, and while you are alive to be cut down, your privy Members to be cut off, and your Bowels to be cut out of your Body, and burnt in your View; your Head is to be cut off, and your Body is to be divided into four Parts, and your Head and your Quarters are to be disposed as her Majesty shall appoint. And the Lord have Mercy upon your Soul.*

Clerk of Arr. Goaler, look to your Prisoner.

J. *Boucher*. My Lord, I beg that my Friends may have Leave to come to me.

L. C. J. *Holt*. You shall have such as is usual, and as is fitting.

Clerk of Arr. Take away the Prisoner.

Accordingly he was carried back to Newgate, but was reprieved.

CLXXIX. *The Trial of DAVID LINDSAY, at the Old-Bailey, for High-Treason. April 19. 1704. 3 Ann.*

THE Court being set, Proclamation was made.

Clerk of Arr. David Lindsay, hold up your Hand (which he did). Thou standest indicted by the Name of David Lindsay of London, Gent. for that thou being a Subject of the late King William, and now a Subject of her present Majesty, after the Eleventh Day of December, 1688, viz. the 26th Day of March, 1689, was in the Kingdom of England, viz. at the Parish of St. Martins in the Fields, in the County of Middlesex; and afterwards and before the Third Day of December, 1697, viz. the First Day of October, 1696. Thou the said David Lindsay did voluntarily go into France without Licence from the late King William or the late Queen Mary; and that thou the said David Lindsay, on the said Third Day of December, 1697, was not within the Dominions of the late King William; and that thou the said David Lindsay not having the Fear of God in thy Heart, nor weighing the Duty of thy Allegiance towards our Lady the Queen that now is thy Supreme, True, Legitimate, Lawful and undoubted Lady; and as a false Traytor against our said Lady Anne, the Queen that now is, after the 14th Day of January, 1697, viz. the 10th of December, in the second Year of the Reign of our Lady the Queen, did traiterously return and come into the Kingdom of England, viz. at the Parish of St. Martins in the Fields, in the County of Middlesex, without Licence from the late King William under his Privy Seal, or from our said Lady the Queen, under her Privy Seal obtained; against the Duty of thy Allegiance, and against the Form of the Statute, and against the Peace of our Lady the Queen, her Crown and Dignity, &c.

Mr. Lindsay (taking a Paper out of his Pocket, read it to the Court). My Lord, I am very sorry I am so unfortunate as to fall under the Displeasure of the Government; and being willing to save the Court all unnecessary Trouble upon my Trial, I have therefore resolved to confess most of the Facts charged upon me in the Indictment, viz. As to my being in France, and coming into England without Licence. But I am advised that there is something so singular for my Benefit in this Case, that I beg your Lordship to hear me by Council before my Arraignment; the Council I desire, are Mr. Williams and Mr. Raymond.

** Mr. Att. Gen. My Lord, he might have had Council assigned him before, if he had desired it.*

L. C. J. Trevor. You shall have these Council assigned you which you desire.

** Mr. Soll. Gen. My Lord, I suppose this is not desired now, with any Design to delay the Trial; the Prisoner must first plead to his Indictment.*

L. C. J. Trevor. If his Council be here, we are willing to hear what they have to say.

Clerk of Arr. Call Mr. Williams and Mr. Raymond (who came into the Court).

L. C. J. Trevor. Mr. Raymond and Mr. Williams, the Prisoner here desires you may be of Council for him, and the Court have assigned you to be of Council for him accordingly.

Mr. Att. Gen. He has heard the Indictment read to him, but he has not yet pleaded to it.

Mr. Lindsay. My Lord, I desire to be heard by my Council first.

Mr. Raymond. My Lord, I apprehend Mr. Lindsay's Intention is, to give the Court as little Trouble as may be, and therefore the Facts, of which he is Guilty, and that are charged upon him in this Indictment he will confess. But, my Lord, he has been advised by his Friends, and other Council, that his Case has something particular in it, which he hopes will be for his Advantage, and desires to have the Benefit of what can be pleaded, besides Guilty or not Guilty.

L. C. J. Trevor. Is there any other Plea, that he can plead specially?

Mr. Williams. My Lord, not any that we know of; I desired him to advise with some other Persons about it; I hope he has done so. As to the Prisoner's Confessing, or pleading Not Guilty to the Indictment, it's a Matter of Prudence, and not of Law.

L. C. J. Trevor. Let him plead then.

Clerk of Arr. David Lindsay, art thou Guilty of this High-Treason, whereof thou art indicted, or not Guilty?

David Lindsay. Not Guilty.

Clerk of Arr. Culprit, how wilt thou be tried?

David Lindsay. By God and my Country.

Clerk of Arr. God send thee a good Deliverance.

Mr. Lindsay. My Lord, I have one Favour to beg, that my Wife and Children may come to me.

L. C. J. Trevor. I think he may have that Liberty, in the Presence of the Keeper, if you have nothing to object against it.

Mr. Att. Gen. My Lord, we are willing they should come to him, in the Presence of the Keeper. We will not abridge any Man of what he can reasonably and justly desire.

L. C. J. Trevor. Have you pitch'd upon any Time to appoint for the Trial?

Mr. Att. Gen. Yes, my Lord, on Monday next, if it suit the Court. He shall have a Copy of the Pannel, and all other Things that are fit for him. I suppose, my Lord, the Prisoner is now committed to the Sheriff, as is usual on these Occasions.

L. C. J. Trevor. Yes; he is committed to the Care of the Sheriff.

Clerk of Arr. Where is the Keeper of Newgate? (He appeared, and took Charge of the Prisoner. And then the Court adjourned till Monday, Nine of the Clock).

Monday,

Monday, April 24, 1704.

THE Court being set, and the Pannel called over, as usual, the Prisoner making no Exceptions; the following Gentlemen were sworn upon the Jury:

<i>Timothy Lenoy, Esq;</i>	<i>Tbo. Ellis, Esq;</i>
<i>Richard Brown, Esq;</i>	<i>Nich. Goodwin, Esq;</i>
<i>Joseph Jorey, Esq;</i>	<i>Tbo. Blackmore, jun. Esq;</i>
<i>Tanner Arnold, Esq;</i>	<i>Will. Snelling, Esq;</i>
<i>Arthur Bayly, Esq;</i>	<i>Peter Lekeux, Esq;</i>
<i>George Ford, Esq;</i>	<i>Jo. Pack, Esq;</i>

L. C. J. Holt. You, Gentlemen, that are sworn, go within the Bar.

Clerk of Arr. *David Lindsay*, hold up thy Hand (*which he did*). Gentlemen of the Jury, look upon the Prisoner, and hearken to the Charge. He stands indicted by the Name of *David Lindsay*, of the City of *London*, Gentleman, &c. as before in the Indictment. Upon which Indictment he hath been arraigned, and hath pleaded *Not Guilty*. Your Charge is, to enquire whether he be guilty of the said Treason, whereof he stands indicted. If you find him Guilty, you are to enquire what Goods and Chattels he had at that Time, or if he fled for it. But if you find him *Not Guilty*, you are to say so, and no more. And stand together, and hear your Evidence.

Mr. Morley. May it please your Lordship, and you Gentlemen of the Jury, This is an Indictment preferred against *David Lindsay*, the Prisoner at the Bar, for High-Treason; for that he being a Subject of the late King *William*, and now a Subject of her present Majesty, after the Eleventh Day of *December*, 1688, *viz.* the Twenty-sixth Day of *March*, 1689, was in this Kingdom of *England*, *viz.* in *St. Martins* in the *Fields*, in the County of *Middlesex*, and afterwards and before the Third Day of *December*, 1697, *viz.* the First Day of *October*, 1696, the Prisoner did voluntarily go into *France*, without Licence either from the late King *William*, or the late Queen *Mary*: And that the Prisoner, on the Third Day of *December*, 1697, was not within the Dominions of the late King *William*. But the Prisoner, not weighing the Duty of his Allegiance towards our Sovereign Lady the Queen, did, as a base Traitor, after the 14th Day of *January*, 1697, *viz.* the 10th Day of *December*, in the second Year of the Reign of her now Majesty, traiterously return and come into this Kingdom of *England*, *viz.* in the Parish of *St. Martins* in the *Fields*, in the County of *Middlesex*, without Licence either from the late King *William* under his Privy-Seal, or from her now Majesty under her Privy-Seal; and this he hath done against the Duty of his Allegiance, and against the Form of the Statute in this Case made and provided. To this Charge he hath pleaded *Not Guilty*.

If we prove him Guilty, I doubt not but you will find him so.

Mr. Lindsay. I shall give your Lordships, and the Court, as little Trouble as may be. I shall only beg Leave to state my Case truly before you, and then I shall submit to your Judgment.

L. C. J. Holt. *Mr. Lindsay*, if you had a mind to confess, you should have done it before; now the Jury are to enquire whether you are Guilty or not.

Mr. Lindsay. My Lord, I only desire to be heard as to the Fact.

L. C. J. Holt. You must stay till the Queen's Evidence is heard, and then you may say what you can.

Mr. Williams. My Lord, his Intentions may be as to some Things to save the Time of the Court; and perhaps to ease the Queen's Council of some Trouble.

L. C. J. Holt. Let the Queen's Council state the Evidence first, and then it may be proper for him to say what he will.

Sir T. Powis [the Queen's Serjeant]. You must either confess the Treason wherewith you are charged, or else we must proceed to prove it.

L. C. J. Holt. If you open the Evidence, then it may be he will confess; but it must be first opened.

Sir T. Powis. My Lord, there is nothing meant by us to restrain him in any thing that he has to say; all that we design is, to put him in a proper Method. It is proper that he should understand the Case. He has pleaded *Not Guilty*, and we are under a Necessity to shew what Evidence we have to prove him Guilty. My Lord, this Indictment is founded on an Act of Parliament made in the ninth Year of the late King *William*. And it is grounded on very good Reasons; for, as it is taken notice of in this Act, there had been a former Act made in the third and fourth Years of the Reign of the late King *William* and Queen *Mary*, by which it was made High-Treason for any to repair into *France* without Licence; that any one that did so, should fall under the Guilt of High-Treason. But that Act was calculated only for the Time the War lasted, and was of no longer Continuance; and there being a Peace concluded, the Preamble of this Act takes Notice, that thereby it would become necessary for the carrying on of Trade and Commerce between *England* and *France*, that there should be a Freedom of going and coming out of, and into the said Kingdoms respectively. And therefore the Act further says, That whereas several Persons who had been in Arms, or had been engaged in treasonable Practices against the King and Government, and other disaffected Persons (as all that resorted into *France* without Licence, during the War, were supposed to have sufficiently shewed themselves disaffected to the Government) therefore the Act goes on, and provides against the Mischiefs that might ensue; and says, If any of his Majesty's Subjects, who had voluntarily, since the Eleventh of *December*, 1688, gone into *France* without Licence, and should at any Time, after the 14th of *January*, 1697, return into *England* without Licence, that such Person, so doing, should fall under the Guilt and Penalty of High-Treason. This is the Substance of the Act upon which the Indictment is formed. Now, that which we have to charge and prove upon the Prisoner, is, That he was here in *England* after the 11th of *December*, 1688. We are ready to prove that he was here in the Beginning of *March*, 1689, that he went into *France* in *October*, 1696, that he afterwards returned into *England* in *December* last. We say, he went into *France* without Licence, and returned without Licence; and it will be his Part, if he can, to make it appear otherwise. If he does not admit these Facts, we shall call our Witnesses to prove them upon him. If they are Facts that he admits, then he may regularly proceed.

Mr. Lindsay. My Lord, may I speak now?

L. C. J. Holt. Yes, you may.

Mr. Lindsay. My Lord, I do confess, that being a Native of *Scotland*, and never having had any Office in *England*, I did go into *France* without his late Majesty's Licence, after the Time mentioned in the Act; and I did continue beyond

Sea

Sea, till I was informed that her Majesty did, according to her usual Clemency, by her Gracious Proclamation in 170³, give a general Pardon to all her Subjects; and being desirous to take the Advantage of it, and to return to my native Country, I came into *Scotland*, where I presented myself before the Government, and had the Benefit of the Queen's Proclamation allowed me. Whereupon, my Lord, being advised by some eminent Council there, that I was as free to come into *England*, as any other Subject; and having my Wife and Children here, I came to *London* by the Way of *Berwick*. Therefore, my Lord, humbly conceiving, in these Circumstances, that I am not guilty of Treason within the Intent of this Act, I desire to be heard by my Council.

L. C. J. Holt. You own you went into *France* since the 11th of *December*, 1688.

Mr. Lindsay. Yes, my Lord.

L. C. J. Holt. From what Place did you go into *France*, from *England* or from *Scotland*?

Mr. Lindsay. From *England*.

L. C. J. Holt. Then he confesses the whole Fact.

Mr. Soll. Gen. But, my Lord, he was there before 1697.

L. C. J. Holt. You must agree on the Fact. He says he did go into *Scotland* within the Time mentioned in that Proclamation. And being in *Scotland*, he says, he did advise with some learned Council, and they told him he might safely come into *England*. Now, do you admit that he did go into *Scotland* on that Occasion of the Queen's Proclamation?

Mr. Att. Gen. My Lord, as to that Fact, we cannot admit it. There was no Licence mentioned in it, the Proclamation gives no Licence to come into *England*, only a general Pardon. What his Council will make of it, I cannot tell.

L. C. J. Holt. Do you expect it should be proved?

Mr. Att. Gen. If he will shew us the Proclamation, if it be the same that I have I will allow it.

L. C. J. Holt. Produce that Proclamation, look upon it, it may be you will admit it without any further Proof.

Then the Proclamation was produced, and Mr. Attorney General looked on it.

Sir T. Powis. Will they have it read?

Mr. Att. Gen. It may be read if they desire it.

Mr. Williams. My Lord, we desire it may be read.

Sir T. Powis. My Lord, we would not have it look'd on as a Thing of Right to be read, without further Proof.

L. C. J. Holt. No, that is of Grace, it is a voluntary Offer of yours.

Mr. Att. Gen. Then I shall not oppose the reading of it.

L. C. J. Holt. Then you do admit that to be the Queen's Proclamation for *Scotland*.

Mr. Att. Gen. Yes, my Lord.

Mr. Williams. I desire to know, whether they admit the Prisoner to be a Native of *Scotland*?

Mr. Att. Gen. We do not know that.

L. C. J. Holt. Then you must prove it, if you think it material.

Sir T. Powis. My Lord, he went from *England* into *France*, and returned from *France* into *England* again.

L. C. J. Holt. He must be taken for a Native of *England*, unless he can prove the contrary.

Mr. Williams. My Lord, shall we first read the Proclamation, or prove him a Native of *Scotland*?

L. C. J. Holt. Read the Proclamation first.

[Then the Clerk read the Proclamation.]

A Proclamation of Indemnity.

ANNE R.

“ANNE by the Grace of God, Queen of
“*Scotland, England, France and Ireland*,
“Defender of the Faith, &c. To all and sundry our good Subjects, to whom these Presents do or may concern, greeting. Forasmuch as it has been, and is, our constant Resolution and Design to establish the Peace, and promote the Welfare of our People; not only by procuring the equal and impartial Administration of Justice, but also by such a Mixture of the benign Influences of our Goodness and Clemency, as may best compose all Distempers, and give a just Assurance against all Fears and Jealousies: And for that Effect, we being desirous to complete the Indulgence that hitherto we have shewed, and to reclaim even such Offenders as might justly have expected the deserved Effects of our Displeasure. And that for Time to come, we may by a Gracious Pardon and Act of Oblivion, establish firm Peace and Concord amongst all our Subjects. Therefore we, of certain Knowledge, and by Virtue of our Sovereign Power and Authority, Pardon, Remit, Indemnify, and for ever Acquit, all and every one of our Subjects, of all Crimes of Perduellion, Rebellion, Treason, Concealing of Treason, Harbouring, Receipt, Supplying, Corresponding and Intercommuning with Rebels, and Declared Enemies, the impugning the Dignity and the Authority of the Estates of Parliament, and all other Kinds of Treason or Lese Majesty, whether Common or Statutory, and of all Crimes of Lese-making, whether to us or our Subjects, or to our Subjects of us, Depraving or Misconstruing our Laws, or of any of our Proceedings, or Misrepresenting or Slandering us or our Proceedings in any Sort; and all Breaches or Abuses of, or Malversations in publick Trusts, with all other Crimes, Delinquencies or Transgressions of whatsoever Nature or Quality, committed, acted or done by any of Her Subjects by Word or Writ, or incurred by any other Act either by Commission or Omission, preceding the Date of these Presents, and which directly or indirectly are, or may import the Contravention of any Law or Act of Parliament, Custom or Constitution of that our antient Kingdom; and that in so far as the same may infer any Pain or Punishment against any of our Subjects, either in their Lives, Fortunes, Estates, Fame or Reputation. All which we by Virtue of our Royal Power and Authority aforesaid, Will, Declare and Ordain to be hereby Pardoned, Acquitted and Indemnified, and put in perpetual Oblivion; and that this General Pardon and Indemnity shall be as valid and effectual to all our Subjects for their Exoneration and Discharge of all Pains and Punishments, as if every particular Crime, Offence, Delinquency or Misdemeanor were here set down, and as if Remissions, under our Great Seal were past and granted for the same, wherewith we for Ourselves and Successors dispense for ever. Like as we hereby Prohibit and Discharge

“ charge any of our Ministers or Judges to call in
 “ Question, or proceed against any of our said
 “ Subjects for the said Crimes, and their Crimes
 “ and Punishments in any Time coming; *Declaring and Ordaining this our general Pardon and Indemnity to be interpreted and understood in the most benign, favourable and comprehensive Sense the same can admit, for the Security of our Subjects.*
 “ Excepting always forth and from this general Pardon and Indemnity, all *Fore-faulters*,
 “ and Sentences, and Dooms thereof, and all pecunial Fines and Unlaws already paid or transacted; and but prejudice to us, or these commissioned by us, to call all Collectors and other Intromitters with publick Money, to give Account of their Intermiſſions, and to make Payment of what shall be found due by their Intermiſſions. And farther excepting, all Manſlaughters, Murders, Aſſaſinations, Witchcrafts, Fire, Raiſings, Depredations, Robberies, Rapes, Spulzies, Thefts, Houſe-breakings, Mutilations, Adulteries, Blaſphemies, and Delinquences of Immorality. All which Crimes, and thoſe guilty thereof, are no ways to be comprehended in, or have any Benefit by this our Pardon and Indemnity as the ſaid Crimes excepted. And laſtly, to the end all our good Subjects may have Notice of our Royal Will and Pleaſure, we do hereby command our Lion King at Arms, and his Brethren, Heraulds, Purſivants, and Meſſengers at Arms, to make due Publication hereof at the Market-Croſs of *Edinburgh*; for all which theſe Preſents ſhall be a ſufficient Warrant.”
 Given at our Court at St. James's, March 16th, 1702, and of our Reign the ſecond Year.

By her Maſteſty's Command.

Queensberry.

GOD ſave the QUEEN.

Mr. Raymond. Look on the Backſide.

Mr. Att. Gen. What is that?

Mr. Raymond. A Certificate from the Duke of Queensberry, Secretary of State of Scotland, that it is a true Copy.

Mr. Att. Gen. We admit it.

Mr. Williams. Then, my Lord, it is inſiſted on that we ſhould prove the Priſoner a Native of Scotland.

Mr. Att. Gen. If you think it material, you may prove it.

L. C. J. Holt. They did think it material, and therefore made it part of their Caſe.

Mr. Williams. Call James Grey, Eſq; (*who appeared, and was ſworn.*) Sir, do you know the Priſoner at the Bar?

J. Grey. Yes.

Mr. Williams. What Countryman is he?

J. Grey. Always reputed of Scotland. I have known him this 20 Years, and he was always reputed ſo.

L. C. J. Holt. Have you known him 20 Years in England?

J. Grey. Yes, my Lord, in England; not in Scotland.

Mr. Soll. Gen. Have you had any Correſpondence with him?

J. Grey. No, Sir, no great Correſpondence. In King James's Time he was Secretary to the Lord Melfort.

Mr. Williams. What Countryman was he reputed then?

J. Grey. A Scotchman.

L. C. J. Holt. Did you know his Family?

J. Grey. No, I have been always in England; I did not know his Family.

Mr. Williams. We have another Evidence.

L. C. J. Holt. You muſt bring better Proof than this, or elſe it will not do.

Mr. Williams. Call Mr. Trumbal (*who appeared, and was ſworn.*) Mr. Trumbal, do you know the Priſoner at the Bar?

Trumbal. Yes.

Mr. Williams. How long have you known him?

Trumbal. I have known him this twenty Years.

Mr. Williams. What Countryman did you always reckon him?

Trumbal. A Scotchman.

L. C. J. Holt. How do you know that?

Trumbal. He has always been reputed ſo. He dealt in Wine with one that I knew, and ſo I came to know him.

Mr. Williams. Did you know him in Scotland?

Trumbal. No.

Mr. Att. Gen. Have you known him any where but in England?

Trumbal. No; but he has been reputed a Scotchman, that dealt in Wine. He had always the Repute of an honeſt Man.

Mr. Williams. Call Charles Canair (*who appeared.*)

Mr. Att. Gen. You ſhould bring your Witneſſes into the Court. What is your Name, Sir?

Mr. Canair. Charles Canair.

Mr. Williams. How long have you known the Priſoner?

Mr. Canair. Ever ſince I was a Child.

Mr. Williams. Where did you know him?

Mr. Canair. In Scotland. I remember him from a Child.

L. C. J. Holt. And you knew him to be a Native of Scotland?

Mr. Canair. Yes, my Lord, of Dundee in Scotland.

L. C. J. Holt. Did you know any of his Relations?

Mr. Canair. Yes, my Lord; his Father was of Dundee in Scotland.

Mr. Williams. My Lord, we have ſomething farther to prove.

L. C. J. Holt. What is it?

Mr. Williams. That the Priſoner was allowed the Benefit of this Proclamation in Scotland; and we beg leave to ſay, this Faſt which is now charged againſt him is already pardoned.

Mr. Att. Gen. That Pardon has Influence in Scotland, not in England.

Mr. Williams. Then you admit alſo that the Priſoner had the Benefit of this Proclamation allowed him in Scotland.

Mr. Att. Gen. I know nothing of that.

L. C. J. Holt. Now go on and ſtate your Caſe.

Mr. Williams. My Lord, Mr. Attorney General is not pleaſed to admit we had the Benefit of the Proclamation allowed us in Scotland.

Mr. Att. Gen. They inſiſt on what I know nothing of; if they think they can have any Benefit by it, they may prove it.

Mr. Raymond. We have done our Endeavour to have the Secretary of State of Scotland appear here, but I don't know whether he has done us the Favour. We have the Certificate under his Hand.

L. C. J. Holt. Is it the ſame Hand?

Mr. Att. Gen. My Lord, he aſſerts that Certificate, but we know not whether it be true.

L. C. J. Holt.

L. C. J. Holt. Then that must be proved.

Mr. Raymond. Call *Thomas Bruce, Esq;* (*who appeared, and was sworn*). *Mr. Bruce*, do you know the Prisoner, and whether he had Benefit of the Pardon in *Scotland*?

Mr. Bruce. I know very little of him. I know he was at *Edinburgh* last Summer, and was under Confinement there, and under Examination several Times; but after some Days he was at Liberty again. That's all that I know.

Mr. Raymond. Was he not at Liberty by leave of the Government?

Mr. Bruce. It was so believed.

Mr. Att. Gen. Can you tell when he came back to *Scotland*?

Mr. Bruce. No, Sir. He was in Custody about July last.

Mr. Att. Gen. Can you be particular to the Time? Was it in *June* or *July*?

Mr. Bruce. I can't be positive; it was in the Time when the Parliament sat. I never was in his Company.

Mr. Raymond. Call *Mr. Southerland*.

Mr. Att. Gen. I know not why we should trouble the Court with this. What signifies the Pardon?

L. C. J. Holt. Let them make what Use they can of it.

Mr. Att. Gen. Sir, what is your Name?

Mr. Southerland. *Southerland*.

Mr. Raymond. Do you know any thing of the Prisoner's having any Benefit allow'd him of the *Scotch Pardon*?

Mr. Southerland. I heard he had surrendered to the Government.

Mr. Raymond. Was he discharged by the Government?

Mr. Southerland. Yes, it was generally reported so.

Mr. Att. Gen. What Time was that, Sir?

Mr. Southerland. In *June* or *July* last Summer.

Mr. Att. Gen. Was he there the 27th of *July*, or before?

Mr. Southerland. I cannot be positive.

Mr. Raymond. Call *Dr. Hutton* (*who appeared*). Doctor, what do you know of the Prisoner's having the Benefit of the *Scotch Pardon*, and its being allowed him by the Government?

Dr. Hutton. I was, in *September*, at *Edinburgh*, and there I saw *Mr. Lindsay* at the *Queen's-Head*, with the *Attorney General*. He had been examined about some Letters (as I heard say) that had been directed to him. And there I heard *Sir John Stuart* tell him, the Council had set him free. And I met him afterwards at Liberty, and it was done upon the Proclamation of Indemnity.

Mr. Williams. What Religion is he reputed of?

Dr. Hutton. I know not that. But I have known him six and twenty Years, and I heard him tell *Sir James Stuart* (who asked him why he came away from *France*) because he would not be a Papist, and he said, he had rather go to the Gallows than return again.

Mr. Williams. What is his Temper? Is he a quiet Man in relation to the Government; or of a turbulent Temper?

Dr. Hutton. I have always known him a fair, peaceable, friendly Man.

Mr. Raymond. Doctor, I would ask you one Question; whether you have any Law in *Scotland* that prohibits going into *France*?

Dr. Hutton. I do not know. I know several Persons that came from *France* to *Scotland*.

Mr. Att. Gen. Doctor, you give him a fair Character. Can you tell in whose Service he was in *France*?

Dr. Hutton. No, Sir; I cannot.

Mr. Att. Gen. What was his Affection towards the Government?

Dr. Hutton. I know nothing of that.

Mr. Soll. Gen. When did he return into *Scotland*; was it before or after the 27th of *July*?

Dr. Hutton. I do not know.

Mr. Raymond. He came into *England* in *September* last, after he had his Pardon. We say he came through *Northumberland*, and other Places hither, and in this County he was taken.

Mr. Lindsay. I was taken no where, but surrendered myself to *Sir Charles Hedges*.

Mr. Williams. The Fact is, that he came from *Scotland* through *Northumberland*, &c. and so into *Middlesex*, and surrendered himself; so that *Northumberland* was the first County of *England* that the Prisoner came into, after his leaving *Scotland*; and so that the Treason, if any, was committed there, and we insist that the Arraignment and Trial ought to be there.

L. C. J. Holt. If you insist upon it, that the Treason committed was in *Northumberland*, then you must prove it.

Mr. Williams. My Lord, with Submission, tho' the Fact being that *Northumberland* was the first County of *England* that we came into, yet it may be difficult to us to prove it; but with Submission, it may not be absolutely necessary for us to prove, that *Northumberland* was the first County, in regard that your Lordship will take notice that *Middlesex* cannot be the first County, it being impossible to come from *Scotland* into *Middlesex*, without being in other Counties before; and the Indictment ought to have been in the first County of *England* he came into.

Mr. Att. Gen. My Lord, we indict him where we find him.

Mr. Raymond. We can prove that he came first to *Berwick*, then through *Northumberland*, before he came into *Middlesex*.

L. C. J. Holt. If you can, do.

Mr. Raymond. *Dr. Hutton*, do you know where he came first into *England*, and which Way he came hither?

Dr. Hutton. No, indeed; I have heard that he came through *Northumberland*, &c.

Mr. Raymond. Did you lend him your Horse?

Dr. Hutton. No, Sir; but a Friend of mine did lend him his Horse.

Mr. Raymond. Where does your Friend live?

Dr. Hutton. At *Edinburgh*.

Mr. Raymond. Did he come hither on that Horse?

Dr. Hutton. That I know not. He was left there by a Friend of mine, to be sent into *England* with the first Opportunity, and so he sent him by *Mr. Lindsay*.

Mr. Raymond. Did he make use of that Horse all the Way?

Dr. Hutton. I know not that.

Mr. Williams. My Lord, I am, by your Lordship's Permission, of Council for the Prisoner: And I hope this free and ingenuous Confession, which he has now made at the Bar, being the very same which he before made at his Arraignment; and being the very same Confession which he made before the Secretary of State, and others, before

before whom the Prisoner was examined, will be taken and weighed by the Court as a good Argument of the Sincerity of this unfortunate Gentleman; and that he designs in his Trial to put your Lordship to as little Trouble as possible. My Lord, It has been proved that he is a Native of *Scotland*, and he always has been of the *Protestant* Religion. He has been indeed in *France*, but finding he could not enjoy his Religion there, he was resolved by the first Opportunity to endeavour to gain a Licence from the Government for his Return into his own Country. In the mean time comes out Her Majesty's Gracious Proclamation of Indemnity. That Proclamation was proclaimed in a publick Manner, by all Her Majesty's Heralds, at the Market-Cross at *Edinburgh*, and it has very extensive Words in it, pardoning all Treasons, Felonies, &c. all Crimes and Misdemeanors whatsoever. My Lord, in Confidence of this Her Majesty's Royal Proclamation, we came from *France* to *Scotland*, and there claimed, and were allowed by that Government, the Benefit of the Queen's Mercy. Afterwards having been advised by the most eminent Advocates and Council of *Scotland*, that by this Proclamation we were rendred in every Respect as a free Subject, and might with Safety come from thence to *England*; we accordingly came from thence hither; but all this while we paid all the due Submission and Regard that could be, as well to the Law as to the Government; for we came from *France* unto the *Hague*, and we there attended upon Her Majesty's Envoy, Mr. *Stanhope*, and acquainted him with our Intentions of returning home. Immediately upon our Return into *Scotland*, we voluntarily came before the Chief Commissioner and Magistrates there; who, upon our Claim, were pleased, at length, to allow us the Benefit of Her Majesty's Royal Proclamation and Pardon. And when we were in *England*, on the first Notice of a Warrant out against us, we, of our own Accord, waited on the Secretary of State, Sir *Charles Hedges*, and he happening not to be then at Leisure, we voluntarily attended upon him a second and a third time; and upon our third Attendance we were committed. And now, my Lord, we stand indicted before your Lordship for the greatest of Crimes, *High-Treason*. My Lord, as to the Statute upon which we were indicted, tho' some Part of it, without doubt, was not only very reasonable, but absolutely necessary, I mean that Part of it which was for the Preservation of his late Majesty's Person and Government; but as to that Part of it upon which we are indicted, it seems, with great Submission, a severe Law. That the bare returning into our native Country, when we before were convicted of no Crime, or guilty, at most, but of a bare Contempt, in going out of the Queen's Dominions without Licence, that this should be made High-Treason, this, with Submission, is somewhat severe: So that in respect of the Severity of this Law, besides the common Arguments of its being a Penal Law, your Lordship will be the rather induced to admit of the most favourable and merciful Construction to every Part and Clause of this Act, that it will bear. My Lord, we do humbly insist on the Words of the Proclamation; and we take it, that those Words do amount to a Licence to us to come into *Scotland*: And if so, then we are not guilty within this Act of Parliament, of coming to the Queen's Dominions without Licence. And we likewise further insist, that one that has the Queen's Licence to come into *Scotland*, may, without any further Licence, come into *England*—I

beg your Lordship's Leave to read that Part of the Proclamation, which we chiefly insist on. The Proclamation pardons all Treasons, and all corresponding and intercommuning with Rebels, or declared Enemies of the Queen. My Lord, it pardons all other Crimes, of what Nature soever. It pardons any Act, that may infer any Pain or Punishment, on the Lives or Estates of Her Majesty's Subjects. And it is declared to be as available to all Subjects, to pardon them all Crimes, as if the particular Crime were named, and as if Remissions under the Great Seal were pass'd. And then Her Majesty declares, That this shall be taken in the most favourable and comprehensive Sense that may be, for the Security of the Subject. Now, my Lord, taking this Proclamation in the most favourable and extensive Sense, in favour of the Prisoner; which Her Majesty has been pleased expressly to direct it should; with Submission, I take it, it will amount to a Licence from Her Majesty, to return from *France* to *Scotland*: And we humbly take it, that if the Prisoner did by Licence come from *France* to *Scotland*, that he afterwards coming from *Scotland* into *England*, is not within the Act.

My Lord, I would beg Leave to consider what it was that hinder'd the Prisoner from returning from *France* to *Scotland*: Sure it was his going to *France* without Licence. Then when Her Majesty is graciously pleased to pardon this Offence, we take it, that Her Majesty, by removing the Obstacle, does by necessary Implication give Leave to the Prisoner to return to *Scotland* again. Her Majesty is pleased, with Submission, plainly to give him this Leave, by taking off that that hinder'd his coming. That Parliament plainly did take it, and have been pleased to declare it an Offence, to go into *France* without Licence; and have therefore been pleased to punish that Offence with a temporary Banishment: But when that Offence is pardoned, when that Banishment is remitted, then the Prisoner seems at Liberty to return home: And that Liberty being given by the Queen's Proclamation, this, with Submission, amounts to a Licence from the Queen, for the Prisoner's returning home. My Lord, there are many Instances, wherein the King or Queen's Grants or Pardons shall have a double Operation, for the Benefit of the Persons upon whom they are bestowed. But these Cases, as I humbly conceive, not immediately relating to this Point now before your Lordship, I shall not trouble your Lordship with citing them. My Lord, if we, when in *France*, had been guilty of more than what is charged upon us in the Indictment; I mean, had we corresponded, or adher'd to the Queen's declared Enemies; still the express Words of the Proclamation seem plainly to extend to us, when it pardons all corresponding and intercommuning with the Queen's declared Enemies, which the *French* then were, and now are. My Lord, If this Proclamation could in any Part of it bear two Constructions (the one making for the Prisoner, the other against him) the Queen has been pleased to determine in what Sense it shall be taken; in the most beneficial manner for the offending Subject. But, with humble Submission, would this be observing of Her Majesty's Gracious Directions; instead of allowing to the Prisoner the Benefit of this Proclamation, to make his very coming to *Scotland*, to claim the Benefit of it, and humbly to lay hold of Her Majesty's Mercy; to make this very Act to amount to a Crime; to make it the greatest of Crimes, High-Treason? This surely would be the very Reverse of Her Majesty's most

Gracious Intentions: And yet this, with Submission, would be the Consequence, if the Prisoner's coming from *France* into *Scotland* should be construed to be Treason. My Lord, I admit the Words of this Act are, If any return into *England*, or any other of Her Majesty's Dominions, without a Licence under the Privy-Seal, it shall be High-Treason.

Sir T. Powis. But this is not a Licence under the Privy-Seal.

Mr. Att. Gen. The Great Seal of *Scotland* will not vacate an *English* Act.³

Mr. Williams. Now we humbly take it, if the Queen is pleased to bestow her Licence by any Act, or in any manner equally notorious with her Privy-Seal, 'tis sufficient, and within the Meaning and Equity of the Statute. And this Proclamation made by all the Heralds at Arms, at the most publick Place in *Edinburgh*, is as notorious, nay, much more notorious and publick, than a Licence under the Privy-Seal only; and therefore within the meaning of this Act. Besides, the very Words of the Proclamation are, That it shall be in every Respect as valid and effectual, as if it were under the Great Seal: And if under the Great Seal, surely it must be at least as strong, as if under the Privy Seal. Besides, the Statute does not say, that the Licence must be under the Privy-Seal of *England*. The Words of the Act are, If any return into *England*, or any other of Her Majesty's Dominions, without Licence under the Privy-Seal, without saying of what Kingdom. Now, with Submission, it not being said what Privy-Seal, or of what Kingdom; it must be intended, according to the Subject-matter, the Seal of that Kingdom or Dominion where the Licence is granted; and that being *Scotland*, the Licence under the Great Seal of *Scotland*, is sufficient: For it seems improper, that the Seal of one Kingdom should be made use of, to license an Act in another Kingdom. Now, if a Licence under the great Seal of *Scotland* be sufficient, this Proclamation declares, that it shall be as valid as if 'twere under the Great Seal: And it can't be deny'd, as I have said, but a Licence under the Great Seal must be equivalent with a Licence under the Privy-Seal. Besides, the Queen's Proclamation does not mention what Great Seal, or of what Kingdom; and so it may be intended, that Great Seal that would be most beneficial to the Prisoner; taking it in its most favourable Sense, as Her Majesty is pleased to direct it should be.

But 'twill be said, That taking this to be a Licence, this is only a Licence to come into *Scotland*; but the Prisoner is indicted for coming into *England* without Licence. But we take it, If we had a Licence to come into any one of the Queen's Dominions, and we first came into that Dominion with this Licence; we can't then be guilty of Treason within this Act. The Words of the Act make it Treason to come into *England*, or any other of the Queen's Dominions without Licence; so 'tis the same thing as if it said, that it should be Treason to come into the Queen's Dominions without Licence. Then if one comes into *Scotland* with Licence, *Scotland* being one of the Queen's Dominions, the Prisoner can't be said to come into the Queen's Dominions without Licence; so that by this Licence the Prisoner is wholly out of the Act. This Act, with Submission, must operate and take its Effect upon the first Step made from *France* into any of the Queen's Dominions; so that if the Prisoner be guilty of High-Treason within the Act, it must be when

he made his first Step from *France* into *Scotland*: But that being made lawful, by the Proclamation amounting (as we say) to a Licence; it can't be afterwards Treason, for the Prisoner to come into *England*. Take it, that the Prisoner had had Her Majesty's Licence to come from *France* into *England*; and accordingly the Prisoner comes into *England*, and afterwards goes into *Scotland*; had this been Treason? Surely not. Take it, that a Man within this Act returns from *France* into *England* without Licence, and is pardoned, and he afterwards goes into *Scotland*; would this have been a new Treason, for which the Man that was before pardoned must lose his Life? We humbly take it, that it would not.

Besides, with Submission, this Proclamation amounts to a Pardon of the Treason, tho' it be before the Prisoner return'd to any of the Queen's Dominions. And if it appears to your Lordship, that the Prisoner is pardon'd, tho' we have not pleaded it, your Lordship will not be pleased to suffer the greatest Punishments to be inflicted on any that your Lordship perceives are entitled to Her Majesty's Mercy, or on any that are so much as within Her Majesty's Intentions of being pardon'd. Besides, another Consequence of the Prisoner's being pardon'd, is, That then if he be pardon'd, he is a free Subject, and has Liberty to go any where, and into any of the Queen's Dominions. My Lord, as to this Point, whether the Treason be pardon'd, 'tis necessary, with humble Submission, to consider what makes this Treason. 'Tis the going into *France* without Licence, and returning home without Licence: 'Tis both joined together make the Treason; and the one without the other does not make the Treason. Had not the Prisoner gone into *France* without Licence, his returning without Licence would not have amounted to Treason: So that the going into *France*, is the Foundation of the Treason. And I humbly take it, that this Act of Parliament has made the bare going into *France* without Licence, an Offence; and has punish'd it as such, by Banishment during the Queen's Pleasure: So that the Prisoner, from the Time he went into *France* without Licence, was an Offender, and consequently capable of a Pardon. So, with Submission, 'tis plain, there was some things on which the Pardon might operate, tho' the Pardon was before the Prisoner's landing in *Scotland*; then taking it, that the Prisoner's going into *France* without Licence was an Offence, and the original Foundation of the Treason: This original Offence is, with Submission, pardon'd by the Proclamation, by the Pardon of all Crimes and Misdemeanors, of what Nature soever. And if the original Offence be pardoned, all the Consequences, all the Dependences upon that Offence, all that ensues upon that Offence are, with Submission, at the same Time pardon'd. This, my Lord, seems to be proved by *Cole's Case*, *Plowd.* 401. where, after one had feloniously wounded another, then comes a Pardon of all Crimes and Misdemeanors; and afterwards the Party wounded dies. The original Misdemeanor being pardon'd, all that ensues upon it is pardon'd; and consequently the Murder is pardon'd, by the Pardon only of all Misdemeanors. Now in our Case 'tis plain, the original Offence is going into *France* without Licence; and that being pardon'd, all that ensues that Offence, all the Dependences upon that Offence, according to the express Words of that Case, are pardon'd also: And therefore, the returning into the Queen's Dominions without Licence, being only

only a Consequent and a Dependent upon the going into *France* without Licence; is pardon'd also. Besides, my Lord, so favourable a Construction does the Law make upon Acts of Mercy, that when the Crown pardons any Crime, the Pardon restores the Man in such a manner, as if the Offence had never been committed. And consequently, after this Pardon, 'tis the same Thing as if the Prisoner had never gone into *France* without Licence: And if the Prisoner had never gone into *France* without Licence, 'tis plain his coming home without Licence would not have been Treason.

In *Hob. 81. Cuddington v. Wilkins*, If a Man commits a Theft, and is pardon'd, if afterwards he is called Thief, an Action lies, tho' he is called so by one that had no Notice of the Pardon; for that after the Pardon, 'tis as if he had never been guilty of Theft. There is likewise another Case put there, which seems much stronger than the Prisoner's Case; which is this: If an Appeal of Felony be brought against a Man, and the Defendant prays Trial by Battle; the Plaintiff counterpleads the Battle, by saying, that the Defendant, when committed to Prison for his Felony, broke the Prison, and so escaped (which is a Presumption of Guilt) and so takes off the Trial by Battle; yet 'tis adjudg'd, that when the King pardons the Breach of Prison, this restores the Defendant to his Trial by Battle, and 'tis then as if the Defendant had not broken the Prison at all. Yet in this Case it might have been objected, That tho' the King has pardon'd the Breach of Prison, tho' the Prosecution or Punishment for Breach of Prison is pardon'd; yet the collateral Effect of it, which is the Presumption of Guilt upon the Party's Flight, might remain; especially as to the Appellant, whose Suit (according to the general Rule) the King's Pardon can't influence. Yet here 'tis adjudg'd, that even as to the Appellant, the King's Pardon of the Breach of Prison, makes it as if the Party had never been guilty of it. Now this is stronger than the Prisoner's Case: For in the Prisoner's Case, the Queen's Pardon is only made use of, to prevent her own Prosecution, and not the Suit of any Appellant. Therefore in the present Case, the Proclamation pardoning all Misdemeanors, pardons the Offence of going into *France* without Licence: And that being pardon'd, 'tis as if the Prisoner had never gone into *France* without Licence; and without this, the bare Return without Licence will not amount to Treason. So that, with Submission, we take this Proclamation to be a Licence to the Prisoner to return into the Queen's Dominions. Nay, we take it to be a Pardon even of the Treason of which he stands indicted.

Besides, I would humbly beg Leave to offer to your Lordship's Consideration, whether a *Scotchman*, that was not in *England* at the Time of the making of this Act of Parliament, be within the Meaning of this Act. The Act says, If any of his Majesty's Subjects shall go into *France* without Licence, if he return without Licence, 'tis Treason. I don't pretend to call in question *Calvin's* Case, which was (at that Time at least) a very convenient Resolution. I don't deny, but a Natural-born Subject of *Scotland* is, as to many Purposes, a natural-born Subject of *England*. But whether (upon the Construction of so very penal a Law as this is) a *Scotchman* is within the Meaning of this Law, is the only Question. Now, with Submission, when the Acts says, If any of his Majesty's Subjects shall go into *France* without Licence, this (according to a reasonable Construction) shall be intended only of

English Subjects, strictly speaking, that is, those of *England*; it must be intended only of such of His Majesty's Subjects, who were represented by the Parliament that made this Law, and who are presumed to consent to the making of this Law; 'tis these Subjects only that may reasonably be supposed to have Notice of this Law, and therefore 'tis reasonable that they only should be bound by it; especially in the Case of so severe a Law, where a Man's Life, Estate, and all that is dear to a Man is at Stake. There may be a great deal of Difference betwixt an Act of Parliament that punishes a Fact that was before *Malum in se*, and an Act which makes that an Offence which was before lawful: Every one of any Nation is, at his Peril, to abstain from committing any Act that is *Malum in se*; and if he commits such an Act in any Country, he seems subject to be punish'd according to the Laws of that Country where the Fact was committed. But going into *France*, or any Place beyond Sea, without Licence, seems only *Malum Prohibitum* by this Statute: And therefore when the Act says, If any of his Majesty's Subjects who went into *France* without Licence, shall return without Licence, shall be deem'd guilty of Treason; it shall be intended only of those of *England*; such Subjects as either by themselves, or their Representatives, were consenting to the making of this Law. Therefore I humbly beg Leave to put the Case; That if one of Her Majesty's Subjects of her remote Plantations (as *Barbadoes*, or *Antego*) that was resident there at the Time of the making this Law, should have since the Year 1688, gone into *France* on any private or particular Account, without Licence; and afterwards should come into *England*; would this Subject (who, in all Probability, knew nothing of the making of this Law) be guilty of High-Treason, for coming into *England*? Surely this would be excessively hard. Then if one resident at *Barbadoes*, or *Antego*, at the Time of the making of this Act, should not be within this Law; much less shall a *Scotchman* be within it, in regard *Scotland* is a separate Kingdom, that can't be bound by our Acts of Parliament; whereas any of the foreign Plantations are plainly liable to be bound by *English* Acts of Parliament.

Besides, there is another Reason from the very Words of the Act, why a *Scotchman* that was not resident in *England*, at the Time of the making this Law, can't be intended within the Meaning of the Act: and that is not only because the Act mentions nothing of *Scotland*; but because the Words of the Act are, If any of his Majesty's Subjects who went into *France* without Licence, shall return into *England*, or any other of His Majesty's Dominions, without Licence, 'tis Treason. Now the Word (Return) must plainly have Relation only to that Country where the Party was resident at the making of the Law, or to the Country that he left at the Time of his going towards *France*. But it does not appear that the Prisoner, who is a *Scotchman*, was in *England* at the making the Act; and he having been proved to be a Native of *Scotland*, must be intended to be then in *Scotland*, unless proved to be elsewhere: And therefore the Prisoner's coming into *England* can never be within the Meaning of the Word *Returning into England*, any more than a Man can be said to return to a Place where he was not before.

There is another Objection (because I will give Mr. Attorney only one Trouble) and that is, That this Indictment (or Trial) can't in this Case be in

Middlesex, but must be in that County where the Prisoner first came after his leaving *France*; which really was *Northumberland*, as he came from *Scotland*; or at least your Lordship will take notice, that it can't be *Middlesex*. 'Tis a known Rule, that all Indictments and Trials for Treasons and all other Crimes, must be in the County where the Treason was committed: And 'tis clear (taking the Proclamation out of the Case) that the Treason was committed in that County which the Prisoner first came into after leaving *France*. The Treason (taking the Pardon out of the Case) was compleated by the first Step made into *England*. Nay, if the Prisoner, immediately after his making his first Step into *England*, had returned, still it had been a complete Treason; and the Party had returned with his Guilt upon him. And, my Lord, I do not take it, that the Party commits a new Treason, by his going into another County. 'Tis true, 'tis said, if I steal Goods in one County, and carry them into another, this is Felony (tho' not Robbery) in every County where I carry them: But even in this Case, the Law (as I take it) is said to be otherwise, in *Fitz. Abr. Tit. Coron. Par. 194.* and that the Trial must be in the County where the Goods were first taken. But taking this to be Law, That the Felon may be tried in any of the Counties, where he carries the Goods he stole; as I must needs own, the Law is now allowed to be so; yet this depends upon a different Reason, no way affecting the principal Case. For the Reason given of this Case, in *Dyer 40. and 7 Coke 2. and Bulwer's Case* is, That the Robbery or Felony does not alter the Property of the Goods; and therefore, into whatever County the Felon carries the Goods, 'tis a new Felony. But there 'tis not that special Reason in the principal Case, and therefore the Law is not the same. Supposing the Prisoner had been pardon'd the Treason, in coming into the first County of *Northumberland* without Licence; could he afterwards have been punish'd for Treason, for coming into the next adjacent County? This would be a pretty strange Construction of multiplying Treasons. And if coming into every County would make a fresh Treason, a Man at that Rate may be brought to suffer as a Traitor, tho' with many Pardons about him. No surely, my Lord, 'tis the original Act the Law regards, and the coming into a second County does not make it a second Treason; and therefore we take it that the Indictment or Trial in this Case can't be in *Middlesex*, but must be in *Northumberland*, or such other County, which was the first County of *England* that the Prisoner came into. Upon the whole Matter, we, with great Submission, insist, First, That Her Majesty's Proclamation amounts in Law to a Licence for the Prisoner to come from *France* into *Scotland*; nay, that it amounts to a Pardon to him, even of his Treason that he is now indicted for. But if that be against us, we in the next Place take it that a *Scotchman* not resident in *England* at the time of the making this Act, is not within the Meaning of this Act. But if that also be against us, yet in the next Place we humbly insist, that he cannot be indicted for this Treason in *Middlesex*, but must be indicted in the County where he first enter'd *England*. And 'tis sufficient if any one of these Points are for us; and therefore we humbly hope the Prisoner shall be acquitted.

Mr. Raymond. My Lord, if your Lordship please, I'd beg the Liberty to offer a Word or two on the same Side for the Prisoner at the Bar.

I humbly apprehend, your Lordship expects no Apology from us, for appearing as Council in a Cause of this Nature, since 'tis by your Lordship's Permission granted us in Pursuance of an Act of Parliament, that we have this Liberty; and I can't forget what your Lordship has said formerly in this Place on the like Occasion, That it is as lawful for the Gentlemen of the Bar to be Council in such a Case, and that they are as much obliged to do their Duty for their Client in it, as in any other Case, wherein by Law they are allowed to plead.

I shall therefore, the Fact being agreed on by both Sides, state it as a Case, and submit the Observations I shall make upon it to your Lordship's Opinion.

The Fact is no more but this.

Mr. Lindsay, being a Native of *Scotland*, came into *England*, and resided some Time here; from thence he went into *France*, where he continued a considerable Time; after he was gone into *France*, and whilst he was there, the Act of Parliament, upon which he now stands indicted, was made. Afterwards the Queen granted a general Pardon and Indemnity to her Subjects in *Scotland* for all Treasons, &c. Depending upon which, Mr. Lindsay returned into *Scotland*, and having had the Allowance of the Benefit of it there, he returned into *England*, coming by the way of *Berwick* and *Northumberland* to *London*.

My Lord, I shall humbly insist upon it in behalf of the Prisoner at the Bar:

First, That he is not comprehended within the Words of this Act.

Secondly, That if he should be within the Words, yet that he is not within the Meaning of the Act.

My Lord, I shall by no means presume to arraign the Wisdom or Justice of the Law-makers in making this Act, which doubtless was founded on great Reason, and was very necessary for the Preservation of his late Majesty's Person and Government. But let it be never so wise, never so just, or never so necessary, yet, with great Submission, 'tis a very penal Law; partly, because it has a Retrospect and makes that Fact an Offence, which was none at the Time when it was done (for before this Act, it was lawful for any one to have gone into *France*, between the Eleventh of *December*, 1688, and the Time of the proclaiming War with *France*). But principally because it makes the Offender against it a Traitor, therefore it must be expounded according to those strict Rules of Construction, the Law has appointed for other penal Statutes, and must never be extended by Equity beyond the Letter.

My Lord, as to the Penning of this Act, I must observe, there is not one Word in it of *Scotland*, or the Subjects of *Scotland*, in express Terms.

The Question then will be, what other Words in it can extend to Mr. Lindsay's being a Native of *Scotland*? The most comprehensive Words seem to be these at the Beginning of the enacting Part, *If any of her Majesty's Subjects, who have, &c.*

I must beg Leave to insist upon it, that Mr. Lindsay can't be call'd one of His late Majesty's Subjects within this Act. I do agree he was the late King's Subject, as King of *Scotland*, but not as King of *England*; but this Act being made in *England* by the *English* Parliament, and using the Word Subjects, must mean such Subjects as that Parliament were able to oblige, which are only the Subjects of *England*, or the Dominions depending on the Crown of *England*; but not the Subjects of

of Scotland, which is a distinct Dominion from England.

The King of England has a double politick Capacity in him, one as King of England, the other as King of Scotland; the two Nations are absolutely distinct, and so are the Laws by which they are respectively governed: If therefore the King, as King of these two Kingdoms, has two several politick Capacities in him; if the Nations and the Laws are distinct, with Submission, the Subjects of Necessity must be considered so too.

I am very sensible, My Lord, with what Solemnity Calvin's Case in 7 Rep. is said by my Lord Coke to have been adjudged; it shall be therefore, with a great deal of Submission to your Lordship's Opinion, and Deference to the Authority of that Case, if I shall say any Thing that may seem to clash with that Resolution.

I confess that Case has determined, that Allegiance is a Quality of the Mind, and can't be circumscribed by Place; that 'tis due to the Person of the King; and because his natural Person can't be divided, the Allegiance owing to him is inseparable and indivisible, and therefore that there is an Union of Allegiance of both Kingdoms; and that a Man can't be consider'd as a Liegeman or Subject, which is all one to the King, as King of Scotland, and not as King of England, and so *Vice Versa*.

I'll beg Leave to consider my Lord Coke's Foundation, upon which this Resolution is built, and submit it entirely to your Lordship whether that is able to support it.

According to my Lord Coke himself in Calvin's Case, Legiance is a true and faithful Obedience of the Subject due to the Sovereign, for which the Sovereign is obliged to protect his Subjects. *Protectio trahit Subjectionem, Subiectio Protectionem.* 7 Co. 5.

I suppose it will not be pretended that this Obedience due from the Subject to the Sovereign is an absolute blind Obedience to every arbitrary Command of the Sovereign; but is only such an Obedience as the Law of the Kingdom, or Principality, or Dominion, has respectively prescribed for the Subject to pay to his Sovereign; and the same holds as to the Sovereign's Part in Point of Protection. If therefore this Obedience or Legiance (which is the same) is altogether prescribed and governed by the Law of the Place where 'tis due, it must necessarily follow, that where the Laws are different, the Legiance or Rule of Obedience and Subjection must be different also, and consequently the Legiance due to the King as King of England, and the Legiance due to him as King of Scotland, (since the Laws of both Nations are distinct) must be separate and distinguishable: Were it not so, the same Act, if so in one, must in both Kingdoms be the Performance of the Subjects Legiance; and the same Act, if so in either, must in both Kingdoms be the Breach of it. But that that is otherwise, is easily to be proved; as for Instance, according to my Lord Coke in Calvin's Case, 7 Co. 7, 6. The King of England may command any Subject of England to attend him in his Wars beyond Sea; but suppose by the Law of Scotland a Subject of Scotland is not oblig'd to go with the King out of the Kingdom, the King commands a Native of Scotland to wait on him out of Scotland beyond Sea, and he refuses; now by the Law of England he has broke his Legiance to the King, and yet in Scotland he is as good a Liege Subject (notwithstanding this Refusal) as any Subject the King has

there.—In this very Case of Mr. Lindsay, by his Return into Scotland from France (if your Lordship takes the Word Dominions in the Act in as large a Sense as I suppose the Queen's Council would have the Word Subjects took, that is, to all the Places in Subjection to the King, tho' not dependent on the Crown of England) he was become a Traitor to the Queen as Queen of England, which is the highest Breach of Allegiance that can be; and yet at the same Time (laying the Pardon out of the Case, and supposing there was no Law in Scotland to prohibit his coming thither) he was a very good Subject of the Queen's in Scotland, and not guilty of any Breach of Allegiance due to her there. Then certainly these two Allegiances are not the same, but distinguishable; one owing to the King as King of Scotland, the other owing to the King as King of England; and if the Allegiances may be considered separately, so may the Subject (who owes those Allegiances, and by owing of which he becomes a Subject) be separately considered as such in respect of them; and consequently, that Mr. Lindsay being a Native of Scotland, must be regarded as a Subject of the King as King of Scotland, and not a Subject of the King as King of England, and so not within the Words of the Act, for the Reasons offered to your Lordship before.

The second Thing I begg'd your Lordship's Leave to insist upon was, That taking it, that Mr. Lindsay, tho' a Native of Scotland, should be comprehended within the Words, *any of his Majesty's Subjects*, yet that this Act did not design to extend to any Native of Scotland, and consequently not to him. With great Submission to your Lordship, there are many Cases in the Books where Statutes have received a Construction contrary to the Words, to comply with their Intent. The Statute of Gloucester, Cap. 1. enacts, that the Disseisee shall recover Damage, in a Writ of Entry, founded upon the Disseisin, against him who is found Tenant; upon which *Litt. Sect. 685*, puts this Case, That if the Disseisor makes a Feoffment of the Land to B. C. and D. and Livery of Seisin is made to B. and C.; but D. was absent, and never would agree to this Feoffment, nor take the Profits; B. and C. die, the Disseisee brings a Writ of Disseisin in the *Per* against D. who pleads this Matter; tho' he is a Tenant of the Freehold of this Land, yet no Damages shall be recovered against him. So in this Case, tho' the Words of the Act in their utmost Extent would comprize the Prisoner at the Bar; yet if the Parliament did not design they should, a Construction shall be made accordingly.

That the Parliament did not intend to concern themselves with Scotland, or the Natives thereof, appears, with Submission, by the Preamble (which is, as my Lord Coke terms it, *Co. Litt. 79*. a Key to find out the meaning of the Law-makers).

The Words of the Preamble are, That upon the Conclusion of the Peace between his Majesty and the French King, it was become necessary for the carrying on a Trade between England and France, That the Subjects of each Kingdom should have, &c. — I suppose it will not be pretended that Scotland can be comprehended under the Word, of England; nor Scotchman under the Word, the Subjects of each Kingdom, that is, of England and France. — For if a Scotchman should be took to

to be a Subject of the King of *England*, yet I humbly conceive he was never took to be a Subject of the Kingdom of *England*; the word Kingdom is the same as Realm, and is usually applied to the Land of *England*, and not to the Dominions dependent on the Crown of *England*; as on the 35 Hen. 8. C. 2. a Treason committed in *Ireland* was adjudged to be a Treason committed out of the Realm of *England*, and triable as a foreign Treason, *Orurke's Case*, *Ander*. 262. Pl. 269. But if Kingdom or Realm should be taken to have the same Signification as Dominion, that Case could not be Law, because *Ireland* was never held to be out of the Dominion of the Crown of *England*; so that with great Submission to your Lordship, nothing in the Preamble affects the Prisoner at the Bar.

The next Thing to be consider'd, is, what the Parliament meant by the Words, *If any of His Majesty's Subjects, &c.* And I humbly hope your Lordship will think it reasonable to let that Expression be explained by the Word Subjects used in the Preamble, and so interpret them his Majesty's Subjects of the Kingdom of *England*, which this Prisoner is not; and the rather, because to construe them to extend to *Scotchmen*, will be an Interpretation that will make the *English* Parliament make an Offence a Treason, which will not be in the Power of the *English* Government to punish, unless by Accident: For if a *Scotchman* returning out of *France* into *Scotland*, contrary to this Act, should be a Traitor, yet he could not be punished here, unless he accidentally came hither afterwards, because the *English* Government has no coercive Means to fetch him from *Scotland* hither to be punished. — But 'tis otherwise in respect of the Dominions depending on the Crown of *England*, as *Ireland*, &c. for a Man may be transmitted from *England* to *Ireland*, or *Vice Versa*, to be tried; as Colonel *Lundy* was 2 Ventr. 314. but *England* can't compel the Government of *Scotland* to send a Man hither from thence to be tried. Then I humbly conceive that it can't be imagined, that the Parliament design'd to make an Offence a Treason, which can't be punish'd but by Accident here, since 'tis below the Dignity of a Government to have Offenders against their Laws, in Crimes of so high a Nature, out of their Power to punish — But of an *English* Subject it would be otherwise, tho' he was in *Scotland*, or any foreign Prince's Dominion, because they might proceed against such a Person to Outlawry, and upon Attainder confiscate his Estate.

Another Thing I must beg leave to offer to your Lordship, as a Proof that this Parliament did not intend in this Act to include *Scotland*, or the Natives of *Scotland*, is, that the Paragraph which makes the taking of a Charter or Grant from the late King *James* to be Treason, is so far from relating to *Scotland*, or the *Scotch*, that it does not make it penal for any *Englishman* to take a Grant of Honour or Estate in *Scotland* from the late King *James*; the Words of the Act being, to be had or enjoy'd in the Kingdom of *England* or *Ireland*: So that the Parliament seem'd industriously not to concern themselves with any thing relating to *Scotland*; and yet doubtless they might have made it Treason for any *Englishman* to have took such a Grant; and there had been as great Reason so to have done, if they had thought fit to have meddled with any thing relating to *Scotland*, since the taking of such a Grant in *Scotland* by an *Englishman* from the late King *James*, had been as great a Derogation to

the Liegance owing to the King, as if it had been of any thing in *England*; the Acceptance of such a Grant amounting to an Acknowledgment of another Power besides the King's — So that for these Reasons I humbly insist upon it, that the Parliament did not intend to include any *Scotchman* within this Act.

But, my Lord, taking it that Mr. *Lindsay*, tho' a Native of *Scotland*, should be within both the Words and Meaning of this Act; yet I must submit it to your Lordship's Judgment, whether this Act could bind him, he being beyond Sea, viz. in *France*, at the Time when it was made. I do agree, that if any of the *Scots* have Lands, &c. in *England*, they shall be liable to pay all Duties imposed by Act of Parliament on those Lands. I do also agree, that every *Scotchman* resident here, is bound by all the Laws of the Land; and so are all Foreigners whatsoever (be they *Danes* or *Swedes*, or of whatsoever other Nation they be) who live here under the King's Protection: But as soon as they are gone out of the Kingdom, their Allegiance, which was but local, ceases, and they are no longer obliged by the Laws of *England*. It must be agreed, that no *English* Act of Parliament can bind *Scotland*, nor, as I humbly apprehend, the *Scots*, whilst out of *England*; if so, then how could this Prisoner be bound by this Act, being a *Scotchman*, and out of this Kingdom, at the Time when the Act was made? With great Submission, his coming into *England* alone could not subject him to this Law; for there seems to be a great Difference between this Act, and other general Acts or Laws of this Place: For, as I said before, if a *Scotchman* comes into *England*, and inhabits here, he is liable to all the Laws then in Force, and shall be punished for the Breach of any of them; because he was before protected by those Laws, and therefore must be obedient to them. But in this Case, the Subjection to the Law, and the Offence, began at the same Instant; for before his Landing in *England*, this Law had no Power over him, and the very Act of Landing made the Offence in this Indictment; 'twill be therefore something severe to construe that Act, which only makes the Prisoner liable to the Law, to be a Breach of it. As to this Matter, there will be no Difference between a *Scotchman* or a *Dane*: Both, when here, are bound by the Laws; neither, when absent. Suppose it should be enacted, That if a *Dane* should land in *England* without Licence from the King, he should be a Traitor; and a *Dane* notwithstanding such Act should come into *England* without such Licence, would he be a Traitor? With humble Submission, Not. Such Act might amount to a Prohibition of his coming, and make him be used as an Alien Enemy, 7 Co. 6 B. as *Perkin Warbeck* was in *Henry* the VIIth's Time; but could not make him a Traitor, because he owed no Allegiance to the King, nor Subjection to the Law, at the Time when the Act was made. As to the Prisoner's having been in *England*, and having resided here before; that, I humbly think, will make no Difference, because his Subjection to the *English* Law ceased, as soon as he stepped off from the *English* Shore.

What I shall beg Leave further to insist upon for the Prisoner (supposing your Lordship should be of Opinion against him on the former Points) is, That this Evidence don't maintain the Indictment. The Indictment is for returning without Licence from *France* into *England*: The Evidence is, That he returned out of *France* into *Scotland*, and from thence

thence into *England*. The Act of Parliament is, *That if any of His Majesty's Subjects, &c. return into this Kingdom of England, or other His Majesty's Dominions*: The Meaning of which, we for the Prisoner humbly take to be, That the first coming of any such Person, as is within the Act, into any of his Majesty's Dominions, shall be the Treason; and that the Act did not intend to make every several Coming into every distinct Dominion a new Treason; as if such Person should come out of *France* first into *Scotland*, then into *Ireland*, thence into *Jersey*, and so into *England*, the Act, with Submission, did not design to make this Person liable to be indicted for four Treasons; but that into what Dominion he first came, for that he was a Traitor and punishable: And that Construction sufficiently prevents the Mischief and Danger the Act design'd to arm against. For if a Man should come without Licence into any one Dominion, and is look'd on as a dangerous Person, the taking away his Life will prevent any future Mischiefs from him: If he has a Licence to come into one, 'tis to be believed, with a great deal of Reason, he may be trusted in any other of his Majesty's Dominions, or else his Majesty would never have granted him a Licence to return into any of his Dominions, where he would be equally capable of putting in Execution any dangerous Practices against the Government. If that should be the Meaning of the Act, then, with Submission, this Indictment ought to have been for coming into *Scotland*, which was the Place he first came into, for there was the Treason, and not for coming into *England*. Besides, if the coming into *Scotland* was the first and only Treason punishable by this Act, then we must offer the general Pardon of *Scotland* in the Prisoner's Excuse: Not, my Lord, that I can pretend, that a Pardon in *Scotland* can pardon a Treason in *England*; but we must beg Leave to insist upon it, as amounting to a Licence to return into *Scotland*. I do expect that it will be objected, that the Licence which this Act appoints, must be under the Privy-Seal of *England*, which this *Scotch* Pardon can't be pretended to be. I confess, my Lord, the Words are, without Licence from his Majesty under his Privy-Seal. But 'tis not said Privy-Seal of *England*. And tho' generally speaking, when an *English* Act mentions the Great Seal or Privy-Seal, it must be took to be the Great-Seal or Privy-Seal of *England*; yet in this *English* Act, if your Lordship will construe the Words, *His Majesty's Subjects*, not only to be his Subjects as King of *England*, but as King of *Scotland*, or any other Nation; if your Lordship will construe the Word, *Dominions*, to be not only the Dominions dependent on the Crown of *England*, but also all other Dominions of which his Majesty was King, as *Scotland*; by Parity, the Words, Privy-Seal, ought to be extended to all the Privy Seals the King has, as King of *England*, or King of *Scotland*. And if so, then since the Queen has in Her Proclamation, declared that Her Pardon shall be took as beneficially as if it had been under the Great-Seal; but the Great-Seal includes the Privy-Seal, and is of greater Efficacy: We humbly hope, that it will be as beneficial to the Prisoner, as if it had been under the Privy-Seal; nay, rather more, because as to *Scotland* it pardons the Offence; for tho' the Return is after the Pardon, yet it pardons the going into *France*, which is the Foundation of the Crime, and without which the returning into *Scotland*, or any of His Majesty's Dominions,

was no Offence. This is the Use the Prisoner would make of this Pardon. I can't press it as a Pardon of an *English* Crime; tho' with great Submission to your Lordship, it seems something strange, that Mr. *Lindsay*, should by virtue of this Pardon be a very good Subject of the Queen's in *Scotland*, and have all the same Liberties other of his Countrymen have there, and yet that he should be a Traitor against the Queen here in *England*; that he should be within the Queen's Protection there, and out of her Protection here; and yet at the same Time that his Allegiance to her can't be severed, nor he considered as a Subject to Her, as Queen of *Scotland*, and not as Queen of *England*.

But admitting the Pardon will not avail the Prisoner in any respect, and that your Lordship should be of Opinion that his coming to *England* is a Treason, notwithstanding he returned from *France* into *Scotland* first; then I must insist upon what Mr. *Williams* has before mentioned, that this Indictment is ill, and that he ought to have been indicted in the County which he first came into, which was impossible to be *Middlesex*; and I must ground it on the general Rule, that all Crimes are local, and inquirable by the Grand Jury of the County where they are committed. Even in Batteries, which are transitory in Actions; yet, with Submission, Indictments are local, and must be enquired of by the Grand Jury of the County where they are committed. My Lord, I shall trespass no longer upon your Lordship's Patience, only just beg leave to say, that upon the whole Matter, for the Prisoner at the Bar, I humbly insist upon it, That he being a Native of *Scotland*, is not within the Words of this Act: For if he should be within the Words, yet he is not within the meaning of the Act. But if both those Points are against me, That, as this Case is, he is not obliged by it. If I should fail in all these, then I must have recourse to the Construction of the Act, that it intended only to make the first Entry into any of the Queen's Dominions Treason, and consequently that this Treason was upon his Return to *Scotland*, and ought in the Indictment to have been laid as such: For which Reason I humbly conceive that the Indictment is not only ill, but the Pardon will amount to a Licence. But if your Lordship should be of Opinion he is indictable for coming into *England*, that then the Indictment ought to have been laid in that County where he first came into. If any of which Points hold, with Submission, the Prisoner can't be found guilty on this Indictment; but your Lordship will be pleased to direct the Gentlemen of the Jury to acquit him, which I humbly pray in his Behalf.

Sir *Thomas Powis*. My Lord, I have observed these Gentlemen in the Method they have gone, and will follow them in the same Manner to give them an Answer. What we have to say, will be nothing but with respect to the Law, as it now stands upon the Act of Parliament: Whether the Case deserves Mercy or no, is not the Question here, that will be consider'd in another Place. Our Part is to maintain the Law as it stands, with reference to this Indictment; it must be owned that a great deal of that which has been said might have carried weight with it, if it had been pleaded in *Scotland*, where the Proclamation was made; but to make use of it here in *England*, as having any Force in this Case, is not agreeable to Law or Reason.

fon. First, no Man can say, a Pardon, if it had been under the Great Seal of *Scotland*, could pardon a Crime committed here in *England*; but it is not so, for it is not under any Seal at all. But supposing it were to be taken in the Extent they would have it, yet it would not be a sufficient Pardon in this Case. For these two Things must be consider'd. First, It is a Pardon only of Crimes committed in that Kingdom. Secondly, It cannot be a Pardon of a Crime committed since that Pardon granted; for we must mind the Date of that Pardon, and the Crime he is tried for. The *Scotch* Pardon is dated in *March*, 170³. that was *March* was Twelvemonth. No Man can say a Proclamation in that Kingdom can pardon a Crime that was committed afterwards. Now this Crime was committed in *December* last, for then it was he returned into *England*; therefore that Pardon can never extend to this Case. So that these two Things if considered, will be sufficient to answer all that has been insisted on, by way of Pardon. First, It is a Pardon of another Kingdom for Offences committed against the Crown of *Scotland*; whereas this Indictment is for an Offence committed against the Crown of *England*. And secondly, It was granted at a Time precedent to the Time of this Offence committed: But next, they say the Pardon in *Scotland* will amount to a Licence from the Queen to go into *Scotland*, and that then by Consequence he was free to come into *England*; with Submission, we think they cannot make such an Inference, for the Queen's Pardon cannot extend to such a double Purpose. Suppose the Queen had expressly pardoned his going into *France* and returning into *Scotland*, that would not have amounted to a Licence to come into *England*. So that we deny their Inference, that the Pardon in *Scotland* amounts to a Licence to come into *England*. But in the second Place, If the Queen had expressly given him a Licence to go into *Scotland* (tho' I do not admit that to be the Case) yet I deny that that would have been a Licence to come into *England*. If the Queen under the Privy Seal of *Scotland*, should have admitted him to come into *Scotland*, yet that would not have been a Licence for him to come into *England*; for it would have been a special Licence to go to one Place, which can never be reckoned, in such a Case as this is, a Licence to go to another Place in another Kingdom. For the King or Queen might perhaps think fit to license one to come into *Scotland*, and yet not think it convenient to license him to come so near their Royal Person, as he would be here in *England*. So that there is no such Licence in that Pardon, as is insisted on; and if there had been, yet it would not have had that Operation to license him to come to *England*. The next Thing they speak most fully to (and which is very considerable, if they make it out) is, that the Words of this Act of Parliament, upon which the Indictment is founded, or at least the Meaning of them, cannot be extended to a Native of *Scotland*. As for the Words of the Act we need do no more than read them, to make it appear to be otherwise. It is observed by them very truly, that *Scotland* is no part of the Kingdom of *England*; but they must admit it is a part of the Dominions of the Queen of *England*, tho' not part of the Kingdom of *England*. They would do little Service to the Subjects of *Scotland*, if they should endeavour to overthrow Cal-

vin's Case, which was so solemnly determined near an hundred Years ago, which enables them of *Scotland* to come into *England*, and enjoy the same Privileges here, as the Subjects of *England* do. Certainly, as they are let into all these Benefits by the Resolution of that Case, so they are at the same Time the Subjects of the King or Queen of *England*. That the Words therefore of the Act are against them, nothing can be plainer; *If any of His Majesty's Subjects who since the eleventh of December, 1688. have gone into France.* — This leaves them no room for Dispute; it says not, if any of the Subjects of the Kingdom of *England*, but if any of His Majesty's Subjects; so that whoever was a Subject of the late King is within the Act. The Words are without any Restriction whatever, *If any of his Majesty's Subjects*; and they will not deny but that a *Scotchman* was a Subject of His late Majesty. But then they say, if the Words should extend to it, the Meaning of the Act cannot. With Submission, we think the Case before you is within the Words and Meaning of the Act, and within the Mischief which the Act provides against. For at the Time this Act was made, it being taken notice of, that upon the Peace concluded there would be a Door opened for a Communication between *England* and *France*, and that many Persons who had resorted thither, who had been actually in Arms there, and other dissaffected Persons, might take Advantage, and be encouraged from thence to form and carry on treasonable Designs and Practices against his Majesty's Person and Government; Therefore, to obviate that Mischief, this Act was made in such general Words, That if any of His Majesty's Subjects who had gone voluntarily into *France*, since the Time mentioned in the Act, without Licence, let them be born where they would, whether they were of the one Kingdom or the other, the Mischief of their returning without Licence was equal. And by consequence, it was the Meaning of the Act to exclude one as well as the other; for the Design of the Act was to prevent the Danger that might arise by such Persons coming over. But as to this present Case, if what the Witnesses have said be true, it would be very mischievous indeed, if a Person that had been resident here for near twenty Years, as the Prisoner was, by his own Witnesses, and afterwards went into *France* without a Licence, if he may be allowed to return back again without a Licence, because not originally a Native of *England*. By the same Rule all those Persons that have done the like both of *Scotland* and *Ireland* would be at Liberty to return also, because not Natives of *England*; which was not surely the Meaning of the Act of Parliament, nor ought the Construction of the Words to be so taken. It's true, we can't here by an Act bind them in *Scotland*, but we are not now putting in Execution this Act in *Scotland*, but putting it in Execution here in *England* on a *Scotchman* that had been long an Inhabitant here before. My Lord, the next Thing that was insisted on, is, that if he be such a Subject as may be construed within this Act, and if the Pardon should not have the Effect they contend for, yet they say this Indictment is laid in the wrong Place, it ought to have been laid in the County where he first arrived. There need little to be said to this, because the Prosecution is made where

where the Party was apprehended. The Objection they make, is that which would render it impracticable to prosecute any for this Offence. For how is it possible to know where a Man first privately arrived? That which is enough to charge him, is, that he was first found in such a Place in *England*; for 'tis not said in the Act, that they shall not return to this or that County, but not to *England*. And then wherever he is found in *England*, there the Indictment may be laid against him. And the Case of the Felony comes home to this Point; the Man that steals Goods in one County, may be indicted in any other County where he carries them. So he that returns into *England* contrary to the Act, wherever he is apprehended he carries the Crime with him. And it does not appear, but that this is the first Place where he was found. They say it is impossible to come from *Scotland* into *Middlesex*, without first coming into some other County; but it is agreed that this is the Place where he was first apprehended. Therefore, upon the whole Matter, the Fact being confessed, we insist that he is within the Words and the Meaning of the Act, and within the mischievous Consequences which are intended to be prevented by it.

Mr. Att. Gen. My Lord, I would not speak any thing to aggravate Matters against the Prisoner; but there have been some things said by his Council, which I think fit to be taken notice of,—They have given him a Character for his Faithfulness to the Queen, and called some Witnesses to it: And Mr. Williams was pleased to say, his owning the Facts charged against him in the Indictment (whereby he saved the Court and the Queen's Council a great deal of Trouble) was an Argument of his Sincerity.—I only say, I believe he had a better Opportunity by other Methods to have shewn it. My Lord, Every one knows from whence he came (*viz.* from *France*) and how long he stay'd there, and in whose Service. And it would have been a better Argument of his Sincerity, if he had given an Account of his Knowledge of what pass'd in *France* while he was there; and probably would have been of more Advantage to him, than saving the Trouble of proving what (he knew) we were ready and able to prove.

What has been said as to the Act in general, is something surprizing to me; to hear any *Englishman* complain of the Hardship of this Law, on which the Prisoner is indicted, which was made for the Preservation of the King's Person and the Government, and by the Wisdom of the Nation thought necessary. But as to the Matters of Law the Prisoner's Council have insisted on, they are reducible to two Heads.

First, That the Queen's Proclamation in *Scotland*, pardoning Her Subjects of *Scotland* of all Treasons, &c. amounts to a Licence to return to *Scotland*, by pardoning the Offence in going to *France*; and every Subject of *Scotland* may lawfully come thence into *England*.

Secondly, That the Prisoner ought to have been indicted in the first County, into which he first returned; which is impossible to be *Middlesex*.

As to the first Matter, it has been said, That a Native of *Scotland* is not bound, nor can be punish'd by a Law made in *England*. And the Council, tho' they have not denied the Authority of *Calvin's* Case, yet they do seem to dislike the Resolution of it. Now he is (according to *Calvin's* Case) a Subject of *England*. That Case was more bene-

ficial to the Subjects of *Scotland* than to the Subjects of *England*; and it has been always allowed to be Law ever since. But, my Lord, we are not to consider this Gentleman in this Case as a *Scotchman* absolutely, but as a *Scotchman* here in *England*. How far an Act made in *England* would affect a *Scotchman* that should return into *Scotland*, I need not meddle with. But the Question here is, Whether an Act of Parliament made in *England*, will not bind every Person that is resident here in *England*? Now the Prisoner was resident here in *England* with his Family, and went hence to *France*: And by the Law, every *Scotchman* residing in *England*, is an *Englishman*; and hath Right to enjoy the Privileges of an *Englishman*. This is the Resolution of *Calvin's* Case. I will give but once Instance of this. The Act of Navigation made 12 Car. II. requires, in many Cases of Goods imported, that the Master, and three fourth Parts of the Mariners, shall be *English*. The Act of 14 Car. II. Chap. 11. of Frauds, declares, That any of her Majesty's Subjects of *England*, *Ireland*, and the Plantations, shall be accounted *English*, and no others.

Now the Natives of *Scotland* inhabiting in *England* or *Ireland*, have always been allowed to be *English* or *Irish* within the Act of Frauds; and have enjoy'd the Privilege ever since of being Masters of Ships: And the same hath been allowed them on all Trials in the Court of *Exchequer*, that is, according to *Calvin's* Case; That to all Intents and Purposes, a *Scotchman* being in *England*, enjoys the Privileges of an *Englishman*, he is a Subject of the Crown of *England*.

But give me Leave, my Lord, to consider how the Prisoner comes to be affected by this Act: Not as being her Majesty's Subject, living in *Scotland*; but he is bound by this Act, as he is a Subject residing here in *England*. For as to what they say, that his Offence is going into *France*; that is not the Matter he is charged with: That is the Description of the Person that falls under the Disability of the Act: [A Man under these Circumstances.] But his returning from *France* into *England* (being a Person describ'd by the Act) is the Offence.

My Lord, his returning is the Offence: Not his returning to *Scotland*, but returning to *England*, or any other her Majesty's Dominions, bound by the Acts of Parliament made in *England*. The Act is, *If any of his Majesty's Subjects return*: And every *Scotchman* that resides here, is a Subject of the Queen. Every Law that is made in *England*, will bind every *Scotchman* that resides here; and this will bind him from returning into *England* without Licence; which is all that is in this Case.

It hath been objected, The Act cannot bind the *Scots* here, because they have no Representative in Parliament. But that is not so: They may be Freemen of Corporations, and are capable of being Freeholders; and as such, may be represented in Parliament. The Penning of the Act shews, the Parliament intended to include all Subjects, that might in the utmost Latitude be called Subjects. The Words are [If any of his Majesty's Subjects, that have gone into *France*, shall return into *England*]. So that the Act says, They that were his Majesty's Subjects, and went into *France*, and did return, shall be guilty. Therefore, what hath been said of the Laws of *England* binding *Scotland*, is quite out of this Case.

The Council for the Prisoner have argued, That the Proclamation of Indemnity in *Scotland*, is a Licence to return into *Scotland*. I would fain know where

where they find that. If there were a Pardon under the Great Seal of *England* for all Offences committed, I would be glad to know whether that would be accounted a Licence to return into *Scotland*? No, certainly. They have said, That the Matter that hinder'd the returning to *Scotland*, was the Offence of going to *France* without a Licence; which Offence is remitted by the Pardon. That is plainly a Mistake: For the Act had not Regard to any Offence of going to *France*; referring to the 11th of *December*, 1688, when, and long after, it was not any Offence to go thither without a Licence: Every Man, till the War was declar'd, might have gone thither without Licence. And yet by this Act, those that went between that Time and the War declared, as well as those that went during the War, are prohibited to return without Licence. So that the Pardon which they rely on, cannot avail the Prisoner: For the Act did not regard Crimes committed; but, as the Preamble is, it was made to prevent an Inconvenience which might follow by disaffected Persons returning; who might form and carry on traitorous Conspiracies, against the late King and the Government. And the Parliament look'd on Persons to be disaffected, that left their Country, and went and stay'd in *France* after the late King went thither; and therefore judg'd it not reasonable to have such trusted here, without the Government should license their Return.

The Persons mentioned in the Act are characterized: So that as to the Matter of the Pardon (if it were an *English* Pardon) it would not bring them from under the Act. Besides, any Licence or Pardon in *Scotland*, cannot indemnify them from an Act made in *England*.—The Law and the Seals of each Kingdom are distinct: And an express Licence under the Seal of *Scotland* to return to *England*, nay an Act of Parliament for that Purpose there, would not avail: For no Act of *Scotland* can take off a Disability laid on by any Act made in *England*. For this Act is a banishing them from *England*, unless the Queen gives a Licence to return.

My Lord, It is an extraordinary Thing which they argue from the Preamble of the Act, that mentions the carrying on the Trade between *England* and *France*; and *Scotland* being not named, the Act shall not extend to the *Scotchmen*. I do not see what can be gather'd from that.—The *Scotchmen* residing here, are considered as *English*: and being here, are bound by the *English* Laws; else the *Scots* would be in a better Condition here than the *English*. But, my Lord, that which we insist on, is, That the *Scots* residing here, are to all Intents *Englishmen*; That they are subject to the Laws of *England*, and bound by them. The going first to *Scotland* will not avail the Prisoner: For the Offence is, returning to the Place from whence he went, that is, *England*. Whether his returning to *Scotland* be an Offence within this Act or not, is not material; nor whether an Act of Parliament made in *England*, can banish a *Scotchman* from *Scotland*: But it is, That an Act of Parliament in *England* may prohibit any *Scotchman*, or any other Person, from returning out of *France* into *England*.

My Lord, The next Matter, which they mightily insist on, is, as to the Place of Trial: But if that Objection should prevail, it would make the Act ridiculous and useless. For then it would lie on the Queen's Council to prove, Where a Person (who privately return'd, and got into the Kingdom) first landed. But the Act says (If they

shall return into *England*). And wherever he is found, thither he is returned. There was an extraordinary thing said indeed: That if we can make it Treason wherever he is found, then he may be tried in every County he comes into; although he be pardoned, or tried, for returning into one County. Certainly that will not be so. For the returning is but one Treason: And tho' he may go into several Places, yet when he is tried in one Place, and convicted, and pardon'd for that, it discharges him wholly. For the returning is but one intire Offence, tho' having been in many Places: The Queen may proceed against him in any one of them. It is like the common Case of an Escape. An Escape is an Escape in every County, wherever the Party goes afterwards: And the Party escaped, or the Sheriff may be proceeded against in any County whither the Party escaped goes, as well as in that whither he first escaped. And without this be so, the Act can never be put in Execution.

My Lord, I think this is the Substance of what they have said; that an Act made in *England*, will not bind a Native of *Scotland*. We think an Act made in *England*, will bind such a one residing in *England*. Now the Prisoner was residing in *England* for twenty Years; and he is both within the direct Words, and within the Intent and Meaning of the Act. There are a great many of them that are in *France*: And I believe the Parliament never intended to leave the *Scots* free to return into *England*, any more than the *English*.

Mr. *Lindsay*. My Lord, I desire to know, whether the Queen's Licence does not set us free, as well in *England* as in *Scotland*? And whether one that has a Licence to come into *Scotland*, may not come into *England* too?

Mr. *Att. Gen.* One may be brought to a Trial here, tho' he had a Licence in *Scotland*.

Mr. *Lindsay*. My Lord, Her Majesty's Pardon extends further than a Licence: It restores to all the Privileges I had before.

L. C. J. *Holt*. If I take you right, you mean This Pardon in *Scotland* secured to you all the Advantages you had at the Time of your Birth, or at any Time before your Departure out of *England*; so that you are not to be impeach'd, or convicted of any Crime you have committed against the Laws of *Scotland*; but you are thereby upon the same Foot, and have the same Rights and Privileges as any other *Scotchman* hath, that hath never offended: And every innocent *Scotchman* hath a Right and Liberty to come into *England* when he will. Which is very true, that the Pardon discharges all Disabilities and Incapacities, that you have incur'd by any Offence committed against the Laws of *Scotland*, but not any committed against the Laws of *England*. That is, supposing the Pardon had been subsequent to your Return into *Scotland*, and that your Return hither had been High-Treason by this Act.

Mr. *Lindsay*. My Lord, I think this Pardon reinstates me in all the Privileges I enjoy'd before.

L. C. J. *Holt*. I tell you no: It only restores you to the Privileges that you had as a *Scotchman*; and which you would have lost, if convicted of those Offences by the Law of *Scotland*; but exempts you not from any Punishment, to which you were then obnoxious by the Law of *England*.

Mr. *Att. Gen.* My Lord, I would say but this only; That speaking of the Pardon, as a Pardon, it cannot pardon a Crime before it is committed. If the Pardon granted in *Scotland*, would pardon a Crime

Crime committed in *England*; yet it would not pardon a Crime committed afterwards.

L. C. J. Holt. But observe what he says. Says he, I am by this Pardon made a Free *Scotchman*: (And it is to be admitted, that the Pardon of *Scotland* has that Effect). And if, says he, this Pardon has made me as Free a *Scotchman* as I was before; *Ergo*, I may come into *England*, as well as any other *Scotchman* that was under no Disability.

Mr. Att. Gen. My Lord, he is bound by the Laws of *England*, as he resided here: It has been the constant Practice. He does not pretend that he had King *William's*, or the present Queen's Licence to come into *England*; only that he had the Queen's Licence to come into *Scotland*.

L. C. J. Holt. You hear what he says.

Mr. Soll. Gen. My Lord, the several Facts alleged in the Indictment, are admitted to be true; except that the Prisoner was a Subject to his late Majesty; and, that his Return into *England* since the 14th of *January*, 1697, was without Licence.

'Tis objected, he was not a Subject of his late Majesty within the Meaning of the Act, because he was a *Scotchman*.

Whoever is born under the Legiance of the King of *England*, is a Subject of the King; and 'tis admitted *Mr. Lindsay* was so born.

It has been likewise objected, His Return was not without Licence.

'Tis not pretended he had such a Licence as the Act of Parliament specifies, and the Indictment mentions; a Licence under the Privy Seal, to return into *England*.

But 'tis insisted on, That the General Pardon in *Scotland* does, by Construction of Law, amount to such a Licence.

It can't surely, with any Colour of Reason, be urg'd, That such a Pardon should be construed any farther than a Licence to return into *Scotland*; and such a Licence would not excuse the Prisoner.

My Lord, this Pardon in *Scotland* can have no Relation to the Offence in Question. A Pardon in that Kingdom can't extend to any Crime, which by the Laws of *Scotland* can't be there punish'd. But had that Pardon, which pass'd in *Scotland*, been under the Great Seal of *England*, it could have been of no Service to the Prisoner. As a Pardon it could not; because 'tis precedent to the Offence, and it can't by any Implication amount to a Licence.

The Reason offer'd, why it should be so construed, is, That the Offence, whereof the Prisoner stands indicted, is of a complicated Nature: That it consists of two Parts; going out of *England* into *France*; and, returning out of *France* into *England*. That the first Part of this Offence (his going to *France*) being pardoned, he can't be prosecuted for his Return.

The Supposition whereupon this Argument is founded, is a Mistake: For after the 11th of *December*, 1688, any Man might (before the War was proclaim'd) have, without any Offence, gone into *France*: And therefore, his going thither after the 11th of *December*, 1688, is no Part of the Crime; but a Description of the Person, whose Return without Licence was enacted to be High-Treason.

Mr. Conyers. My Lord, the Prisoner insists on the Benefit of Her Majesty's Proclamation of Pardon in *Scotland*; which (as has been already taken notice of) bears Date in *March*, 1703, and cannot extend to pardon a Treason since that Time. The Treason for which he stands charged, was not till *December* last; then he came into *England* without

Licence of the Queen: He voluntarily went into *France* without Licence, since the 11th of *December*, 1688. He came back into *England* without Licence, in *December* last; and for that he stands charged with Treason, by Virtue of the Act of Parliament in the ninth Year of the late King. But the Inference he makes from this Pardon, by the Queen's Proclamation in *Scotland*, is, That he is thereby restored to all the Privileges of a *Scotch* Subject, and consequently may freely come into the Kingdom of *England*, as any other of her Majesty's native Subjects of that Kingdom may do. Now the Pardon in *Scotland* can only extend to exempt him from Punishment for any Crimes committed in that Kingdom; and he can have no Benefit of it for a Crime committed against the Laws and Statutes of *England*, which is a distinct Kingdom, and govern'd by distinct Laws. And such Inference as he makes from this Pardon, is both against the very Words and Meaning of the Act of Parliament, upon which he stands indicted. The Words are very express and plain: *Any of Her Majesty's Subjects, who have at any Time since the 11th of December, 1688, voluntarily gone into France without Licence (as the Prisoner confesses he did) and after the 14th Day of January, 1697, shall return into England, or any other Her Majesty's Dominions, without Licence — shall be judged guilty of High-Treason.* He was residing in *England* after the 11th of *December*, 1688. He went from *England* into *France*; and is returned into *England* without Licence, since the 14th of *January*, 1697, and so is within the express Words of this Act. And the Intent of the Act will appear by the Preamble. The Mischiefs and Inconveniences apprehended at the making of this Act, were, That the Freedom of going and coming out of *England* into *France*, and from *France* to *England*, by the respective Subjects of each Kingdom after the Peace, might be an Encouragement to such of the King's Subjects, who had been engaged in traitorous Designs and Conspiracies against his Majesty, and who might be encouraged to form and carry on treasonable Designs and Practices against the King and the Government, to come out of *France* into *England*. The Persons from whom those Dangers were apprehended, were such Persons as are described in this Act; and therefore, for the Safety and Preservation of His Majesty's Person and Government, the Intent of this Law was to prohibit their returning into *England*, without such Licence from His Majesty under His Privy-Seal.

L. C. J. Holt. Have you any more to say? Or have you any thing to reply?

Mr. Williams. My Lord, we would save your Lordship's Time as much as might be; but we humbly insist, that our Objections are not answer'd: And it being upon a new Law, and in Case of Life, we pray that the Matter may be found Specially.

L. C. J. Holt. If we see any Reason to doubt it, it shall be found Specially. But what you have said, overthrows *Calvin's* Case; for you urge, That you are a Subject of *Scotland*, and so not within this Act of Parliament. But you ought to consider, That as you are a Subject of *Scotland*, so also you are a Subject of the Crown of *England* by being a Native of *Scotland* since the Accession of *Scotland* to *England*, which is by the Law of *England*. And if the Case had been, that you had only departed from *Scotland* into *France*, and from thence returned into *Scotland*, and stay'd there without ever coming into *England*, the Case would have been much different:

different: For it may be, the Law of *England* cannot oblige a *Scotchman*, for any Act by him done in his own Country (though there is no Occasion to give any Opinion of that); but an Act of Parliament in *England*, may subject any *Scotchman* to any Penalty, for any Act that he should do in *England*. Suppose a *Scotchman* going out of *Scotland* into *France*, since the 11th of *December*, 1688, that shall return into *England* since the 14th of *January*, 1697, he seems to be within the Words and Meaning of the Act. But there is no need of determining that Point now: The Prisoner being a *Scotchman* born, and having been in *England* for a long Time, and departing from *England* into *France* within that Time, and returning into *England* afterward, is to all the Purposes within the Letter and Design of the Act: For being a Resident in *England* at that Time, you are to all Purposes a Subject of the Crown of *England*, as much as any Native of *England*; and your departing into *France*, and remaining there for so long Time, and returning without Licence, is the same Danger that the Act of Parliament intended to prevent.

Mr. *Williams*. My Lord, I would not presume to say any thing in Derogation of *Calvin's Case*: But I say, that tho' a *Scotchman* may be as a Natural-born Subject of *England*, yet he may not be within the Meaning of this so penal a Law.

L. C. J. *Holt*. Certainly within the Meaning, if within the Words and Reason. But there is another Point that you, his Council, have urged in his Behalf; which is, That this Pardon is a Licence to him to return into *Scotland*. Which in Truth is not; for it is to another Purpose, viz. To pardon and discharge all Treasons and Crimes committed in *Scotland*; but not give a Licence to return into that Realm: But suppose it to be a Licence to go into *Scotland*, that will not be a Licence to return into *England*. The Treason is, to return into the Realm of *England*, or any other His Majesty's Dominions. Another Matter that you have insisted upon, is, That supposing this to be a good Pardon under the Great Seal of *Scotland*, it hath pardon'd the Offence of going into *France*. The Return into *England* can't be High-Treason; because the Treason consists of two Facts, say you, which are, The departing into *France*, and, The returning into the Queen's Dominions. Like unto the Case, when one gives another a mortal Wound, of which he languishes, and before he dies, the Stroke is pardon'd; and then the Party dies: Afterwards it will not be Murder; because that Act, which should make it so, is discharged by the Pardon. To this a plain Answer has been before given by the Queen's Council; That going into *France* since the 11th of *December*, 1688, is no Offence originally; but only the Return of such Person is made High-Treason, and from that Return doth the High-Treason commence. Therefore such a Pardon, under the Great Seal of *England*, could not have discharged him from being guilty of High-Treason, if he had returned afterwards.

But, says he for himself (as I apprehend him) That this Pardon hath made him a Free *Scotchman*, to all Purposes, as if he had never offended. And tho' the Pardon can't have any Operation to discharge him of any Crime committed against the Law of *England*; yet it hath this Effect, by putting him in the same State of other *Scotchmen*, to enable him to come into *England*. It is true, this Pardon puts him in the same Condition, in which other *Scotchmen* are by the Law of *Scotland*; but it puts

him not in the same Condition that other *Scotchmen* are by the Law of *England*. By the Law of *England*, *Scotchmen* may at any Time come into *England*: But the Law prohibits those who are Subjects, and went into *France* without Licence, to return into *England*.

They who were born in *Scotland*, may inherit Lands in *England*: But if an Alien to *England* and *Scotland* be naturaliz'd by Act of Parliament in *Scotland*; though he is to all Purposes a Natural-born Subject of *Scotland* by the Law of that Realm; yet not therefore Inheritable to Lands in *England*, because he is not a Natural-born Subject by the Law of *England*.

There is another Question hath been stirr'd; which is, That he should have been indicted in the first *English* County into which he came: For it appears, upon the Evidence, that he came from *Scotland*. Now *Middlesex* can't be the first County; but it must be *Northumberland*: For upon his coming there, the Treason is complete; and his proceeding further into other Counties, can't make it more Treasons than it was before. As to the Case of Felony, stealing Goods in one County, and carrying them into another; it is Felony in every County they are carried into. A Prisoner escapes from a Goal in one County, and then goes into several Counties; it is an Escape in every County into which he comes; which is a Case very opposite to this in Question. Suppose a Man committed for Felony has escaped out of *Newgate* into *Northumberland*; may he not be indicted in *Northumberland*? He came voluntarily into this County of *Middlesex*; and certainly may be indicted, and tried here. Indeed, if he had been taken in one County, and carried into another County, that would be another Case; because he came there by Coersion.

Mr. *Williams*. Now, my Lord, in this Case, the Prisoner comes into this County of *Middlesex* to surrender himself; and coming into *Middlesex* with an Intention to surrender himself, when a Warrant is out against him, will not be Treason in *Middlesex*, tho' his first coming into *England* were admitted to be Treason.

L. C. J. *Holt*. That does not appear: He says otherwise himself. He says, he heard there was a Warrant out against him; and then he surrender'd himself.

L. C. J. *Trevor*. I do not think, if he had come into this County to surrender himself, it would have alter'd the Case. If he had surrender'd himself in the first County he came into, he would have been within the Law.

Mr. *Williams*. My Lord, with humble Submission, if he comes into *England*, he, by that, commits Treason. But if, after his coming into *England*, and before he comes into *Middlesex*, he hears that in *Middlesex* there is a Warrant out against him; and, purely to surrender himself upon this Warrant, he comes into *Middlesex*, and surrenders himself in *Middlesex*; with humble Submission, this Act of Surrendering himself, which the Prisoner does in Obedience, and in Justice to the Process of Law, won't amount to make him guilty of High-Treason in *Middlesex*.

L. C. J. *Holt*. This is not the Case. However, we are all of Opinion, that alters not the Case: (For I have consulted my Lord and Brothers). Have you any more to say for the Prisoner? Or has he any thing more to say for himself?

Mr. *Lindsay*. My Lord, I have told you what was the Motive that brought me into *England*; That

That I was to come to my Wife and Children, believing that I might have done it without Trespassing against the Law, because I saw others did so before me. Now if it be taken as a Fault in me, and not in others; that will be very hard, my Lord. If I have offended, it is out of Ignorance.

L. C. J. Holt. Ignorance of the Law is no Excuse: But that may fall under another Consideration, which doth not belong to us. Have you any more to say?

Mr. Lindsay. If I have by my Ignorance offended in this Point, and if you think my Indemnity in Scotland will not avail me, I humbly beg your Lordship will intercede for me to Her Majesty.

L. C. J. Holt. Gentlemen of the Jury, this Prisoner, *David Lindsay*, is indicted for High-Treason upon the Statute that was made in the Ninth of King *William*. The Offence set forth in the Indictment is to this Effect, That he being a Subject of the late King, did, since the 11th of December, 1688, go out of this Realm into *France*, and that he has returned into *England*, without Licence under the Privy-Seal, since the 14th of January, 1697; which returning, by that Act is made High-Treason. This Act was made upon the concluding the Peace of *Refwick*, because then (as the Act recites in the Preamble) the Seas would be open for Commerce between *England* and *France*, and that would give an Opportunity to those Persons to return to *England*, whom the Wisdom of the Nation thought dangerous to the Government, that is, those that had been in the Service of the *French* King, and others, that by departing the Realm since the 11th of December, 1688. Therefore, to prevent all Danger to the King and his Government, this Act was made, to make such a Return to *England* by such Persons to be so penal as to amount to High-Treason.

Now, the Question is, whether this Prisoner be guilty. It does appear that he is a Native of *Scotland*, and also that he was here in *England* for many Years (I think one of his own Witnesses says about twenty) and did depart since the 11th of December, 1688, and he returned into *Scotland* since March was Twelve-month, and came into *England* afterwards about December last, which is also admitted. So that it appears he is in the Words of the Act, and had no Licence under the Privy-Seal.

But that which he insists upon by his Council, is, that he was a *Scotchman* by Birth, and had an Invitation to return into *Scotland*, and had the Queen's Pardon, whereby he was pardon'd all manner of Offences. It's true, he admits he was at *St. Germain's*, but returned into *Scotland* in order to take the Benefit of that Pardon. He was at first secured by the Government there, but he had the Benefit of the Pardon allow'd him, and was discharged. And then he says, he did desire to come into *England*, and would not continue longer in *France*, because he would not be a Papist. That when he was in *Scotland*, he desired to come into *England* too, which he thought he might upon the Account of his Pardon in *Scotland*; and he advised with Council, whether he might safely come into *England*, and they told him he might, as he says.

The Question is, whether any of these Things will be to his Advantage. First, It is a Law of *England*, that he is indicted upon; no Pardon under the Great Seal of *Scotland* can discharge any

Crime committed against the Law of *England*, neither can a Pardon under the Great Seal of *England* discharge any Crime against the Law of *Scotland*. But suppose he had had a Pardon under the Great Seal of *England* before his Return; that would not have pardon'd him in this Case: For his Offence is not in going into *France*, and coming into *England* in Time of Peace; but that having so gone, he returns without Licence, that is the Fact that is made so penal. Now a Pardon given before a Man commits any Offence, is ineffectual; the Queen cannot pardon a Crime before it is committed.

But, says he, I am by this Pardon made to all Purposes a free *Scotchman*, I am restored to all my Capacities that I had lost; therefore, if I have all the Capacities that I had as a *Scotchman* before, I may come into *England*. Now that is a Mistake. It's true, he is restored to all the Capacities of a *Scotchman*, which is to be had by the Laws of *Scotland*; but a Pardon in *Scotland* cannot give him those Privileges he had by the Law of *England*, and therefore cannot discharge him from an Offence committed against the Law of *England*. Nay, if he had been in *Scotland*, having escaped after he had been here, that would not have been effectual to discharge him from his Offence against the Law of *England*. Gentlemen, the Matter is before you, he is a Subject of the Queen of *England*, he has departed from *England* since the 11th of December, 1688, and has returned hither without Licence under the Privy-Seal. And if you do believe all this, then you are to find him guilty; but if you do not believe it, you are to acquit him.

Then the Jury withdrew, and in about half an Hour returned into Court.

Cl. of Arr. Gentlemen, are you agreed of your Verdict?

Jury. Yes.

Cl. of Arr. Who shall speak for you?

Jury. Our Foreman.

Cl. of Arr. *David Lindsay*, hold up thy Hand (which he did). How say you? Is he guilty of the High-Treason, whereof he stands indicted, or not guilty?

Foreman. Guilty.

Cl. of Arr. What Goods or Chattels had he at the Time of this High-Treason committed?

Foreman. None that we know of.

Then the Court adjourned till Five of the Clock.

About Five of the Clock the Court met, and the Prisoner being brought, the Court proceeded.

Mr. Att. Gen. My Lord, *Mr. Lindsay* the Prisoner hath been convicted of High-Treason, and I pray the Judgment of the Court.

Cl. of Arr. *David Lindsay*, thou has been arraigned for High-Treason, and thereof convicted, what hast thou to say why Judgment should not pass against thee?

Mr. Lindsay. My Lord, I refer myself to the Queen's Mercy.

L. C. J. Holt. Have you any thing to plead for yourself, or by your Council?

Mr. Williams. My Lord I did design to have insisted upon a Point in relation to this Statute, upon

upon which the Indictment against the Prisoner is grounded; but understanding it has been already under the Consideration of your Lordship, and the rest of my Lords the Judges, and that it has received your Lordship's Determination, I shall chuse to wave it; but this, with Submission, I do insist upon; That it is not shewn in this Indictment that the Prisoner was a Subject of King *William* at the Time of his going into *France*, or at the making this Act. Now, as I humbly conceive, the very Words of the Act require, that the Party should be a Subject at that Time. The Words are thus, If any of His Majesty's Subjects, who have after the 11th of December gone into *France*, if they return without Licence, they shall be guilty of High-Treason. Now by the Words of the Act, it seems requisite that he should be a Subject at the Time of his going into *France*; or at least at the Time of the making of the Act. So that, with Submission, the Indictment does not agree with the Act of Parliament, unless it be shewn that the Prisoner was a Subject at the Time of his going to *France*; and no Indictment in any Case, much less an Indictment for High-Treason shall be aided by Intendment.—And in this Case, my Lord, there is the less Room for an Intendment, that the Prisoner was then a Subject, because it is not shewn that the Prisoner was a natural born Subject, or that his Treason was *contra naturalis allegiantie debitum*. And it not being shewn that he was a natural Subject, it must be supposed he became a Subject by Naturalization, or by Denization, which might be since his going into *France*.—My Lord, I must own, 'tis said in the Indictment that he was a Subject of King *William*, but 'tis not said when he was a Subject; so that it may be as well supposed he became so after he went into *France*, as before; and the rather in regard he is not shewn to be a natural-born Subject. And we take it, that by the Penning of this Law, which says, *If any of his Majesty's Subjects, who have gone into France, &c.*—it must be meant of a Subject at that Time, or at the Time of his going into *France*; and it not being shewn that he was a Subject at that Time, we humbly take it that the Indictment is insufficient.

Mr. *Raymond*. My Lord, we say, with great Submission, that this Indictment is not good, because it does not shew that Mr. *Lindsay* was a Subject of the late King at the time of the making the Act, or any time before. If this Person had become a Subject of the King after the making of the Act, as he might by Derivation, and had returned into *England*, having been in *France* in the Time mentioned in the Act, he would not be within the Act. Therefore it was necessary to shew at what Time he was a Subject. It is not laid in the Indictment, that he was a natural-born Subject, nor do I pretend that it is necessary in an Indictment for Treason, because one that owes Local Allegiance may be guilty of Treason. But they ought to have averr'd either that he was a natural-born Subject, and that he shall be intended so always; or else, that he was a Subject at the Time of the making of the Act, otherwise we won't be within the Act; because the Words of the Act seem to tie it up to Subjects at the Time of the making the Act, by the Words which follow, *viz.* Who have gone into *France*, &c.

Sir *T. Powis*. I have look'd both into the Indictment and the Act. One Part of the Objection is, that he is not a natural Subject. That is

not to be insisted on, for there is no such thing in the Act; for the Act says, *If any of his Majesty's Subjects*; and there is no need of laying any more in the Indictment than the Act requires; and it was not intended to be confined to such. The other Part of the Objection is, That it is not alledged that the Prisoner at the Bar was the Subject of King *William* at the time when the Act was made. Now there is no need of alledging these Words in the Indictment; for the Act runs thus, *Therefore be it enacted, that if any of his Majesty's Subjects, who have at any Time, since the 11th of December, 1688, voluntarily gone into France, without Licence from His Majesty King William, or from Queen Mary, shall return*: And the Indictment does lay it, that this Prisoner was a Subject of the late King *William*, and that he is now a Subject to the present Queen; and that he, after the 11th of December, 1688, did go into *France*. Now sure here is alledged in this Indictment that the Act refers to; that is, *That if any Subject, who went into France after the 11th of December, 1688, shall return into England*. And the Indictment says, he was a Subject of King *William*, and that he did go into *France* after that Time, and did return into *England* after the Time prohibited by the Act. Here is nothing required in the Act, but what is laid in the Indictment. And it is a very strange Objection to say that we should averr that he was a Subject when this Act was made; this ought to have been shewed on the other Side, if it be otherwise. Here is that in the Indictment which is conformable to the Act, and there is no more necessary, than to describe the Person according to the Act.

Mr. *Att. Gen.* My Lord, we have taken that Method in the Indictment that is proper, that is, to pursue the Act of Parliament; we have laid him as the Act describes. Now they say, that it being not shewn that he was a Subject at the Time of his going into *France*, he is not within the Act. But when a Man is laid in the Indictment to be a Subject, it is a strange Objection to fancy we must mention the Time of his beginning to be a Subject. We have shewed he was a Subject before the making of the Act, and we have shewed he was a Subject after; and he is presumed to have always been a Subject, unless special Matter is shewn when he was not a Subject, as that he was an Alien, and at a particular Time naturalized or made a Denizon; which without Proof will not be presumed; and this Objection should have before arisen from Evidence. It is laid likewise to be contrary to the Duty of his Allegiance, being a Subject of the late King *William*, and of the present Queen.

Mr. *Williams*. My Lord, this Exception against the Indictment seems, with great Submission, not to be answered; I go upon the Words of the Act:

If any of his Majesty's Subjects, who have since the 11th of December, 1688, gone into France. My Objection is, That it is not shewn, that at the Time of going into *France*, nor when the Act was made, that the Prisoner was a Subject; and it not being so shewn, to intend the Prisoner then a Subject, is helping the Indictment by Intendment, which cannot be. And I say there is the less Room for this Intendment here, because this Prisoner is not shewn to be a natural Subject.

Mr. *Raymond*. My Lord, every Word of this Indictment would have been true, if this Gentleman had been an Alien, and become a Subject after the Act was made, and before the late King died.

died. And yet in such a Case he would not have been within the Act: For if he had been a Stranger, and after the Act had been denizon'd, and then had returned into *England*, having before been in *France*, that would not have been within the Act, because the Act says, *If any of the King's Subjects, who have gone into France, shall return: Which must be meant, that were so before the Act was made: And yet that is all this Indictment says.*

L. C. J. Holt. That is a foreign Supposition. Can any Man suppose, that such a Man that has been in *France*, that he should be naturaliz'd or indenizon'd after such an Act was made? And suppose it were so, that he was an Alien, and happen to be naturaliz'd by general Words; the Act does not say, If he shall be a Subject at his Departure; but if he were in *France* since such Time, and return after this Act.

He was a Subject to King *William*, and to Queen *Anne*; and that he went away since the 11th of *December*, 1688, and returned into *England* without Licence.

This is an Indictment formed suitable to the Act of Parliament; it pursues the Words of the Act of Parliament. The Act describes the Person, and sets out what shall be the Offence; that is, one that is a Subject of the King, and has gone away into *France* since the 11th of *December*, 1688, and shall return without Licence.

Mr. Williams. It appears not he was a Subject when he went away.

L. C. J. Holt. If any of his Majesty's Subjects, that have gone away since the 11th of *December*. It does not say, Any that shall go away; but that have gone away after the 11th of *December*.

Mr. Justice Powel. A Subject is supposed to be a natural Subject, unless he be naturalized afterwards: But now he being said to be a Subject according to the Act, supposes him to be a Subject then.

Mr. Raymond. My Lord, we think, with Submission, this is not an Indictment according to other Indictments.

Mr. Justice Powel. It's enough that he is said to be a Subject.

Mr. Raymond. But, my Lord, must there not be a Distinction between a Subject that owes natural Subjection, and commits Treason, and one that only owes local Legiance?

Mr. Justice Powel. You might have shewn that, when you were upon the Evidence.

Mr. Williams. My Lord, we humbly think it must be shewn that he was a Subject, at least at the Time of the making of the Act.

Mr. Justice Powel. We must take him to be a natural Subject, unless the contrary appear.

L. C. J. Trevor. We suppose that he was a Subject at the Time of his going out of *England*; and that the Indictment sufficiently sets forth. If you could have shewn that he became a Subject afterwards, that might have help'd you; but else it signifies nothing.

L. C. J. Holt. Have you any more to say?

Mr. Williams. If we have slipt any Thing on Behalf of the Prisoner, which might have been of Service to him, we hope he shall not suffer for any Omission of his Council; and therefore humbly pray, that your Lordship will favour him, and will be pleased to hear him for himself.

Mr. Lindsay. My Lord, What I have done has been out of Ignorance, and being supported by what other People did. And therefore, my Lord,

having come into *England* by my self, I did not come with any Design of Harm, or to do any Thing contrary to the Law. As I am a *Scotchman*, it is not to be presumed I can understand the Laws of *England*: And therefore, if I have done any Thing amiss out of Ignorance, I hope your Lordship will make a favourable Construction of it; and represent my Case to the Queen. And I hope, as Her Majesty has given me the Effects of her Mercy in *Scotland*, I shall not feel the Effects of her Displeasure in *England*.

L. C. J. Holt. *Mr. Lindsay,* You have been indicted, and upon the Evidence of your own Confession of the Fact alledged against you, and after a great Debate in Matter of Law (which by you, and your Council, was urged on your Behalf) are convicted of High-Treason. That which now remains, is, To pronounce Judgment of Death upon you, which you are to suffer in that Manner which the Law hath appointed. Your Crime is, returning from *France* without the Queen's Licence; having before gone thither without any Licence from the late King or Queen. That Law which hath made such your Return to be an Offence of so high Nature, cannot (by any considering *English* Protestant) be thought to be severe: For they who, in the Time mention'd in the Act, chose rather to run into *France*, than to stay in *England*; could have no other Inducement, than an Affection to an Interest opposite to the Protestant Religion, and the ancient Constitution of this Kingdom. For they were received, protected, and encouraged by that Prince, who is a dangerous and profess'd Enemy both to our Religion and Government. The Wisdom of the Nation thought it absolutely necessary to keep them out; unless they should either clear their Innocence, or give Satisfaction by their Repentance, that they were fit to be trusted here. For he that should adventure to return, without doing either, must be presumed to come in upon the same Principles, and with the same Purposes, with which he went out: Which must be a constant Danger, even to the Foundation of our Government, which is established upon the Protestant Religion, and the Laws of the Kingdom. As to these Circumstances which you have mentioned to be peculiar to your Case, they fall not under Consideration; since they are not sufficient to justify you in acting contrary to the Law. Of what Consideration they may be to obtain the Queen's Mercy, falls not under our Cognizance; for that is a peculiar Attribute, inseparable from Her Majesty's Royal Person, by whom it can only be dispensed. Our Business is to put the Law in Execution. And you must be convinced in your own Conscience, that you have been convicted on a full Evidence, proving the Fact, which hath proceeded from your own Mouth. We have all heard, and debated that Matter of Law which you urged by your Council in your own Behalf; and are all of Opinion, that doth not avail you; but you are an Offender against an Act of Parliament: And nothing remains now, but to pronounce the Sentence of the Law upon you; which is,

That you shall be conveyed from hence to Newgate, the Prison from whence you came, and from thence to be drawn upon a Hurdle to Tyburn; where you are to be hanged by the Neck, and while you are alive to be taken down, your privy Members are to be cut off, and your Bowels to be taken out of your Body, and burnt in your View; your Head is to be cut off, your Body is to be divided into four Parts, and your Head and your
Quarters

Quarters are to be disposed as her Majesty shall appoint. And the Lord have Mercy upon your Soul.

Mr. *Lindsay*. My Lord, I beg that my Wife and Children may come to me; and that I may have a Minister of the Church of *England* allow'd me.

L. C. J. *Holt*. You shall have whom you will, according to what is usual in such Cases.

Mr. *Lindsay*. I desire my Wife and Children may come to me alone, without the Keeper.

L. C. J. *Holt*. That is not to be permitted, that may occasion Danger.

Mr. *Lindsay*. I desire they may be lock'd up with me.

L. C. J. *Holt*. Mr. *Lindsay*, It is a Charge on the Keeper, that he admit them; but so as may not occasion any Danger.

Mr. *Lindsay*. It is a Trouble to the Keeper to wait on me so long (two or three Hours together) which was the Reason I desired it. And if a Minister come to me, I desire we may be private.

L. C. J. *Holt*. He will use you with all the Charity that may be; but he must do what is prudent. Nothing that is reasonable, or fit, shall be deny'd you.

Mr. *Lindsay*. My Lord, I should be sorry, if I desired any thing that is unreasonable. My Lord, I suppose it is my Time now to say any Thing. I shall say only thus much; that is, I well understood what Circumstances I was in: I believe no *Scotchman* has been call'd in Question upon that Act; and I believed in my Conscience I was not guilty.

L. C. J. *Holt*. You are guilty of the Fact charg'd upon you; and it was a very reasonable Law.

Mr. *Lindsay*. My Lord, I own, the Reason was good for making the Act; but that the Reason that I am guilty of the breaking it, I cannot own that.

L. C. J. *Holt*. You are guilty of the Thing you are charg'd with. All that you can do now, is, To appeal to the Mercy of the Queen: She is the best Judge of it.

Mr. *Lindsay*. My Lord, I rest upon your Lordship's representing my Case to the Queen.

Her Majesty was afterwards pleased to grant him a Reprieve.



CLXXX. *The Trial of JOHN TUTCHIN at the Guild-Hall of London, for a Libel, entitled, The Observator, Nov. 4. 1704. 3 Ann.*

The Queen against John Tutchin.

London ff.



HE Information sets forth, That the Defendant being a seditious Person, and a daily Inventor and Publisher of false News, and horrible and false Lies and seditious Libels, and a perpetual Disturber of the Peace of this Kingdom; and wickedly and maliciously devising the Government, and Administration of Justice under our Lady the Queen, to traduce, scandalize and vilify; and our said Lady the Queen, her Ministers and Officers, to bring into Suspicion, and the ill Opinion of her Subjects: The 30th Day of May, in the First Year of her Majesty's Reign, at London, &c. did falsely, seditiously and scandalously, write, compose and publish, and cause to be written, composed and published, a certain false, malicious, seditious and scandalous Libel, entitled, *The Observator*. In which Libel, (of and concerning this Kingdom, and the Officers and Ministers of the Queen) are contained (inter alia) as follows.

N^o 11. Saturday, the 30th of May, 1702.

"At the same Time we [the Subjects of this Kingdom meaning] "consider the French King's Success in "his Bribery and Corruption, we ought to lament the "sad State of our own Country [the Kingdom of England meaning] "which affords so many Instances "of Treachery. If we may judge by our national "Miscarriages, perhaps no Nation in Europe has "felt the Influences of French Gold more than England: And worthy it is our greatest Lamentation, "that our dear Country [meaning this Kingdom] "should be thus weaken'd by Men of mercenary Principles; when Countries inferior to us in Strength "and Riches, are secured from Attempts of this Na-

"ture only by the Fidelity of their People. What "is the Reason that French Gold has not affected "Holland as well as England; but that their Ministry is such as is entirely in the Interest of their Country, and altogether incorruptible? They prefer "Men that are knowing in their Posts, and are "active in Business: When, in England, we find out "Offices for Men, not Men for Offices. And a "Title of Honour gives a Man a Title to a great "Employment he is altogether ignorant of. By this, "and by preferring of Men by Interest and Favour, "has the Excise, the Customs, and other Branches of "the Revenue intolerably sunk: And by this Means "has the Navy of England, our chief Support, been "hitherto perfectly bewitch'd. And can Lewis spend "his Money better, than in getting Men into Offices in England, who are either false, or ignorant "in the Business, or are his Friends?

N^o 23. Saturday, the 11th of July, 1702.

That the Defendant afterwards, the 11th of July following, another false, malicious, seditious, and pernicious Libel, entitled, *The Observator*, falsely, maliciously, and seditiously, did write, compose, and publish, and caused to be written and published: In which Libel (of and concerning the Government of this Kingdom, and the Power of the People of this Kingdom) are contained (inter alia) as follows.

"And this is a Prerogative of singular Advantage to the People of England; in that their Representatives are the Judges of the Male-Administration of their Governors; that they can call "them in Question for the same, and can appoint "such to wear the Crown (meaning the Crown of this Kingdom) "who are fittest for Government: "Which

" Which they have often done, and indeed which
" is the Privilege of all free People, who are au-
" thorized by the Laws of God and Nature, to
" chuse their own Governor's."

N^o 19. Saturday the 12th of June, 1703.

That the Defendant afterwards, the 12th of June, in the second Year of the Queen, did write and publish, and caused to be written and published, another false, scandalous, and seditious Libel, Entituled, The Observer. In which said Libel (of and concerning the Royal Navy of this Kingdom, and the Government of the said Navy) are contained (inter alia) as follows: " Take one Time with another, the " Mismanagements of the Navy (meaning the Royal Navy of this Kingdom) " have been a greater Tax " on the Merchants, than the Duties raised by Par- " liament: We never had a better Navy, but the " Wisdom of the Managers thereof is like a ot- " tomless-Pit, past finding out."

N^o 20. Wednesday the 16th of June, 1703.

That the Defendant afterwards, the 16th Day of the said June, did write and publish, and caused to be written and published, another false, scandalous, and seditious Libel, Entituled, The Observer. In which was contained (inter alia, of the said Royal Navy, and the Officers of the said Navy) as follows: " What avails it a Man of Learning and Parts, to " qualify himself for the Service of his Country " on the Ocean? If he has Knowledge enough to " advise Neptune himself, if he has no Interest, he " shall have no Preferment. How much does it " look to our Nation's Disadvantage, to have Men " in eminent Stations in the Navy, who have not " so much as an Idea, a Notion, a Thought of " Naval Affairs? To have Men to superintend the " Building of our floating Castles, who know not " the Nature of any Part of the Management? To " have Men employ'd in the Victualling, who qua- " lify themselves for that Post by learning to write " their Names, which is indeed a Post for a Philo- " sopher bred to the Sea?"

N^o 27. Saturday the 10th of July, 1703.

That the Defendant afterwards, the 10th of July following, did write and publish, and cause to be written and published, another false, scandalous, and defamatory Libel, Entituled, The Observer; in which are contained (inter alia, of one Daniel de Foe, who was indicted the 24th of February, in the first Year of the Queen, before the Justices of Oyer and Terminer at the Old-Bailey, London: And in July following, was convicted upon his own Confession, for composing and publishing a seditious Libel, Entituled, The shortest Way with the Dissenters, or Proposals for the Establishment of the Church, and of the Judgment against him to pay a Fine of 200 Marks, and to stand three Times in the Pillory, and to find Security for his good Behaviour for seven Years) as follows: " Countryman. Truly Master Observer, " I have no very good News for you: Mr. Daniel " De Foe has pleaded Guilty to the Indictment " against him, for writing and publishing the " shortest Way with the Dissenters; and he is sen- " tenc'd to stand three Times in the Pillory, to pay " a Fine of 200 Marks, and to find Security for " his good Behaviour for seven Years. Observ. The " Court could do no otherwise than convict him, Vol. V.

" upon his pleading Guilty; habemus confitentem reum, is very often the Voice of Courts of Judicature, 'tis the Ease of Judges and Juries: If " Daniel De Foe was in Expectation of Coleman's Black-Box, he has found a Pillory instead of it. " I don't trouble my Head about the Custom of giving the Pillory to Authors, which is the Punishment of Bakers. You talk'd just now of turning Author, have a Care of your Candle; you see which is the shortest Way with Authors; " you must all enter your selves into the Regiment of Colonel Foe: The Law of England directs, that " no Man shall be fined ultra tenementum; and I " make no Question, but the Justice of the Court " has fined Mr. Foe answerable to his Estate: His " Security for his good Behaviour for seven Years, " without doubt, was rationally considered, as to " the Legality thereof. For my Part, I am only " acquainted with old Laws of England, the an- " cient Birthrights and Immunities of Englishmen: " This I take to be the Foundation of new Laws."

N^o 17. Saturday the 20th of May, 1704.

That the Defendant afterwards, the 20th of May last, did write and publish, and cause to be written and publish'd, another false, scandalous, and seditious Libel, Entituled, The Observer. In which are contain'd (of and concerning the Defendant, and a Prosecution to be had against him for divers seditious Libels by him, before that Time, compos'd and publish'd) as follows: " Countrym. Master Observer, " there's another Plot against you (meaning the De- " fendant). " Observ. Prithee Man, there's a Plot " against the Queen, and the whole Nation; is it " any Wonder then, that there are Plots against me? " The High-Flyers are now plotting against every " honest Man in England. I'll tell you more of it, " the next Time we meet. Countrym. I fancy some " sort of People plot against you, because you en- " deavour to countermine their Plots against the " Queen and Nation. Observ. You are right " enough; but that shan't hinder me from detect- " ing their Designs, and from opening the People's " Eyes: But prithee, what Plot is this? Countrym. " Why, Sir, it is a Plot preparatory to your Trial; " and if they can't affect this Plot, I suppose you'll " never be tried. They insinuate into the Citizens " of London, that you have lately written very " scandalously, maliciously, and treasonably, and " I don't know how many other Lies, against them " the said Citizens; and by this Means they are " minded to set your Jurors against you. Obs. This " is likely enough; they'll leave no Stone unturn'd, " to suppress the Truth. I understand, I should " have been prosecuted by Bill the last Sessions, but " that the High-Flyers did not like the Jury; nay, " they say they don't like the two Sheriffs, be- " cause they won't pack Juries to find innocent Men " guilty." To the Disturbance of the Peace of this Kingdom, to the great Scandal of the Queen and her Government, and against the Peace of the Queen, her Crown and Dignity, &c.

*Proclamation was made for all Persons to attend.
Then the Jury was called.*

*John Cooper,
Thomas Briscoe,
Alexander Pollington.*

Edward Pinfold being called, desired to be excused.

Mr. *Pinfold*. My Lord, I desire I may be excused. I do not know Mr. *Tutchin*, for I never saw him in my Life; but I have read his *Observations*, and have several Times publicly disallowed them; and therefore some may think I am prejudiced against him.

* Mr. *Att. Gen.* The Question is * Sir E. Northey. only, whether he was the Author of these Papers? For that is the Matter to be tried.

Mr. *Pinfold*. I do not know that.

Mr. *Mountague*. But, my Lord, there may be something more in it, for he publicly disallowed his Papers.

L. C. J. *Holt*. You must not be excused unless the Queen's Council will.

Mr. *Mountague*. My Lord, we challenge him on behalf of the Defendant.

Mr. *Att. Gen.* Shew your Cause.

Mr. *Mountague*. My Lord, our Cause is, that he himself looks upon himself as not indifferent.

L. C. J. *Holt*. He says, he has read some of his Papers, and has publicly condemned them, that he did not approve of the Matter contained in them, but he does not know the Author.

Mr. *Whitaker*. But he said he did not doubt but he was the Author of them.

Mr. *Serj. Darnel*. He is the fitter Man for a Jury.

Sir T. *Powis*. He does not say he has disapproved all the Papers he has read, and it may be those were not the Papers now in Question.

Mr. *Mountague*. My Lord, the Matter we are contending for, is, that one that is not altogether an indifferent Person should not be on the Jury.

Mr. *Att. Gen.* The Question is not whether the Papers are criminal, but whether the Defendant is the Author of the Papers; and if this Gentleman knows him to be Author of them, he is proper to be on the Jury: For the Jury are by Law to be of the Neighbourhood of the Place where the Fact is alledged to be done, because they are presumed to know what is done there? And if this be a Cause of Challenge, you may Challenge all People, and so there could be no Trial.

L. C. J. *Holt*. He can't be challenged, unless he had given his Verdict before.

* Mr. *Soll. Gen.* My Lord, we * Sir S. Harcourt. can have no Jury in this way they are going. A Jurymen is not to be asked what his Opinion of the Cause is; what he will voluntarily say, he may; and if upon what he says voluntarily he is liable to Exception he may be set aside.

L. C. J. *Holt*. It is not a Challenge.

Mr. *Mountague*. Surely, my Lord, he is not so indifferent as he ought to be. He says he has already declared his Opinion publicly concerning Mr. *Tutchin's* Papers.

Mr. *Pinfold*. My Lord, I know not well what he is indicted for, but it may be they are those Papers that I have given my Opinion of.

Mr. *Att. Gen.* I believe no Man that has read them, but has given his Opinion of them one way or other; but that is not a sufficient Cause of Challenge.

Mr. *Whitaker*. Mr. Attorney, I hope you will not contend for one Jurymen.

Mr. *Att. Gen.* He says, he knows not what Papers he was indicted for, he says only that he has read some of his Papers, and has declared his Dislike of them.

L. C. J. *Holt*. Draw up your Challenge in Form, and it shall be consider'd.

Mr. *Att. Gen.* If these Gentlemen think there is nothing in it, what need they put us to this Trouble.

Mr. *Mountague*. Indeed I believe there is something more than ordinary in it, for I object only to what he himself has said.

L. C. J. *Holt*. I will have it done that it may remain a Decision in *perpetuam rei memoriam*. But if you that are for the Defendant will wave it you may.

Mr. *Mountague*. My Lord, we must insist on it; they have Jurymen enough.

Mr. *Soll. Gen.* We can't tell whether we have or no, for you may challenge them all, as well as this Man.

Mr. *Mountague*. No, I will challenge no body besides; and I challenged him, only because he mentioned himself as not an indifferent Person.

Mr. *Soll. Gen.* Is it a principal Challenge, or to the Favour?

L. C. J. *Holt*. A principal Challenge, if any.

Mr. *Soll. Gen.* He can't challenge to the Favour in Case of the Crown.

L. C. J. *Holt*. He makes it as a principal Challenge; which must be determined, and you shall have my Judgment when drawn up; it must be a principal Challenge or nothing; for there can be no Challenge to Favour in the Case of the Crown.

Mr. *Att. Gen.* My Lord, we are not willing to put you to this Trouble, we will leave it to Mr. *Pinfold* himself.

L. C. J. *Holt*. Then ask Mr. *Pinfold*.

Mr. *Att. Gen.* Mr. *Pinfold*, Do you know who is the Author of these Papers?

Mr. *Pinfold*. I know nothing of it but what is commonly reported. I know not Mr. *Tutchin* if I see him; I have read his Writings.

Mr. *Att. Gen.* My Lord, we leave it to the Jurymen himself.

Mr. *Pinfold*. My Lord, I desire to be excused.

Mr. *Att. Gen.* Then we excuse you.

Then the Persons following were sworn on the Jury.

John Cooper,	Mark Proffor,
Thomas Briscoe,	William Grub,
Alexander Pollington,	James Lund,
James Dod,	John Baker,
Isaac Bennet,	Thomas Allen,
Robert Fotherby,	Jasper Waters.

Then Proclamation for Information being made, the Court proceeded.

Mr. *Serj. Weld*. This is an Information against *John Tutchin*: The Information sets forth, That he being a seditious Person, and a daily Inventor and Publisher of Lies, and maliciously designing to asperse the Government, and the Administration of it, has composed and published several malicious and scandalous Libels; some of them are relating to the Government, some to the Parliament, some to the Courts of Justice, other of them to the Ministry. I shall not now take up your Time in opening the Words at large, because they are very long, and for that you will have them read to you, when the Witnesses come to prove them. He hath pleaded, Not Guilty.

Mr. *Att. Gen.* You must recite the Words of the Charge.

Mr. *Serj. Weld*. The Charge is very long. The Information sets forth, That he did write, and compose

pose, and publish a false and scandalous Libel, call'd *The Observer*, of and concerning the Government. This is laid to be on *Saturday* the 30th of *May*, 1702. And the Words therein charged against him, are these: "At the same Time, we the Subjects of *England* considering the Success of the *French* King, in his Bribery and Corruption, we ought to lament the sad State of our own Country, which affords so many Instances of Treachery. If we may judge by our national Miscarriages, perhaps no Nation in *Europe* has felt the Influences of *French* Gold, more than *England*; and worthy it is our greatest Lamentation, that our dear Country should be thus weaken'd by Men of mercenary Principles, when Countries inferior to us in Strength and Riches are secured from Attempts of this Nature, only by the Fidelity of their People. What is the Reason that *French* Gold has not affected *Holland*, as well as *England*; but that their Ministry is such, as is intirely in the Interest of their Country, and altogether incorruptible: They prefer Men that are knowing in their Posts, and are active in Business. When in *England* we find Offices for Men, not Men for Offices; and a Title of Honour gives a Man a Title to a great Employment he is altogether ignorant of. By this, and by preferring of Men by Interest and Favour, has the Excise, the Customs, and other Branches of the Revenue, intolerably sunk; and by this Means has the Navy of *England*, our chief Support, been hitherto perfectly bewitch'd: And can *Lewis* spend his Money better, than in getting Men into Offices in *England*, who are either false or ignorant in the Business, or are his Friends?" And the Information further sets forth, That on *Saturday* the 11th of *July*, 1702, he publish'd another Libel, call'd *The Observer*; in which are these Words: "And this is a Prerogative of singular Advantage to the People of *England*, in that their Representatives are the Judges of the Male-Administration of their Governors; that they can call them in Question for the same, and can appoint such to wear the Crown, who are fittest for Government: Which they have often done, and indeed which is the Privilege of all free People, who are authorized by the Laws of God and Nature to chuse their own Governors." It further sets forth, That *June* 12, 1703, he publish'd another Libel, call'd *The Observer*; in which are these Words: "Take one Time with another, the Mismanagements of the Navy have been a greater Tax on the Merchants, than the Duties raised by Parliament. We never had a better Navy; but the Wisdom of the Managers thereof is like a Bottomless-Pit, past finding out." The Information further chargeth, That on the 16th of *June*, 1703, he publish'd another Libel, call'd *The Observer*; in which were these Words: "What avails it a Man of Learning and Parts, to qualify himself for the Service of his Country on the Ocean? If he has Knowledge enough to advise *Neptune* himself, if he has no Interest, he shall have no Preferment. How much does it look to our Nation's Disadvantage, to have Men in eminent Stations in the Navy, who have not so much as an Idea, a Notion, a Thought of Naval Affairs? To have Men to superintend the Building of our floating Castles, who know not the Nature of any one Part of the Management? To have Men employ'd in the Victualling, to qualify themselves for that Post by learning to write their

Names, which is indeed a Post for a Philosopher bred to the Sea?" It's farther set forth in the Information, That on the 10th of *July*, 1703, he publish'd another Libel, wherein, among other things, are these Words relating to *Daniel De Foe*. "Countryman. Truly, Master *Observer*, I have no very good News for you. Mr. *Daniel De Foe* has pleaded guilty to the Indictment against him, for writing and publishing *The shortest Way with the Dissenters*; and he is sentenced to stand three times in the Pillory, to pay a Fine of 200 Marks, and to find Security for his good Behaviour of seven Years. *Observ.* The Court could do no otherwise than convict him, upon his pleading Guilty; *habemus confitentem reum* is very often the Voice of Courts of Judicature; 'tis the Ease of the Judges and Juries: If *Daniel De Foe* was in expectation of *Coleman's* black Box, he has found a Pillory instead of it. I don't trouble my Head about the Custom of giving the Pillory to Authors, which is the Punishment of Bakers. You talk'd just now of turning Author, have a care of your Candle; you see which is the shortest way with Authors: You must all enter yourselves into the Regiment of Colonel *De Foe*. The Law of *England* directs, That no man shall be fined *ultra tenementum*; and I make no Question, but the Justice of the Court has fined Mr. *Foe* answerable to his Estate: His Security for his good Behaviour for seven Years, without doubt, was rationally considered, as to the Legality thereof. For my Part, I am only acquainted with old Laws of *England*, the ancient Birthrights and Immunities of *Englishmen*: This I take to be the Foundation of new Laws." And that on *Saturday*, *May* 20, 1704, he publish'd another Libel, call'd *The Observer*; wherein, among other things, are these Words: "Countryman. Master *Observer*, There's another Plot against you. *Obf.* Prithee Man, there's a Plot against the Queen and the whole Nation; is it any Wonder that there are Plots against me? The High-Flyers are now plotting against every honest Man in *England*. I'll tell you more of it the next time we meet. Countryman. I fancy some Sort of People plot against you, because you endeavour to countermine their Plots against the Queen and Nation. *Observat.* You are right enough; but that shan't hinder me from detecting their Designs, and from opening the People's Eyes: But, prithee, what Plot is this? Countryman. Why, Sir, it is a Plot preparatory to your Trial; and if they can't effect this Plot, I suppose you'll never be tried. They insinuate into the Citizens of *London*, that you have lately written very scandalously, maliciously and treasonably, and I don't know how many other Lies against them, the said Citizens; and by this means, they are minded to set your Jurors against you. *Observ.* This is likely enough: They'll leave no Stone unturn'd, to suppress the Truth. I understand, I should have been prosecuted by Bill the last Sessions, but that the High-Flyers did not like the Jury. Nay, they say they don't like the two Sheriffs, because they won't pack Juries, to find innocent Men guilty." The Defendant has pleaded, Not Guilty: But if we prove the Charge, I doubt not but you will find him Guilty.

Sir *T. Powis*. My Lord, I am of Council with Her Majesty. This Information is brought on the Behalf of the Queen, against Mr. *Tutchin*. I shall not long entertain you about it, because the Matter

is short. The Charge is, That he has publish'd several Libels, scandalous and seditious, reflecting on the Government, and the Administration of it, in many Instances given at large. I think the Papers are six in Number; and by and by you will have them more particularly before you. I presume, there ought to be made a Difference between a just Liberty and Licentiousness. This Information is brought, that Men may be warned. The Plea he has made is, That he is not Guilty. The Matter we are to prove is, That he was the Person that did write and compose these Papers, and did publish them, or cause them to be done. My Lord, we shall call our Witnesses: And notwithstanding what you have heard of late from the Defendant, relating to this Trial, I do not doubt but there will be all Justice done. I am sure, on our Side, nothing else is intended. And I doubt not, but if we prove that he did publish these Papers the Jury will find him Guilty.

Mr. Att. Gen. My Lord, the Information is laid against Mr. Tutchin, for a few of his *Observers* of the many he has writ; sometimes two, sometimes three in a Week. It is a great while that he has done it; and it has been the great Indulgence of the Government, that he has not been prosecuted before. He has been taken notice of by the *House of Commons*, and been before the Secretary of State; where he has been admonish'd to take care of what he should write: But he would not take Warning. And now he is to be try'd for some of his Papers; wherein it will appear, that he has taken the greatest Liberty, I believe, that ever Man took. Libels used to come out by Stealth, and in the dark; but these have been publish'd openly, with all the Defiance imaginable. You may see how mild the Prosecution hath been, by what he has done since the Beginning of it: He has been writing in such a Manner, to prepare for the Trial, as I think was never done before. A Prosecution of this Nature is of the greatest Consequence: And it may be, I may be blam'd being in the Office wherein I am, that there have not been more such made. Here is the highest Reflection on the Government imaginable. There can be no Reflection on them that are in Office under her Majesty, but it must cast some Reflection on the Queen who employs them. I believe there is hardly one in any considerable Post under the Government, but has been criminated by him: Nothing escapes him. He censures all Mankind; writes magisterially, and defies all Authority, and casts the vilest Reflections on the Government: As if we, who are in the Queen's Service, made it our Business to corrupt Juries. And makes Reflections both on Sheriffs and Juries. These are of the greatest Consequence in the World to the Government, and to every Body. For if such mercenary Writers may have the Liberty to reflect on whom they please, no Man's Reputation can be safe.

Gentlemen of the Jury, The Matter you are to enquire into is, whether the Defendant be the Author, or Publisher of these Libels: That is the Matter you are to try. What the Punishment must be, if you find him Guilty, is in the Judgment of the Court. We will produce our Witnesses; and doubt not but you will do the Queen Justice.

Mr. Soll. Gen. Call John How. (He appear'd, and was sworn). Shew him those *Observers*. (Which was done; and he look'd them over). Have you look'd over them?

Mr. How. Yes.

Mr. Soll. Gen. Then pray acquaint my Lord and the Jury, whether you know who compos'd and brought them to the Press?

Mr. How. I do suppose them to be Mr. Tutchin's: I dealt with no other Man for them.

Mr. Att. Gen. Acquaint my Lord and the Jury, how they came to be printed.

Mr. How. About the latter End of March, 1702; I treated with Mr. Tutchin about writing an *Observer*, to be publish'd Weekly: The first of which was publish'd in April, 1702. And all that have been printed since, I had from him, to this Year.

Mr. Att. Gen. You look'd on these Papers here: Were these printed by the Direction of Mr. Tutchin?

Mr. How. To the best of my Knowledge they were. They were always brought from him to me.

Mr. Att. Gen. Was there any Agreement made between you about the writing of it?

Mr. How. Yes, it was agreed at first to write once a Week; and I was to give him half a Guinea for it. I have printed in all about 266.

Mr. Att. Gen. Have you had frequent Discourse with him about them since? You said, you printed in all about 266: Have you paid him for all?

Mr. How. Yes.

Mr. Soll. Gen. Have you had any Discourse with him, wherein he has owned them all to be his?

Mr. How. He has owned them from time to time, till within this Week.

Mr. Soll. Gen. Has he owned himself to be the Author of them?

Mr. How. He always own'd himself to be the Author.

Mr. Soll. Gen. Have you had any Discourse with him, lest you should come into Danger for it?

Mr. How. Yes, I have had Discourse with him about the Danger: And he has said to me, I own, myself to be the Author: And do not fear; if any Danger happen, you are a Rogue to yourself and Family, if you do not discover me.

Sir T. Powis. Look on these Papers, and see if he deliver'd these very *Observers* to you: Were these the very same?

Mr. How. Yes.

Sir T. Powis. And was he paid for them by you?

Mr. How. Yes.

Mr. Mountague. I desire to see them.

Mr. Att. Gen. Deliver them to Mr. Mountague.

Mr. Mountague. Take that *Observer*, and look on it: 'Tis that which they are about to read. [Then Mr. How look'd on it]. How long ago is it that you had that Paper in your Custody?

Mr. How. I suppose this was delivered out of my Shop, to be sent to Mr. Borret.

Mr. Mountague. Do you know you sent that Paper?

Mr. How. Yes, I deliver'd it, and put my Mark upon it.

Mr. Mountague. How long ago?

Mr. How. I do not justly remember it.

Mr. Mountague. If you do not remember that, do you remember the printing of it?

Mr. How. It was done at my House.

Mr. Mountague. When a Copy is brought to you to be printed, do you print that Copy always exactly?

Mr. How. As near as I can, I do.

Mr. Mountague. The Question I would ask you, is; Do you, when you have a Copy, strictly keep to

to the Letter of the Copy ? Or do you, as you think convenient, alter it ?

Mr. How. I have alter'd it oftentimes, to make it safe.

Mr. Mountague. Then you do take it on you to alter ?

Mr. How. To strike out a Line, never to alter his Sense.

Mr. Mountague. Do you not insert any Thing ?

Mr. How. Yes, frequently a Word.

Mr. Mountague. Do you not take upon you to insert several Words, and leave out several ?

Mr. How. Yes.

Mr. Mountague. You do. Then I ask you, Are you sure that that Paper is printed without Alteration ?

Mr. How. I do not remember any thing of that.

Mr. Mountague. I ask you, Whether that Paper were not alter'd from what was sent you ?

Mr. How. I cannot swear it.

Mr. Att. Gen. Can you say that Paper was alter'd ?

Mr. How. Not that I know of.

Mr. Whitaker. Look on the Title ; whose putting down is that ?

Mr. How. He agreed to the Title.

Mr. Mountague. Does the Paper come to you, entitled the *Observer*, or not ?

Mr. How. I cannot tell whether he ever put it in.

Mr. Mountague. Who put it in then ?

Mr. How. It was agreed between us to call it *The Observer*.

Mr. Mountague. Does he write the *Observer*, or did you ?

Mr. How. There is no occasion for the Title, that I know of.

Mr. Mountague. But who writ the Title to it ?

L. C. J. Holt. They ask you this Question : Who was it that put this Title to this Paper ?

Mr. How. I do not know but I might write it in the Paper at first, and so it was inserted afterwards.

L. C. J. Holt. Who was it first writ that Title ?

Mr. How. I do not know who did write that, He or I. I did first propose the Title to him.

L. C. J. Holt. Was that Title writ by him or you ?

Mr. How. I do not know, my Lord.

L. C. J. Holt. Was there an Agreement made between you, that this Paper should be writ once a Week with that Title ?

Mr. How. Yes, my Lord.

L. C. J. Holt. Did he agree to that Title ? And was he privy to it ?

Mr. How. Yes, my Lord, it was agreed upon between us ; and he agreed to write such a Paper, with such a Title.

Mr. Whitaker. Where did you come to this Agreement ?

Mr. How. I cannot tell.

Mr. Whitaker. Was it in London, or Middlesex, or Surrey ?

Mr. How. I cannot tell.

Mr. Whitaker. Where were they printed ?

Mr. How. I printed some of them in *Fancchurch-street*, about Eighteen ; the rest in *Gracechurch-street*.

Mr. Harris. Was that Paper alter'd by you, or not ?

Mr. How. I cannot remember whether I alter'd that, or no.

L. C. J. Holt. You say you alter'd sometimes : Did you acquaint him with the Alterations you made ?

Mr. How. Sometimes they have been sent to me ; I knew not where to find him ; and then I

have alter'd them my self, rather than be disappointed. At other Times, I have been in his Company ; and then I complain'd, and he has alter'd them. And sometimes he said, You have the Pen ; do you alter them.

Mr. Soll. Gen. Can you say, You alter'd a Syllable in these Papers ?

Mr. How. I cannot say so.

Mr. Soll. Gen. Since the first publishing of them, have you not publish'd them in Volumes ?

Mr. How. Yes.

Mr. Soll. Gen. And who gave Order for it ?

Mr. How. Mr. Tutchin.

Mr. Att. Gen. What Direction had you about this Volume ? [*A Volume bound up being in Court*].

Mr. How. That Volume was order'd by Mr. Tutchin. He order'd me to bind up three Volumes : One of which he order'd to be deliver'd to Mr. Borret ; which I did not deliver, by reason of a Prosecution at the *Old-Bailey*.

Mr. Att. Gen. Did he order any other Man's Works to be bound up, or his own ?

Mr. How. He order'd me to bind his own, with the *Preface*.

Mr. Att. Gen. Where is that *Preface* ?

Mr. How. Before the Book : And he owned that, and put his Hand to it.

Mr. Att. Gen. Had you paid for these ?

Mr. How. Yes ; He order'd me to bind up these together, and to deliver one of them to Mr. Borret. Sir T. Powis. Did you pay him for the *Preface* ?

Mr. How. Yes, and for the *Index*.

L. C. J. Holt. Who made the *Index* ?

Mr. How. He did.

L. C. J. Holt. Did he write his Name to the *Preface*, after it was brought to you ?

Mr. How. It was deliver'd to me with his Hand to it ; and he owned it.

Mr. Soll. Gen. Then he owned all the *Observers* to be his, by setting his Name to the Volume ?

Mr. Mountague. Where was this Book deliver'd to you to be bound up ?

Mr. How. I do not know, whether in London, or Middlesex, or Surrey.

Mr. Mountague. Recollect where it was that you had this Discourse about a Book.

Mr. How. I do not remember the exact Time.

Mr. Mountague. But you remember the Discourse : And can't you say where it was ?

Mr. How. No, indeed.

Mr. Mountague. The *Preface* they talk of, was it brought in Writing ?

Mr. How. It was brought, or sent in Writing ; and I printed it from a Manuscript Copy.

Mr. Mountague. How do you know he sent it ?

L. C. J. Holt. What did you give him for that *Preface* and *Index* ?

Mr. How. I think it was ten Shillings.

Mr. Mountague. My Lord, with Submission, they cannot read this Paper : For if it be read, it must be read as the Paper of Mr. Tutchin. Now, as to this Paper that they produce, we do insist upon it, that is Mr. How's Paper, and not Mr. Tutchin's. For he tells you, That whatever Papers he had, or whatever Directions were given him from Mr. Tutchin, were in Writing. Now if Mr. Tutchin is to be charg'd with a Libel in Writing, they must produce that very Writing, or a true Copy thereof. And another Man's taking a Copy of my Writing, cannot be said to make it my Writing ; especially when it is not prov'd to be a true Copy. So that this Paper, which is printed by

Mr. How,

Mr. *How*, cannot be charged on Mr. *Tutchin*. If one single Penman had taken a Copy of it, if he could not be sure it was an exact Copy, it could not be read; much less such a Paper, which goes thro' so many Hands as this has done. And Mr. *How* says, He did often alter it, according to the best of his Understanding; and therefore that makes it his Paper. For, by a very small Alteration, a Thing may be made a Libel, that was not so before. And besides, it appears by Mr. *How*'s own Evidence, that Mr. *How* makes an Advantage by the Printing and Publishing of it: And perhaps he makes Alterations, to make it sell the better. That makes it nothing like to Mr. *Tutchin*'s Paper; and therefore they ought to produce that very Paper that was brought from Mr. *Tutchin*: And this Paper ought not to be read against him.

Mr. *Harris*. My Lord, he does not swear it is a true Copy; and therefore we cannot allow it to be read.

Mr. *Whitaker*. He has added the very Title: It is called an *Observer*; and he has put that Title to it. And he gives you no Account when, or where there was any Agreement made with Mr. *Tutchin* about it.

L. C. J. *Holt*. Where was the Agreement made for printing the Papers?

Mr. *How*. I am not positive where it was; whether in *London* or *Middlesex*. I did think it was in *Fanchurch-street*; but he says it was in the *Strand*.

Mr. *Mountague*. Can you be positive it was in *Fanchurch-street*?

Mr. *How*. I cannot be positive.

Mr. *Att. Gen*. Where were they printed?

Mr. *How*. In *Fanchurch-street*.

Mr. *Att. Gen*. Where did you bind the Book, and put the *Preface*?

Mr. *How*. That Book was sent out of my House to be bound; and when it was done, it was sent from my House again.

Mr. *Conyers*. Did he come to *Fanchurch-street*, to direct the Printing at any time?

Mr. *How*. Yes, several Times.

Mr. *Weld*. Did he agree with you to have them printed and publish'd?

Mr. *How*. Yes.

L. C. J. *Holt*. Have you the original Papers of these *Observers*?

Mr. *How*. I have very few of them now.

L. C. J. *Holt*. How came you to part with them?

Mr. *How*. I thought there would be no Use made of them, and so I did not keep them: But I have most of the third Volume by me.

Sir T. *Powis*. My Lord, in answer to this Objection, I must say, If this shall prevail in that Strictness, I take it for granted, that instead of restraining Libels, it will be the best and most effectual Way to publish them. For the Author then hath nothing to do, but when a Copy is printed, to destroy the same; and then no Evidence can be against him: Because the Printer will be called on, to know if that which is printed agree with the written Copy to a Letter. If that be so, it will be impossible to come at the Author. It is not an Answer, to say, you may go to the Printer: For tho' he is punishable; yet it is more reasonable to come at the Author. We have given a fair Evidence, that this is the same that was brought to this Man: And they do not make it appear, that he did add to, or diminish any of these Papers. The Printer says, The Defendant has avowed and justifi-

fied all that he did for him since the Beginning. That by his Order he collected all those *Observers* we insist on, in this Volume; which he has owned, and publish'd sufficiently: For here is his *Index* and *Preface*. And that he did publish this Volume there is no room to question. We have given as good Evidence of this as the Matter will bear.

Mr. *Att. Gen*. My Lord, we have given as good Evidence as can be expected, of a Matter of this Nature. We are prosecuting the Author, and have brought the Printer to give his Evidence; which is all we are able to get: For it is not in our Power to prove, where the Defendant did actually write them. The Printer had no Reason to take care of the original Papers, because when they were printed, they were of no Use. He tells you, the whole Volume was printed, and owned by Mr. *Tutchin* continually, and by him directed to be made up into a Book, and he paid Mr. *Tutchin* for writing them from Time to Time. If this be not a sufficient Evidence of his publishing of them, it would be impossible to give any Evidence; for the Author would always take away his Copy, and then he is safe. These were printed and published in *London*; and wherever the Agreement was made, we may charge the Defendant, where the Papers were printed, pursuant to an Agreement made between him and Mr. *How*; which makes the Composing and Printing his Act.

Mr. *Serj. Darnel*. My Lord, if this be not Evidence, that this Man is the Maker or Publisher of these Papers, his Agreement to have it done, his owning after it is done, and his own Confession, and his being paid for it; if this be not Evidence, nothing is.

L. C. J. *Holt*. His Agreement to publish that Book, is sufficient to prove that he owned it.

Mr. *Conyers*. My Lord, there is one Thing very considerable; the Discourse he had with this Man. Says he, *If you are question'd about it, I am the Author, I gave you the Copy, and directed the printing of it; and you are unjust to your self and your Family, if you do not discover me.* My Lord, they make this Objection: We did contract with Mr. *How* to make an *Observer*, but he made Alterations in it, as he thought fit; and sometimes he shew'd them to him, and sometimes not. Now it's clear, Mr. *Tutchin* did give him that Liberty; and he cannot say, that there was any one of these Papers that was altered.

Mr. *Soll. Gen*. And, my Lord, after there were an Hundred composed, he directs Mr. *How* to bind them up in a Volume, and puts a *Preface* and *Index* to them, and sets his Name to it. Now that is certainly a Publication and owning of them.

Mr. *Weld*. So far as in that Book goes, there is Evidence that he is the Author and Publisher; and they have objected nothing to it: So that the only Question is concerning the other *Observers*. Now he says he had leave from the *Observer* to make those Alterations.

L. C. J. *Holt*. No, he does not say so. Hark you, Sir, Did you ever add any Thing?

Mr. *How*. Not that I know of, but a Word sometimes to make it Sense.

Mr. *Weld*. Did he ever allow you to do it?

Mr. *How*. He has often said, that Printer was a Blockhead that did not.

Mr. *Mountague*. My Lord, my Objection was singly, as to the reading the Papers, not of the Book. The Thing they offer'd as Evidence, was the Papers; and we say they ought to produce the Originals, which they have not done.

L. C. J. *Holt*. They offer the Book in Proof.

Mr. *Mount-*

Mr. Mountague. Then, my Lord, I must beg Leave to oppose that likewise. For this Book is proved to be his, no otherwise, than by the Printer's swearing, that Mr. Tutchin order'd him to bind up three Volumes of his *Observers*; and the Printer himself has put together these Papers, and Mr. Tutchin has writ a Preface before them; but whether the Papers thus put together were ever examined, *non constat*: or whether the Bookbinder has made no Alterations, *non constat*. And it does not appear, that Mr. Tutchin look'd over any of the Papers that are here bound up. So that the most the Queen's Council can make of this Evidence, is this: Here is a Book Mr. Tutchin took to be his Book upon the outward View of it, or at least upon the Credit of his Printer; and therefore every thing in it must be read against him, as his. Surely, my Lord, that ought not to be allowed of. When Dr. Drake was here tried for being the Author of a scandalous Book, it was sworn against him, That upon shewing him one of the Books he was charged with, he owned himself to be the Author of it. But a Question being ask'd, Whether the Book that was offer'd to be read in Evidence against him, was that very Book that had been shewn him, when he owned himself to be the Author? It was answered, No: But it was a Book of the same Impression, and therefore ought as much to be read against him, as the Book he owned. But, as I take it, that Evidence was disallowed.

Mr. Att. Gen. Mr. Mountague, you state it wrong, for that Book was read.

L. C. J. Holt. That Book was read, tho' it was not proved as that very Book that was deliver'd. It was the Bookfeller that said the Book was printed by Dr. Drake; but he would not say it was that very Book that was given in Evidence. He took a Book with such a Title: But was this the Book? But he could say, the other Book was never taken away. Now this Book is owned by Mr. Tutchin, by making the Preface and Index to it.

Mr. Mountague. It was a Book of the same Impression with that which Dr. Drake had own'd himself to be the Author of, that was offer'd in Evidence.

L. C. J. Holt. He took the Book from the Shop that was read, the other Book was in the Shop.

Mr. Att. Gen. The Bookfeller said he knew who writ the Book, but not who writ the Preface.

Mr. Mountague. But, my Lord, be the Case one way or the other: The Thing we insist on is, That they cannot read the first Papers produced, because Mr. Tutchin has not owned that Paper in particular for his, that is inserted in the Book.

L. C. J. Holt. If the first Paper was printed by his Order, according to the Bargain made between them, it is reasonable it should be read. I do not know, says he, that I made any Alteration here; sometimes I did alter, and sometimes strike out, and made the Expression lower; but I know not that I made any Alteration here; and when I did, I oftentimes acquainted him with it; but that I made any Alteration here, I know not: I printed it by the Copy, and the Copy is lost. Now Mr. Tutchin would have him make up a Volume; and, says he, This Volume I bound up by his Order.

Mr. Mountague. My Lord, here is a Paper offer'd, which they cannot prove to be a true Copy; and will you let them read it, because they produce another Paper like it, bound up in a Volume; which, by the way, is proved no otherwise to be his, than by his bespeaking a Set of *Observers* to be bound up for him?

L. C. J. Holt. It is the same.

Mr. Mountague. My Lord, I think, with Submission, they may not read any of the Papers, if they have not examined the first Copy sent to the Printer.

L. C. J. Holt. A Man sends a Copy to print, which is a Libel, and the Print is produced that is said to be according to the Copy: There is another Print produced, that agrees with the first, which he hath owned.

Mr. Mountague. My Lord, I did hope that the Queen's Council would have given an Answer to that Part of my Objection, That these printed Papers are no more than Copies.

L. C. J. Holt. It is more than a Copy. Every Copy of a Libel is a Libel; and every Printer of a Libel is guilty of a Libel.

Mr. Mountague. My Lord, it's true, every Copy of a Libel is a Libel; but whose Libel is it?

Mr. Harris. My Lord, it is not proved that he ever perused that Copy.

Mr. Mountague. Pray, Mr. How, was it his Direction to put these very Sheets together, or to make up a Volume of *Observers*? I do ask you, whether your Direction was to make up a Book of *Observers*, or to bind up these very Sheets?

Mr. How. He gave me Direction to make up a Set of *Observers*.

Mr. Mountague. Then you say, it was only to bind up a Set of *Observers*; and so on your own Head you bound up these *Observers*. But can you say, he has look'd over all the Papers in that Book, and owned them?

Mr. Serj. Weld. My Lord, here is a Man says, he order'd him to deliver them to my Lord Nottingham.

Mr. Mountague. How long is it since he gave you these Directions?

Mr. How. I believe it was about a Week after the Volume was published.

Mr. Mountague. How long since is it, that the Volume was published?

Mr. How. It was about April, 1703.

Mr. Mountague. How long after did you deliver them?

Mr. How. I deliver'd them within a Week after.

Mr. Att. Gen. There are but two of the *Observers* we charge the Defendant with in that Book; and therefore we humbly insist on reading of the printed Papers, on the Evidence we have given, which we take to be sufficient to read them without the Book; these Papers being printed after this Agreement was made between them, and bound up by his Directions, he is answerable for them.

Mr. Mountague. My Lord, I do, with Submission, say it ought not to be read, tho' it be in that Book; for no Man has proved that Paper that is in it to be his. But if they lay any Weight on the owning the Book, the publishing the Book is a new Crime, for which he may be punished afterwards, and he is not charged with it in this Information.

Mr. Att. Gen. If a Man be indicted for being the Author of a Book; being indicted once, he is indicted once for the whole Book.

Mr. Whitaker. My Lord, we are indicted for a single Paper; and that Book is not the Matter of the Indictment.

Queen's Council. My Lord, we have done now. We desire the Papers may be read.

L. C. J. Holt. Read them both.

Then the first *Observer* was read.

Observer, May 30, 1702. "At the same time we consider the French King's Success in his
" Bribery

“ Bribery and Corruption, we ought to lament the
 “ sad State of our own Country, which affords so
 “ many Instances of Treachery. If we may judge
 “ by our national Miscarriages, perhaps no Nation
 “ in *Europe* has felt the Influences of *French* Gold
 “ more than *England*; and worthy it is our greatest
 “ Lamentation, that our Dear Country should be
 “ weaken’d by Men of mercenary Principles, when
 “ Countries inferior to us in Strength and Riches
 “ are secured from Attempts of this Nature, only
 “ by the Fidelity of their People. What is the Rea-
 “ son that *French* Gold has not affected *Holland*, as
 “ well as *England*? but that their Ministry is such,
 “ as is entirely in the Interest of their Country, and
 “ altogether incorruptible: They prefer Men that
 “ are knowing in their Posts, and are active in Bu-
 “ siness. When in *England* we find Offices for Men,
 “ not Men for Offices; and a Title of Honour
 “ gives a Man a Title to a great Employment he
 “ is altogether ignorant of. By this, and by prefer-
 “ ing of Men by Interest and Favour, has the Ex-
 “ cite, the Customs, and other Branches of the Re-
 “ venue, intolerably sunk; and by this Means has
 “ the Navy of *England*, our chief Support, been hi-
 “ therto perfectly bewitch’d: And can *Lewis* spend
 “ his Money better, than in getting Men into Of-
 “ fices in *England*, who are either false or ignorant
 “ in the Business, or are his Friends?”

Mr. *Soll. Gen.* The next is N^o 23. *Saturday*,
July 11. 1702.

“ And this is a Prerogative of singular Advan-
 “ tage to the People of *England*, in that their Re-
 “ presentatives are the Judges of the Male-Admini-
 “ stration of their Governors, that they can call
 “ them in Question for the same, and can approve
 “ such to wear the Crown who are fittest for Go-
 “ vernment; which they have often done, and in-
 “ deed which is the Privilege of all free People,
 “ who are authorized by the Laws of God and Na-
 “ ture to choose their own Governors.”

Mr. *Att. Gen.* Now we will shew these Papers
 to Mr. *How*, for these are all that are in the Book.
 (They were shewn him). Mr. *How*, pray tell us who
 was the Author of these Papers?

Mr. *How.* Mr. *Tutchin*.

L. C. J. *Holt.* How do you know that?

Mr. *How.* I had them of him.

Mr. *Att. Gen.* Did you pay him for them?

Mr. *How.* I paid him for these very Papers.

Mr. *Mountague.* What, these Papers that are now
 produced? You never shew’d them to him, did you?

Mr. *How.* No; but I shew’d him the same
 Number.

Mr. *Mountague.* Have you read them to him?

Mr. *How.* He has owned them all; he has own-
 ed them an Hundred and an Hundred times, all of
 them.

Mr. *Mountague.* Have you the Copy of these
 Papers by you?

Mr. *How.* No.

Mr. *Mountague.* Did you search for them?

Mr. *How.* No, I have not.

Mr. *Harris.* My Lord, if we had seen these Pa-
 pers, then we might have seen what Alterations were
 made in them.

Mr. *How.* I believe he had them back again.

Mr. *Mountague.* I believe he has not been ask’d
 to search for them.

Mr. *Att. Gen.* Did not Mr. *Borret* send to you
 about the Original Papers?

Mr. *How.* Yes.

Mr. *Att. Gen.* Did you look on what you had?

Mr. *How.* Those that I had were look’d out.

Mr. *Att. Gen.* What became of them?

Mr. *How.* I know not, but he might have them
 back again.

Mr. *Att. Gen.* Those that you did find, what
 did you do with them?

Mr. *How.* Those that I have now, are but Two
 or Three.

Mr. *Att. Gen.* Did you carry all the Original Pa-
 pers you had to Mr. *Borret*?

Mr. *How.* Yes, all that I know of.

Mr. *Mountague.* Have you no Copies? Did you
 not say you were not desired to look for these *Obser-*
vators?

Mr. *How.* I said, I did not know whether I was
 ordered to search for these particular *Observers*.

Mr. *Mountague.* Did Mr. *Borret* desire you to
 look after these Original *Observers*?

Mr. *How.* I am not positive.

L. C. J. *Holt.* Did you deliver all those that you
 had to Mr. *Borret*?

Mr. *How.* Yes, my Lord, all that I had at that
 Time; but I have had some since.

Mr. *Att. Gen.* He told you before, That till
 there was like to be a Prosecution, he did not keep
 them, but since he did; and now he look’d for what
 he had, and deliver’d them to Mr. *Borret*.

L. C. J. *Holt.* Then Mr. *Borret* must be sworn.
And he was sworn accordingly.

Sir T. *Powis.* Mr. *Borret*, acquaint my Lord,
 and the Jury, whether you desired Mr. *How* to look
 out the Copies of the *Observers*.

Mr. *Borret.* I sent to desire Mr. *How* to look
 out all the written Copies of the *Observers*, which
 he had received from Mr. *Tutchin*; and he after-
 wards brought me a considerable Number of them,
 and said they were all he could find: And I have
 very carefully look’d them all over, but cannot find
 any one amongst them that relates to any of those
Observers mentioned in the Information, except
 one, which is in *May* last, the which I have here in
 Court.

Mr. *Mountague.* Did you send to Mr. *How*, to
 ask for the Original of these Papers here named?

Mr. *Borret.* I did.

Mr. *Mountague.* Will you produce the Papers
 you have? My Lord, they have taken those Original
 Papers; and if they were produced, you would see
 how they are mangled.

Mr. *Att. Gen.* If they were nothing to the Mat-
 ter, what did they signify? Only this is a popular
 Thing, and they must say a great deal.

Mr. *Conyers.* Read the *Observer* of the 12th of
June, 1703, which contains these Words. (Which
 the Clerk read, as follows).

“ Take one Time with another, the Mismanage-
 “ ments of the Navy have been a greater Tax on
 “ the Merchants, than the Duties raised by Parlia-
 “ ment. We never had a better Navy; but the
 “ Wisdom of the Managers thereof is like a Bot-
 “ tomless-Pit, past finding out.”

Mr. *Conyers.* Now go on to N^o 20, the 16th of
June, 1703. (Which the Clerk read, as follows).

“ What avails it a Man of Learning and Parts,
 “ to qualify himself for the Service of his Country
 “ on the Ocean? If he has Knowledge enough to
 “ advise *Neptune* himself, if he has no Interest, he
 “ shall have no Preferment. How much does it
 “ look to our Nation’s Disadvantage, to have Men
 “ in eminent Stations in the Navy, who have not
 “ so much as an Idea, a Notion, a Thought of Na-
 “ val

“ val Affairs? To have Men to superintend the
“ Building of our Floating Castles, who know not
“ the Nature of any Part of the Management? To
“ have Men employ’d in the Victualling, who qua-
“ lify themselves for that Post by learning to write
“ their Names, which is indeed a Post for a Philo-
“ sopher bred to the Sea? ”

*Then Mr. Tanner was sworn, as to an original
Record, which he produced about Daniel De
Foe’s Trial, to be compared with the Passage to
be next read,*

Mr. Conyers. Now read the *Observer*, N^o 27.
Saturday the 10th of July, 1703. (*Which was
read, as follows*).

“ *Countrym.* Truly, Master *Observer*, I have
“ no very good News for you. Mr. Daniel De Foe
“ has pleaded Guilty to the Indictment against him,
“ for writing and publishing the *shortest Way with*
“ *the Dissenters*; and he is sentenc’d to stand three
“ Times in the Pillory, to pay a Fine of 200 Marks,
“ and to find Security for his good Behaviour for se-
“ ven Years. *Obfer.* The Court could do no other-
“ wise than convict upon, upon his pleading Guilty;
“ *habemus confitentem reum* is very often the Voice
“ of Courts of Judicature: ’Tis the Ease of Judges
“ and Juries. If Daniel De Foe was in Expectation
“ of Coleman’s Black-Box, he has found a Pillory
“ instead of it. I don’t trouble my Head about the
“ Custom of giving the Pillory to Authors, which
“ is the Punishment of Bakers. You talk’d just now
“ of turning Author, have a Care of your Candle;
“ you see which is the shortest Way with Authors:
“ You must all enter your selves in the Regiment of
“ Colonel Foe. The Law of England directs, That
“ no Man shall be fined *ultra tenementum*; and I
“ make no Question, but the Justice of the Court
“ has fined Mr. Foe answerable to his Estate: His
“ Security for his good Behaviour for seven Years,
“ without doubt, was rationally consider’d, as to
“ the Legality thereof. For my Part, I am only
“ acquainted with old Laws of England, the an-
“ cient Birthrights and Immunities of *Englismen*:
“ This I take to be the Foundation of new Laws.”

Sir T. Powis. The last is of the 20th of May last;
Mr. Borret, is the Original of that here?

Mr. Borret. Yes.

Sir T. Powis. Who had you this of?

Mr. Borret. I had it from Mr. How.

Sir T. Powis. Shew it to Mr. How. (*Which was
done*).

L. C. J. Holt. Whose Hand is that?

Mr. How. To the best of my Knowledge, it is
Mr. Tutchin’s.

L. C. J. Holt. Who had you it from?

Mr. How. From Mr. Tutchin, or his Order.

L. C. J. Holt. Did you pay him for it?

Mr. How. Yes, my Lord.

Mr. Att. Gen. Then that likewise was printed
under the Title of the *Observer*?

Mr. How. Yes, Sir.

Then the Paragraph was read.

“ *Countrym.* Master *Observer*, there’s another
“ Plot against you. *Obfer.* Prithce Man, there’s
“ a Plot against the Queen, and the whole Nation;
“ is it any wonder then that there are Plots against
“ me? The High-Flyers are now plotting against
“ every honest Man in England. I’ll tell you more
“ of it the next Time we meet. *Countrym.* I fancy
“ some Sort of People plot against you, because
“ you endeavour to countermine their Plots against
“ the Queen and Nation. *Obfer.* You are right

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“ enough; but that shan’t hinder me from detect-
“ ing their Designs, and from opening the People’s
“ Eyes. But, prithce, what Plot is this? *Countrym.*
“ Why, Sir, it is a Plot preparatory to your Trial;
“ and if they can’t effect this Plot, I suppose you’ll
“ never be try’d. They insinuate into the Citizens
“ of London, that you have lately written very
“ scandalously, maliciously, and treasonably, and
“ I don’t know how many other Lies, against ’em
“ the said Citizens; and by this Means they are
“ minded to set your Jurors against you. *Obf.* This
“ is likely enough; they’ll leave no Stone unturn’d,
“ to suppress the Truth. I understand, I should
“ have been prosecuted by Bill the last Sessions, but
“ that the High-Flyers did not like the Jury; nay,
“ they say they don’t like the two Sheriffs, be-
“ cause they won’t pack Juries to find innocent Men
“ Guilty.”

Mr. Mountague. Now, my Lord, we take it,
there is a Variation between this Paper, and the In-
formation. In the Copy, it is only C.; in the Infor-
mation, it is *Countryman*. Now when they describe
any Paper, it must be as it is writ; and they cannot
say *Countryman*, when it is but C.

L. C. J. Holt. He writes a Dialogue between
the *Countryman* and the *Observer*; but now he
makes C. for *Countryman*.

Mr. Mountague. My Lord, if they go upon the
Libel, they must give it as it is under his own
Hand.

Sir T. Powis. That Letter is to be understood
Countryman.

L. C. J. Holt. When he used to write C. were
you not to write *Countryman* at large?

Mr. How. At first we were; afterwards as it
might be intelligible.

Mr. Mountague. Still we think they have not
done enough: They have not proved this Thing
sufficiently, by the Witnesses they have called. For,
my Lord, we take it, that they must positively
shew it was writ within the City. In the Trial of
the Bishops, it was proved to be all under their
Hands: Yet it was required then, that they might
make it appear, that that Paper was writ in the
County of *Middlesex*.

Mr. Att. Gen. Mr. How, where do you live now?

Mr. How. In *Grace-church-street*.

Mr. Att. Gen. Let that Agreement be made
where it will, the Publishing was in London; and
we may lay the Information here.

L. C. J. Holt. Where did you receive these Pa-
pers?

Mr. How. Most commonly they were sent to my
House, in *Talbot-court, Grace-church-street*.

Mr. Whitaker. Have you not fetch’d some of
them from *Lambeth*?

Mr. How. Yes, some of them.

L. C. J. Holt. Suppose a Man draws up a Libel
in *Middlesex*, and there agrees with a Printer who
lives in London to print it: He takes it away, and
prints it in London, and there publishes it. Now the
Question is, Whether he that drew it, is not guilty
of Composing and Publishing of it in London? Every
Copy is a Libel of it self.

Mr. Mountague. Every Copy is a Libel; and
the taking a Copy of a Libel, may be a Publicati-
on: But that is not the Thing laid to his Charge;
it is *Scriptit & Composuit*. Now the Writing is in
the County of *Surrey*; there he writes, and there he
composes.

L. C. J. Holt. He is charged with Writing,
Composing, and Publishing a Libel in London. Tho’

he be not guilty of Writing there, yet he may be guilty of Composing it there.

Mr. Mountague. Now, my Lord, as to the Publishing, the Printing is not the Defendant's Publishing: That affects another Man. Therefore we think they should give some Evidence of his writing these Papers in *London*.

Sir T. Powis. My Lord, As to that, the Word *Composuit* is proper to relate to the Printing of it: (For the Printers have such a Term as Composing). And that is fully proved to be in *London*. And for Writing (whether that be a material Thing between us) I take it, that he that does write a Libel, and sends it to *London*; and there, by his Authority and Directions, it is composed again in another Paper, and printed; that Paper is still his Writing, wherever it goes. However, the other Words come up to the Case fully; because if that which he writes is so published, it may be said to be writ by him, wherever it is so published.

Mr. Att. Gen. We have proved his owning himself to be the Author, and his causing it to be printed in *London*.

L. C. J. Holt. That is not an Evidence of his writing it.

Mr. Att. Gen. My Lord, It is a Proof of his causing it to be printed.

L. C. J. Holt. If he be guilty of a Fact in one County, you cannot charge it in another. But if he caus'd it to be printed in *London*, no question it will be a Publication here.

Mr. Att. Gen. The Composing and Printing is a Publication; and that we have proved to be done in *London*, pursuant to his Agreement. And we also charged him with writing the same; and as a Proof of that, we have proved his owning himself to be the Author. If that be not an Evidence of his writing it, we can hardly ever prove that part of the Charge of writing: For he that writes a Libel, will do it alone; and proving the Copies to be received in *London*, is an Evidence they were writ there first, if the Defendant did not prove the contrary.

Mr. Whitaker. Mr. How swears, he had the Copy from *Lambeth*.

Mr. Att. Gen. Where was it composed?

Mr. How. At my House.

Mr. Att. Gen. Was he there at your House?

Mr. How. Yes; and I had them from him there.

L. C. J. Holt. Did he write any of them there?

Mr. How. Not that I know of.

Mr. Att. Gen. Is Mr. Tutchin in the Court?

Mr. Mountague. I believe not.

L. C. J. Holt. Why is he not here?

Mr. Mountague. May it please your Lordship, and you Gentlemen of the Jury, to spare me a few Words in Behalf of the Defendant. I can hardly say I am of Council with Mr. Tutchin, because I have never seen him, but upon recording his Appearance in open Court; and he has not thought fit to send us any Instructions till this Morning, when we were just going down to *Westminster*. But I do suppose, this Remissness in his Temper, does proceed from his Innocency of the Accusation against him: And he has a Mind to let the World see, how easy it is to make his Defence; since he has pitch'd upon me for his Advocate, and given me so little Time to prepare my self for it. But as short Notice as I have had of this Information against him, thus much I will beg Leave to say to it in general; That it does by no Means

come up to what the Gentlemen on the other Side call it, *A Charge of Writing and Publishing a false and scandalous Libel*. My Lord Coke has given us a Definition, or rather a Description of a Libel: Says he, "*Famosus Libellus, seu infamatoria Scriptura*, is made either against a private Man, or a Magistrate. If it be against a private Man, it does deserve to be punished; because it is likely to incite all the Family or Kindred of such Person, to revenge the Injury; which tends to the Breach of the publick Peace. If it be against a publick Person, as a Magistrate, it is a greater Offence: Because it concerns not only the Breach of the Peace, but it is a Scandal to the Government. And it matters not whether such private Man, or Magistrate, be dead or alive at the making of such Libel; because the Friends and Relations of such Persons, are incited thereby to disturb the Peace of the Kingdom. By all which Sayings of my Lord Coke, I do humbly suppose, That there can be no Libel, where no Person certain is reflected upon, or scandalized. A Libel that points at no Body in particular, is like a Shot at Random, that seldom does any Mischief. And therefore I do take it, with great Submission, That in this Case, Mr. Attorney should have shew'd us what Person (either publick or private) these *Observers* have aspersed. My Lord Coke, in another Place, does liken libelling to Poison, which secretly destroys a Man's Reputation, as the other does his Life. But certainly it would be thought a strange Sort of Indictment, to charge a Man with being guilty of Murder; and not mention some one in particular, that has lost his Life through the Defendant's Means or Procurement. Now pray, my Lord, how much does this Information differ from such an Indictment? Here it is said, That the Defendant Tutchin has wrote and published a false and scandalous Libel, of and concerning this Kingdom of *England*, and the Officers and Ministers of the Queen. But a national Reflection, that equally concerns every individual Person in the Kingdom with the Reflector himself, cannot excite and stir up the People to quarrel one with the other. And to tell me, the Ministers and Officers of the Queen are particularly concern'd, does but give me Occasion to ask, what Officers and Ministers Mr. Attorney is taking care of? For I do not find any Minister of State, or other great Officer, so much as mention'd throughout this Record. A Bailiff, or Constable, is one of the Queen's Officers; and yet very few will think, a Man ought to be punish'd for Scandal, that shall say of such Officers and Ministers, they commit frequent Misdemeanors, and are of mercenary Principles. Would it not have been easy for Mr. Attorney to have assigned the Particulars, if he knows of any body that has been defamed by these *Observers*? But since the Information sets forth no Particulars, I hope the Jury will take it for granted, that nothing in these Papers can be affixed to any Man's Door: But whatever has been writ, is spent in the Air; and I hope this Accusation will vanish there likewise.

In the next Place, my Lord, I would beg Leave to take Notice of the particular Papers, which have been severally read in Evidence. And the first that has been produced, is one of the printed *Observers*, agreed on all Hands to have been publish'd so long ago as the 30th of *May*, which was in the first Year of her present Majesty's Reign. And as to this, the Charge is, That the Defendant has

written,

written, compos'd and publish'd it. But how many of these three Particulars have been made out, must be next observ'd. And as to the writing of it, Mr. How has sworn, That there was an Agreement made betwixt him and the Defendant, (but where, he cannot say) that Mr. Tutchin should write a Paper, sometimes once, sometimes twice a Week, of the publick Transactions; and such a Paper has been writ by Mr. Tutchin; but where this Paper was wrote by Mr. Tutchin, or deliver'd, Mr. How cannot swear. However, so far he goes, that from these Papers of Mr. Tutchin he has printed at his House in London, these Papers are now produced. But on this Evidence, I must, with your Lordship's Favour, observe, That there are two different Sorts of Libels spoken of: The one is in Writing, suppos'd to be written by Mr. Tutchin, but God knows where: The other in Print, own'd by Mr. How to be printed and publish'd from the written Paper; which does not appear, and of which no true Copy has been proved. Now we hope, therefore, my Lord, that the Gentlemen of the Jury will rightly distinguish betwixt this first and second Libel, and make a Difference betwixt the Act of Mr. How, and that of Mr. Tutchin. The printed Papers here produced, are stil'd the *Observator*; so was not the written ones, if Mr. How be to be believed. The printed *Observators* are sold about, for the sole Benefit of Mr. How; and Mr. Tutchin receives only a small *Premium*, for the writing once or twice in a Week. Mr. Tutchin only earns his weekly Subsistence, by making Observations in the Country; and it does not appear, that he concerns himself further about the printing or publishing of them. If he gets his Money, Mr. How may do with his Papers as he thinks fit. So that I must humbly insist upon it, That what Mr. How has done within this City of London, can never reach Mr. Tutchin into Surry or Essex. It has been said indeed, and I shall not contradict it, That the bare transcribing of a Libel, will make a Man guilty of libelling: But for this Reason I do say, That Mr. How only has been guilty of making and publishing these printed *Observators* in London; and Mr. Tutchin, if he be guilty, must be convicted of the making and publishing that, which can be sworn to be his written Observations; especially since it has plainly appear'd, that the Papers written by Mr. Tutchin, have been frequently alter'd by Mr. How, before they were printed off.

And if we consider the Passages that have been produced, the Gentlemen of the Jury will perceive, a very little Alteration will make these Papers quite different from what they are. However, as they be, I hope there is no great Matter in any of them. The first *Observator* says: "At the same time, if we consider the French King's Success, in his Bribery and Corruption, we ought to lament the sad State of our own Country, which affords so many Instances of Treachery, &c." Now, pray who is *We* in this Case? Says Mr. Attorney, in his *Innuendo*, The People of England. But I hope an *Innuendo* shall not make a Man guilty of a Crime, which otherwise can't be affix'd upon him. But supposing this same Paper were in truth written with Relation to England; will any one say, that (no Times whatsoever) this Country has afforded not any Instances of Treachery? And what Part of this Information does so much as fix the time to which the *Observator* alludes? If all that is here set forth were written of a former Ministry, I do suppose there would not be so much Blame laid on the Au-

thor, as if he comes nearer the present Times: So the Time to which these Papers do refer, must certainly be material, and fit to be consider'd of, before any one can rightly judge of this Case. And for want of its being ascertained and determined whether these Reflections may extend, I hope the Jury will not very much regard them.

The next Charge does set forth a wicked Assertion to have been made, *de & concernent Potesstat. Populi Anglicani*. But we must be in your Lordship's Judgment, whether the Paper that is produced, does make out that Assertion to be just as it's laid. I take it, with Submission, that there is a manifest Variance betwixt the Charge and the Libel. The Charge makes him speak of the Power of the People at large; when the Paper comes to be read that speaks of our Representatives in Parliament. And surely there is a Difference, to say, The People at large can do so and so: and to say, Our Representatives in Parliament can do it. For Instance; The making of Laws is not in the People dispersed over England; but in their Representatives in Parliament, in Concurrence with the House of Lords, when the Royal Assent does likewise concur with them; therefore I think this Charge can't affect us, upon account of this Variance. The next Article then to be taken notice of, is that concerning the Navy.—

Mr. Soll. Gen. But Mr. Mountague says nothing of the Prerogative the People have, that the Representatives are the Judges of the Male-Administration of their Governors; that they can call them in Question for the same, and can appoint such to wear the Crown, who are fittest for Government; which they have often done. He passes by all this scandalous Matter.

Mr. Mountague. I did so, Mr. Solicitor, and I did it on purpose, because I look'd upon it as a Matter not proper for you and me to talk of as Advocates in this Place. And I am apt to think my Discretion in passing it by will be more easily justified, than theirs that shall bring such Points as these upon the Stage to be talk'd on before this Assembly. I must declare for my own Part, that I think the Rights of Princes and the Power of the People too high Topicks for me to meddle with; let others do as they think best. I shall pass over to the next Article concerning the Navy. "Take one time with another, the Mismanagements of the Navy have been a greater Tax on the Merchants, than the Duties raised by Parliament." Now how does this relate only to the Navy-Royal; it is no where said, the Mismanagement of the King's Navy, or the Queen's Navy. And the Word Navy does, in my poor Understanding, signify no more than a Number of Ships got together; and therefore I do humbly conceive, there may be a Navy of Merchant Ships, as well as a Navy of Men of War, 'tis altogether uncertain what Navy the Author does allude to.

L. C. J. Holt. Surely the Navy must be the Navy Royal.

Mr. Mountague. If it must, my Lord, yet nobody can say that we never had any Mismanagements in the Royal Navy, and whenever that has happened, the Merchants of England, in all Probability, have suffer'd for it.

Mr. Att. Gen. My Lord, I think all this Discourse is such as is not to be allowed.

Mr. Soll. Gen. When a Man complains of the Mismanagement of the Government, and then comes after this, and says that the People have a Power inherent in them to call their Governors

to an Account: What is this? Does it want an Exposition, thus to possess the People with an Opinion of the Power they have to call the King or Queen to an Account? What does such Things tend to, but to raise in the People an Indignation against the Government?

Mr. *Mountague*. My Lord, the thing I was insisting upon was, that whatever is here set forth, is not brought within any Compass of Time, and there is no particular Reflection upon any Person whatsoever. Though Mention is made of divers Mismanagements and of several Miscarriages; yet all these things may be said of other Times long since. And therefore, since this Exception goes to all the rest of the Charges in the Information, I shall pass by the other Particulars. And since I have taken up a great deal of your Lordship's Time already, I shall leave the rest to these Gentlemen that are to speak after me.

Mr. *Serj. Darnel*. Will you say they are true?

Mr. *Whitaker*. My Lord, here is an Accusation that we did write, and compose, and publish these Papers; now it appears that the first Author was often out of *London*, and that the Copy was often fetch'd from *Lambeth*, and other Places; and the Witnesses did apply the Title of *Observer* to every one of these Papers. Now that which they call Libellous is not in the Writing which we did write; and if we did not write it in *London*, I hope you will not find us guilty of writing and publishing a Libel.

Mr. *Mountague*. My Lord, we have not done any thing as to the Printing at all; we had nothing to do with it.

L. C. J. *Holt*. Were not you concern'd in printing it? I can't imagine how Mr. *How* came to pay for it else. Mr. *How*, what were you to give for every *Observer*?

Mr. *How*. For about Sixty-six of the last, I paid Twenty Shillings a Time.

L. C. J. *Holt*. What did you give for them before?

Mr. *How*. Half a Guinea a Time.

L. C. J. *Holt*. Was it the same thing to him whether you printed it or not?

Mr. *How*. Yes; but I would not have given it him, if it had not been to be publish'd.

Mr. *Whitaker*. My Lord, we are in your Judgment as to this Matter, whether they can find us guilty of a Libel in *London*?

Mr. *Soll. Gen.* It was in *London*.

L. C. J. *Holt*. Where was the Agreement made?

Mr. *How*. I did think at first that it was in the City, and I do think so; but he says it was in *Surry*. The Papers were deliver'd sometimes at my own House, and sometimes in the Country.

Mr. *Att. Gen.* Were they deliver'd to you to be printed?

Mr. *How*. Yes.

Mr. *Att. Gen.* You said you and he have mended the Papers; has that been done at your House in *London*, or in the Country?

Mr. *How*. I do not know which.

Mr. *Mountague*. Let me ask you one Question: Can you swear to any particular Paper, that he deliver'd that Paper in *London*?

Mr. *How*. I do not know where they were deliver'd.

Mr. *Weld*. It need not be insisted on to find him guilty of all; if they find him guilty of the Publication, that will be enough; and that they cannot deny but he is guilty of that. When it is deliver'd

to be printed, it is as much a Publication as the composing of it.

Mr. *Mountague*. But it does not appear that it was deliver'd in *London*.

Mr. *Weld*. But he owned it in *London*.

Sir T. *Powis*. He did cause these Papers to be printed in *London*.

L. C. J. *Holt*. He deliver'd them to be printed in *London*: *How* agrees to give him half a Guinea a Paper at first, and Twenty Shillings afterwards; and surely then he designed to have them printed.

Mr. *Mountague*. He cares not what he does with the Papers, he was only to have so much Money for them:

Mr. *Att. Gen.* My Lord, here they are setting up a Doctrine that will make Libelling safe, so that no Man shall ever be punish'd for it. We have charged him with writing, composing, and publishing a Libel: We have proved the Agreement made with the Printer, be it in *London*, or out of *London*, is not very material. Now if there be an Agreement made out of *London*, for printing and publishing a Libel, wherever that Libel is printed and publish'd, he is guilty; for whatever is done by his Agreement, he is guilty of it. As to the next thing, I am much concerned to hear them say, that which I never before heard urged in any Court, that a Libel is not a Libel unless they assign some particular Person; but I look upon it as the highest kind of Libels to reflect on publick Officers in general; on the Administration of Justice in general. I believe every one knows a Libel is a Libel, tho' particular Persons are not named: If it reflect on Officers in general, as Ministers of State, or Judges or the like. Mr. *Mountague* would have it, that Reflections on the Ministers of the Crown is not a Reflection on the Queen; and he would have it, that we should have averr'd who these Ministers are that were meant in the Libels. As to the first, certainly they that reflect on the publick Administration of Justice by the Queen's Officers, do reflect on Her Majesty, who places and continues them in their Offices. And to the second Reflection, being in general on the Ministry, we ought not, nor could aver, who in particular he meant in these Libels; the whole Administration under the Queen is reflected on, in placing in Officers in general; in the Management of the Navy, and placing in the Officers thereof; and in the Administration of Justice in the Courts of Justice; and what can be more scandalous? There needs no Averment to explain these, in themselves they appear to be Libels; and I hope such Discourses as have been made on this Occasion for the Defendant, will not meet with any Countenance; but I am surprized to hear it justified here by a Council, That the People have Power to call their Governors to Account.

Mr. *Mountague*. I did not say so.

Mr. *Att. Gen.* Certainly what you did say, viz. That you shewed more Discretion in passing it by, than we did in questioning the Defendant for it, and that we wanted Discretion in bringing this Matter on the Stage; could have no other Meaning, but that the Matter was justifiable, but you would not in Prudence do it; which, I must say, is the greatest Liberty I have known taken by a Council.

L. C. J. *Holt*. I did not hear him say so.

Mr. *Mountague*. I did not say so; I said it was more discreet to pass it by than take notice of it.

Mr. *Att. Gen.* I will always prosecute any Man that shall assert such Doctrine. My Lord, I think
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my self obliged in Duty, being in the Station I am, always to take Notice of such Discourses as these, which no Council ought to presume to make.

L. C. J. Holt. Gentlemen of the Jury. This is an Information that is preferred by the Queen's Attorney-General against Mr. Tutchin, for writing, and composing, and publishing, or causing to be writ, composed, or published, several Libels against the Queen and her Government; and all these that are set forth as Libels, are entitled, *The Observer*, and they are in Number six. The first is said to be made and published May 30, 1702, and in which Mr. Tutchin is charged with having this libellous, scandalous Paragraph against the Government, and the Administration of it. The Words are these, "If we consider the French King's Success, in his Bribery and Corruption, we ought to lament the sad State of our own Country, which affords so many Instances of Treachery. If we may judge by our national Miscarriages, perhaps no Nation in Europe has felt the Influences of French Gold, more than England; and worthy it is our greatest Lamentation, that our dear Country should be thus weaken'd by Men of mercenary Principles, when Countries inferior to ours in Strength and Riches are secured from Attempts of this Nature, only by the Fidelity of their People. What is the Reason, that French Gold has not affected Holland, as well as England? But that their Ministry is such as is entirely in the Interest of their Country, and altogether incorruptible: They prefer Men that are knowing in their Posts, and are active in Business. When in England we find out Offices for Men, and not Men for Offices; and a Title of Honour gives a Man a Title to a great Employment he is altogether ignorant of. By this, and by preferring of Men by Interest and Favour, has the Excise, the Customs, and other Branches of the Revenue intolerably sunk; and by this Means has the Navy of England, our chief Support, been hitherto perfectly bewitched: And can Lewis spend his Money better than in getting Men into Offices in England, who are either false or ignorant in the Business, or are his Friends?" This now is charged on him as a defaming the Government, in employing corrupted Officers, or ignorant Officers, when they are not fit for their Places. There is another that has been produced, which is the Second, that hath these Words: "And this is a Prerogative of singular Advantage to the People of England, in that their Representatives are the Judges of the Male-Administration of their Governors; that they can call them in Question for the same, and can appoint such to wear the Crown, who are fittest for Government: Which they have often done, and indeed which is the Privilege of all free People, who are authorized by the Laws of God and Nature, to chuse their own Governors." This is to possess the People, that they may at their Will and Pleasure when they take a Fancy thereto, dispossess the Queen, and set up what Governor they please. These two, and the rest which I shall mention by and by, are given in Evidence. And it seems at first Mr. Tutchin came to Mr. How, the Printer, and there is a Contract made between them two, to print a weekly Paper, and it was to be entitled, *The Observer*, and he was to have half a Guinea a Time. Mr. Tutchin was to write, and the other was to print; his Printing-House was here in London: Accordingly he enters into this Contract, and from Time to Time has received Copies, and prints them, and has paid Mr. Tutchin

for them, and has printed all his *Observers*, even to this very Day: Afterwards there came two out in a Week. Now it is most plain, that a Contract was made between Mr. Tutchin and Mr. How, for Mr. Tutchin to write and frame, and Mr. How to print. And no body can imagine that Mr. How, the Printer, would give him Money, unless that written Copy were to be printed: But now, say they, was there no Alteration made; but were they printed exactly pursuant to the Copy of Mr. Tutchin? Yes, but these two were not; not but that sometimes I made some Alterations; for says he, when I thought his Expressions were too passionate and severe, I apprehended Danger, and made some literal Alterations. But after this, these two were read, and Mr. Tutchin owned them, and divers others, and ordered him to bind them in a Volume, and he does so, and Mr. Tutchin makes a Preface, and binds it to this Volume. It appears that his own Hand is to it, to the Preface, and was paid Money for them, and Mr. Tutchin owned this Number; so that there is a full Proof that these were composed by Mr. Tutchin, in order to be printed, and they were printed afterwards, and he has received Money for them.

Now there are four more which are charged in the Information, of the same Nature. One is thus: "Take one Time with another, the Mismanagement of the Navy has been a greater Tax on the Merchants, than the Duties raised by Parliament: We never had a better Navy; but the Wisdom of the Managers thereof is like a Bottomless-Pit, past finding out." A fourth Paper hath these Expressions. "What avails it a Man of Learning and Parts, to qualify himself for the Service of his Country on the Ocean? If he has Knowledge enough to advise Neptune himself, if he has no Interest, he shall have no Preferment. How much does it look to our Nation's Disadvantage, to have Men in eminent Stations in the Navy, who have not so much as an Idea, a Notion, a Thought of naval Affairs? To have Men to superintend the Building of our floating Castles, who know not the Nature of any one Part of the Management? To have Men employ'd in the Victualling, who qualify themselves for that Post by learning to write their Names, which is indeed a Post for a Philosopher bred to the Sea?" This also charges the Government for employing unfit Ministers in the Navy. There is a fifth, and that hath these Words. "Countryman. Truly Master *Observer*, I have no very good News for you: Mr. Daniel De Foe has pleaded Guilty to the Indictment against him, for writing and publishing *The Shortest Way with the Dissenters*; and he is sentenc'd to stand three Times in the Pillory, to pay a Fine of 200 Marks, and to find Security for his good Behaviour for seven Years. *Observer*. The Court could do no otherwise than convict him, upon his pleading Guilty; *babemus confitentem reum*, is very often the Voice of Courts of Judicature, 'tis the Ease of Judges and Juries: If Daniel de Foe was in Expectation of Coleman's Black-Box, he has found a Pillory instead of it. I don't trouble my Head about the Custom of giving the Pillory to Authors, which is the Punishment of Bakers. You talk'd just now of turning Author, have a Care of your Candle; you see which is the shortest Way with Authors; you must all enter your selves in the Regiment of Colonel Foe. The Law of England directs, that no Man shall be fined *ultra tenementum*; and I

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"make no question, but the Justice of the Court has fined Mr. *Foe* answerable to his Estate. His Security for his good Behaviour for seven Years, without doubt, was rationally considered, as to the Legality thereof. For my Part, I am only acquainted with old Laws of *England*, the ancient Birthrights and Immunities of *Englishmen*: This I take to be the Foundation of new Laws." And then here is the last which hath these Words. "*Countryman*. Master *Observer*, there's another Plot against you. *Observ*. Prithee Man, there's a Plot against the Queen, and the whole Nation; is it any wonder then, that there are Plots against me? The High-Flyers are now plotting against every honest Man in *England*. I'll tell you more of it, the next Time we meet. *Countrym*. I fancy some sort of People plot against you, because you endeavour to countermine their Plots against the Queen and Nation. *Observ*. You are right enough; but that shan't hinder me from detecting their Designs, and from opening the People's Eyes: But prithee, what Plot is this? *Countrym*. Why, Sir, it is a Plot preparatory to your Trial; and if they can't effect this Plot, I suppose you'll never be tried. They insinuate into the Citizens of *London*, that you have lately written very scandalously, maliciously, and treasonably, and I don't know how many other Lies, against them the said Citizens; and by this Means they are minded to set your Jurors against you. *Obf*. This is likely enough; they'll leave no Stone unturn'd, to suppress the Truth. I understand, I should have been prosecuted by Bill the last Sessions, but that the High-Flyers did not like the Jury; nay, they say, they don't like the two Sheriffs, because they won't pack Juries to find innocent Men guilty."

This is the last of the Libels. Now whatever you admit concerning these, the same is proved concerning the other two, except that of the Volume. These he did receive from Mr. *Tutchin*, or by his Agent. He also paid Mr. *Tutchin* upon the same Account that he paid for the rest, and they were printed here in *London*, and published. Now Mr. *Tutchin* did not at any Time complain that they were not printed according to the Copies sent. As to the Copies they are lost all of them but one of these four. There are divers others, but they concern not this Information, but one, and that is Mr. *Tutchin's* Hand, the same Hand as the other Papers, and by that Copy the Paper was printed, and Mr. *Tutchin* also received the Money for it. So that now you have heard this Evidence, you are to consider whether you are satisfied that Mr. *Tutchin* is guilty of writing, composing, and publishing these Libels. They say they are innocent Papers and no Libels, and they say nothing is a Libel but what reflects upon some particular Person. But this is a very strange Doctrine, to say, it is not a Libel reflecting on the Government, endeavouring to possess the People that the Government is Male-administrated by corrupt Persons, that are employed in such or such Stations either in the Navy or Army.

To say that corrupt Officers are appointed to administer Affairs, is certainly a Reflection on the Government. If People should not be called to account for possessing the People with an ill Opinion of the Government, no Government can subsist. For it is very necessary for all Governments that the People should have a good Opinion of it. And nothing can be worse to any Government, than to endeavour to procure Animosities, as to the Management

of it; this has been always look'd upon as a Crime, and no Government can be safe without it be punished.

Now you are to consider, whether these Words I have read to you, do not tend to beget an ill Opinion of the Administration of the Government? To tell us, that those that are employed know nothing of the Matter, and those that do know are not employed. Men are not adapted to Offices, but Offices to Men, out of a particular Regard to their Interest, and not to their Fitness for the Places; this is the Purport of these Papers.

Now they on his Behalf insist on these Things: First, they say you do not prove any Crime against him in *London*. Indeed it is not proved that he writ them in *London*; but the Question is, whether there is not Proof of the Composing and Publication in *London*? There is Proof that they were sent to Mr. *How*, in order to print them in *London*. Now, whether he received them from him in *London* or no (but suppose out of *London*) yet if he received them to print them in *London*, that is a Publication in *London*. If they scruple that Matter it shall be specially found. If they were delivered to be printed at *London*, I must leave it to your Consideration, whether you will not find him guilty of publishing them in *London*. They were some of them printed in *Fenchurch street*, and others in *Gracechurch-street*. He knew where the Printer lived, the Contract was made, and he was paid for them. Gentlemen, I must leave it to you; if you are satisfied that he is guilty of Composing and Publishing these Papers at *London*, you are to find him Guilty.

Then the Jury withdrew, and about a Quarter of an Hour after return'd into Court.

Clerk. Answer to your Names, &c. How say you, Is *John Tutchin* guilty of the Charge laid against him, or Not Guilty?

Foreman. Guilty of Composing and Publishing.

L. C. J. Holt. They appeal from my Opinion; they don't find the Writing in *London*, but they find him guilty of Composing and Publishing in *London*, that is, supposing he did write them out of *London*, and deliver them in order to be printed in *London*.

Mr. Soll. Gen. Do you find that the Papers, the several Copies of these six *Observers* were delivered to be printed in *London*?

Foreman. Yes, guilty of Composing and Publishing, but not of Writing.

Mr. Soll. Gen. Do you find him guilty of the whole Charge, except the Writing?

Foreman. Yes.

Clerk. Gentlemen, hearken to your Verdict, you say *John Tutchin* is guilty of the whole Information, except the Writing?

Foreman. Yes.

Clerk. And so you say all?

Jury. Yes.

November 13.

Mr. Att. Gen. MY Lord, Mr. *Tutchin* has given me Notice that he will bring an Appeal in arrest of Judgment; and indeed he has given publick Notice of it, for it is put into the News-Papers.

L. C. J. Holt. Is he here?

Mr. Mount-

Mr. Mountague. Yes, my Lord, he is about the Court.

Mr. Att. Gen. Call him.

Cryer. *John Tutchin*, Gentleman. (*Then he came into Court*).

Mr. Mountague. May it please your Lordship to favour me a few Words in Behalf of the Defendant, *John Tutchin*. He was tried before your Lordship at the Guild-Hall, London, on Saturday was seven-night, for being the Author, Composer and Publisher of some Papers entitled, *The Observer*; and there is a Verdict enter'd against him, and now he appears to submit to the Judgment of the Court, which he humbly hopes shall not be given against him. For, my Lord, in the first Place I beg Leave to take notice that we think there is Cause why your Lordship should set aside the Trial that has been had; for we look on all the Proceedings upon the Writ of *Distringas*, on which the Verdict is taken, as null and void. This is an Information against Mr. *Tutchin* for a Libel; and the Facts laid in the Information are said to have been transacted within the City and County of London. To this Information he pleaded the last Trinity Term, and the *Venire Facias* was awarded the last Day of that Term, Return. *Die Lunæ proximæ post tres Septimanas Sancti Michaelis*, which your Lordship knows was October 23, the first Day of the Term, and the *Distringas* should have issued the very same Day; but it so happens that the *Distringas* in this Case does appear to have been sued forth October 24, which is a Day after the Return of the *Venire*, and therefore we say the *Distringas* is naught, and all the Proceedings thereupon are null, because there is no Award of the Court to warrant this *Distringas*. In the next Place we say, that the Return, neither of the *Venire* or the *Distringas*, are as by Law they ought to be; for the Return of the *Venire* is *Die Lunæ proximæ post tres Septimanas Sancti Michaelis*, and the Jury are to be brought *coram Domina Regina apud Westm. Die Jovis prox. post*; and the Return of the *Distringas* is *Craft. Anim. with an Hab. Corpora coram Regina apud Westm.* For both which Reasons we think it naught, because when any Proceedings in Criminal Matters are laid in a foreign County, the Process must be made returnable at a Day certain. Day might be given *coram Regina ubicunque*.

L. C. J. Holt. You mean at a common Day; and it is so, whenever Indictments are removed hither by *Certiorari* out of foreign Counties.

Mr. Mountague. My Lord, we think there is no Difference to be made between the Proceedings in London, and other Counties more remote from Westminster.

L. C. J. Holt. In Informations exhibited by Mr. Att. Gen. in this Court for Crimes done in foreign Counties, 'tis usual to return the Process upon Day certain.

Mr. Att. Gen. My Lord, Informations are of the Nature of a Bill.

L. C. J. Holt. Process on an Indictment may be made returnable on a certain Day, if it be found in this Court; but if it be removed hither by *Certiorari*, it is otherwise.

Mr. Mountague. My Lord, we take it that the Process that has been hitherto taken out upon all Informations that charge Crimes on Defendants as done out of the County of Middlesex, has been made returnable on some common Return-Day, and not at a Day certain.

Mr. Att. Gen. It has always been allowed to be upon a Day certain, as well as upon a general Return-Day; and it is settled and declared so by the Court.

L. C. J. Holt. I am apt to think the Clerks have gone both Ways.

Mr. Att. Gen. A Man takes a long Day if he will.

Mr. Mountague. We have look'd over many Informations, and the Practice does not appear to have been so. But what does Mr. Attorney say to the first Exception we have taken? Here is a Discontinuance after the Return of the *Venire*, which was upon October 23, and the *Distringas* bears *Teste viceffimo quarto die Octobris*.

L. C. J. Holt. Ay, what can you say to that, Mr. Attorney? That very Day the Writ is enter'd there must be a *Distringas*.

Mr. Att. Gen. My Lord, I know not how it came to pass. I believe somebody has done it on Purpose. I desire the Clerk may give an Account of it. I never saw the Writ. I desire Time to know how this has been manag'd.

L. C. J. Holt. There must be a Continuance to that Day; if there be no Continuance, all is fallen.

Mr. Att. Gen. If they come again, we will see how this has pass'd.

L. C. J. Holt. If it be so, the Plea is discontinued, and you must plead *de Novo*.

Mr. Mountague. My Lord, seeing it is in Court, I desire it may be read now.

L. C. J. Holt. What need you make that Reflection? Do you think we will make any Alteration in it?

Mr. Mountague. I hope I may ask that without making any Reflection: I am sure I did not intend it so.

Then the Record was read.

Mr. Att. Gen. Come again To-morrow.

Mr. Mountague. Mr. Tutchin, then you may go for To-day; but be here again To-morrow.

L. C. J. Holt. Is the *Venire* made returnable *Die Lunæ*?

Mr. Mountague. Yes, my Lord, it is; I look'd upon it.

Mr. Att. Gen. I will see if it can't be found out.

November 20.

L. C. J. Holt. Mr. Attorney, will you go on?

Mr. Att. Gen. My Lord, we are ready, if they will maintain their Exceptions.

Mr. Mountague. My Lord, we think we have no Occasion to cite many Authorities and Presidents to maintain the Exception, when it is apparent that there is a Discontinuance; the Reading of it makes it appear, that the *Distringas* was sued out a Day after the *Venire*, so that here is a *Nisi Prius* that has been issued out erroneously. The Statute says the Day and Place for taking Inquisitions must be in *Præsentia Partium*. And 'tis plain, the Day and Place mentioned in this Writ was appointed when the Defendant was not in Court, and therefore is null and void.

L. C. J. Holt. In *Præsentia Partium*, where is that required?

Mr. Mountague. By the Statute of *Nisi Prius*, which says, *nec alterminetur hujusmodi Inquisitiones coram aliquibus Justiciariis de Banco nisi statuatur certus*

certus dies & Locus in Comitatu in Prasentia Partium.

L. C. J. Holt. Which Statute do you mean?

Mr. Mountague. The Statute of *Westminster* the Second, *cap. 30.*

L. C. J. Holt. Call for that Statute.

Mr. Att. Gen. My Lord, I desire that they will maintain their Exception, for I am in the dark about it, and that they may maintain it by the Authority of the Law, and not only by an *ipse dixit*, and a Noise in the Town.

L. C. J. Holt. They say the Exception maintains itself.

Mr. Att. Gen. My Lord, let them go on first, and then we will answer them. If they will rely upon this Exception without Authority, then we must pray the Judgment of the Court; but if they will bring Authority for it, we do desire to hear them, and shall give them an Answer.

Sir T. Powis. My Lord, if they have any other Exception to make, I desire they may make it now.

Mr. J. Powel. *Mr. Mountague*, you have made one Exception, that is, of the Discontinuance of the Process; now, if you have any other Exceptions to make, you may make them now.

Mr. Mountague. My Lord, the Exceptions I have hitherto taken, have been to the Trial. I mention'd this, and I mention'd another which I do not insist on; since I understand it has been otherwise settled, that is, about the Return of these Writs upon a Day certain; which, my Lord, I did look upon to have been wrong; because I did not think *Mr. Attorney* could shew any Precedents of any such Returns to warrant this; for I can find none, and I have searched in the Time of King *Charles I.* and in King *Charles II.* and King *James.*

L. C. J. Holt. If a Suit be commenced in the *Common-Pleas* by Bill, as if an *Attorney* shall file a Bill there, the Process is made returnable at a Day certain, and here our Proceedings by Bill are always at a Day certain. Now an Information which is originally filed here, is in nature of a Bill, and the Proceedings therefore may be confined to a Day certain; but if any Indictment be brought hither by *Certiorari*, the Process must be returned at a common Day, and not at a Day certain. We had this Matter under Consideration before, upon another Occasion, and we thought it very reasonable the Proceedings on Informations here should be the same as the Proceedings by Bill, which are returnable on Days certain from any County of *England.*

Mr. Mountague. My Lord, if that be your Opinion, I have nothing to say to it. I have some Records here in my Hand, some in King *Charles's* Reign, and some in King *James's* Time, and all these are made returnable on the common Return, and one of these Records was settled by Sir *William Jones.* As to what the Officers say, they are divided I find; for some of them have told me, it is quite contrary to what *Mr. Harcourt* reports the Course of the Court to be.

Mr. Att. Gen. My Lord, I dare appeal to you, whether this has not been argued twenty Times.

Mr. Mountague. My Lord, let *Mr. Attorney* shew Precedents.

Mr. Att. Gen. You must shew Precedents.

Mr. J. Powel. It is otherwise when there is an original Proceeding.

L. C. J. Holt. Have you any more Exceptions?

Mr. Mountague. I rely on the first Exception. It lies on *Mr. Attorney* to answer this Exception.

Mr. Att. Gen. My Lord, I desire they may shew any Case or Resolution of Law, that the *Distingas* should bear *Teste* the same Day the *Venire* is return'd upon. The *Distingas* is awarded on the Roll upon the first Day of Term; and the *Venire* is returned the first Day of Term: And at the same Time it is awarded, that there shall be a *Distingas*, Day is given to the Party; that is the Warrant: For the *Distingas* and the *Teste* never appear upon the Roll. If they have any Authority, I desire they may shew it. My Lord, I think we can satisfy you, that it is right; or that it is amendable. This is a Maxim of the Law, *There must be Authority.*

L. C. J. Holt. It may be the Thing is so plain, as to need no Authority.

Sir T. Powis. I desire to know, whether the Award of the *Distingas* is right on the Roll, I take it, that the *Venire* is return'd the first Day of the Term; and that there is thereupon a *Distingas* awarded returnable, *Die Jovis prox. post Crast. Anim.* I beg to know, whether it be so or no?

L. C. J. Holt. I have it in my Hand; and I was apprized of that before; and was going to state it. For the Continuance of the Roll is right. The *Venire Facias* is return'd, *Die Lunæ prox. post tres Mich.* On which Day, the *Attorney* appears on the Queen's Behalf; and the Defendant appears likewise. What is then done? *Idco præceptum est Vicecomitibus London, quod distingant eos; itaque habeant Corpora eorum coram Domina Regina, Die Jovis prox. post Crast. Anim.* Now, on what Day must this Award be said to be? That must be that Day whereon the *Venire* is said to be return'd, which is, *Dies Lunæ prox. post Tres Mich.* The Award of the *Distingas*, therefore, by the Roll, is that very Day, the 23d: But the *Distingas* bears Date, not the 23d, but the 24th.

Sir T. Powis. Now do they rely on it, that notwithstanding the Roll has awarded it *Die Lunæ*, yet because the *Distingas* is dated *Die Martis*, do they rely on it, that this is to prevail, without any more to be said to it.

L. C. J. Holt. This is the true State of the Matter. Now there is no Discontinuance on the Roll; for it appears on the Roll, that the *Distingas* was awarded the 23d.

Mr. Broderick. The Objection is, That the *Distingas* has been sued out without Warrant. They ask for Authorities. I believe we might shew Twenty.

Mr. Att. Gen. My Lord, I desire they would cite some Authorities of the Twenty they speak of. I can shew them Cases, where the *Distingas's* have been *Tested* out of Term, or upon the Sunday: These are to be set right. I would be glad to see any Authority, wherein it appears the *Distingas* must be the same Day. I would be glad they would do more than say it.

Mr. Mountague. My Lord, before I answer this, I would ask, whether that Roll be the *Nisi Prius* Roll, or the Plea Roll?

L. C. J. Holt. It is the *Nisi Prius* Roll.

Mr. Mountague. My Lord, the Plea Roll has been made right since I took my Exceptions. The *Nisi Prius* Roll ought to be a Transcript of the Plea Roll.

Mr. J.

Mr. *J. Powel*. The *Nisi Prius* Roll is made out of the other: If the *Nisi Prius* Roll be good, it is well enough.

Mr. *Mountague*. My Lord, to have a Transcript of a Roll that has been made up since, is not right.

Mr. *Att. Gen.* My Lord, he strikes at the Root of the Court.

Mr. *Broderick*. My Lord, I would take notice, that it is the Course of the Court, that the *Distingas* shall bear Date the Day of the Return of the *Venire*. The Clerks tell me, they never knew it otherwise.

Mr. *J. Powel*. The Award is right; but you have not taken out a Writ according to the Award of the Court: Whether that will be warranted?

Mr. *Att. Gen.* They have no Authority, but the Reason of the Thing; and then I think we may give this short Answer: We do affirm, That it is right as it is: But if it were not right, we say it is amendable.

L. C. J. Holt. All the Matter will be to prove that it is amendable.

Sir *T. Powis*. If need be, we may put the Matter into the right Way: For if the *Distingas* be not the same Day with the Award, we pray that it may be amended.

L. C. J. Holt. By what Law must it be amended? You are in the Affirmative: If you acknowledge it wants Amendment, by what Law must it be amended?

Sir *T. Powis*. It is amendable by the Common Law.

Mr. *J. Powel*. You say it is no Fault; and if it be, it is amendable by the Common Law.

L. C. J. Holt. First let us know whether it needs Amendment? And then next, whether it can be amended?

Sir *T. Powis*. My Lord, let them shew that it needs Amendment: For if they make Exceptions, and say no more, and we proceed to answer them, then they may come upon us again with new Matter, and so there will be no End.

Mr. *Mountague*. When we were in the Affirmative in our Exception, we did give some Reasons why we said it is not right.

Mr. *J. Powel*. The Party was in Court the 23d. Then they awarded the *Distingas* in his Presence; so that the *Nisi Prius* was awarded in the Presence of the Party: The Award of it is *Die Luna*. But here's the Fault: They did not make a right *Teste* that Day; so that the Fault is, the *Distingas* that is sued out.

Mr. *Mountague*. On Monday there is an Award of the *Nisi Prius*; but on Tuesday it is taken forth. Now we say, that it is not according to the Writ awarded: For the Writ bears *Teste* the Day after; and upon that Account we say, the Proceedings are null. My Lord, Mr. *Attorney* asks for Precedents for this: But, with Submission, we take it to be plain, that the Motion made for the amending this Thing, supposes it not to be right.

L. C. J. Holt. The first Question to be debated, is, Whether this be a right Trial? or if not, Whether it be a Discontinuance of the whole? The *Distingas* bears Date the 24th of October; the Roll is the 23d of October; and there is no such Writ then taken out, but the Day after; so that the *Teste* is not according to the Roll. When a Writ is not awarded according to the Roll, what the Consequence will be, is another Matter.

Mr. *Att. Gen.* I beg your Lordship's Direction in this Matter. It deserves a great deal of Care;

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for there has been a great Noise in the Town about it. However, we will go your Way. Whether they begin first, or we, I am very easy.

L. C. J. Holt. It is not warranted by Award of the Court. This is a Matter of the greatest Consequence to the Government.

Mr. *Broderick*. Mr. *Attorney* speaks of a Noise about the Town: I concern not myself about that, nor any further in this Case, than as it may be the Case of every Subject of England.

L. C. J. Holt. He is found to be the Author of the *Observators*.

Mr. *Att. Gen.* I do not speak it now upon the Business of this Prosecution; for he is so inconsiderable, that it matters not much how it goes. But if this be not amendable, it will blow up all Proceedings. Every Man must have Justice; and God forbid but he should.

Sir *T. Powis*. My Lord, if it be thought proper, we will go on. Your Lordship observes, what Warrant there was for a *Distingas*; and that it is rightly awarded on the Roll, which is a Warrant to the Clerk for a *Distingas*, and by Consequence if the *Distingas* be not made according to that Award, it is the Misprision of the Clerk. Now if we do admit this to be out of all the Statutes of Amendment (tho' it is fit to be considered whether some Statutes do not warrant it) but suppose it should be out of all the Statutes of Amendments; yet by the Common Law it may be amended.

There were Amendments at the Common Law before any Statute, both in civil and criminal Matters; and these Amendments chiefly regarded the Process of the Court, and such Errors as were occasioned by the Inadvertences or Neglects of the Officers; but especially in the same Term, during which Time the Judges have the Records of the Court in *Scrinio Pectoris*.

My Lord Coke says so expressly: And so was the Opinion of the Court in *Blackmore's Case*, in the eighth Report, fol. 156, 157. which is the great Case of Amendments.

That Book says, fol. 156. b. Without question, at Common Law, the Default of Entry of a Continuance, or of an *Essoign* (which was the Misprision of the Court itself in the Form of the Entry) was amendable by the Court. And the Objection here is, that there is a Discontinuance: And the Instance there given from the Case in 5 Ed. III. fol. 25. is very considerable; where, after a *Venire Facias* issued, and an Award *Quod jurat poniter in respectum*, in the Entry whereof there was a great Mistake of the Parties, which made a Discontinuance, and yet amended at the Common Law.

The Instances of Amendments at Common Law, out of the Old Books are many: 22 Edw. III. fol. 7. b. and 10. a. where a Discontinuance was amended. 29 Edw. III. fol. 32. b. a *Habeas Corp. Jurator*. amended. 7 Hen. VI. 29. *Broke, Tit. Amendment*, 32. 4 Hen. VI. 16. b. By which Book it appears, that the Judges had Power to amend in many Cases at the Common Law, in the Case of a common Person. And if in the Case of a Subject, much more in the Case of the King: For, by the Common Law, the King had many Privileges and Advantages in legal Proceedings, which a Subject had not: And the King, in his Suits, hath many great Prerogatives. The King may plead one Title, and afterwards wave it, and plead another. He may wave a Demurrer, and afterwards take Issue. And many other Privileges be-

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long to the Crown, of this nature, which a Subject hath not.

And particularly in the Matter of Amendments by the Common Law, the King had a Privilege, which a Subject had not.

• An Original Writ was not amendable for a Subject at the Common Law, but in the Case of the King it was.

Therefore in *Blackmore's Case*, fol. 156. b. it is said, That if a *Quare impedit* be sued forth on the Behalf of the King, and the Writ is *presentare* instead of *presentare*; it may be amended in the Case of the King, after Exception taken; but not so in the Case of a Subject.

And so in *Fitz. Amendment*, 12, 19, 22, several Amendments at Common Law, especially in the Case of the King.

Another Advantage which we have in this Case is, That we are in the same Term wherein the *Disstringas* was awarded and made forth.

And in the same Case of *Blackmore*, fol. 156. b. 157. a. it is said, That at the Common Law, the Judges may amend as well their Judgment, as any other Part of the Record, in the same Term. For during the Term, the Record is in the Heart or Breast of the Court, or of the Judges, and not in the Roll: But in another Term, by the Common Law, Misprisions of Clerks in Process were not amendable by the Court; for in another Term, the Roll is the Record. So says that Book.

But here we are in the same Term: And it is the Misprision of the Clerk in Process, and in the making out a judicial Writ, which is in the Power of this Court, as issuing out from hence, whereas Original Writs issue out of *Chancery*: And Judicial Writs are often amended, where Originals are not. *Vide Brook's Amendments*, 20, 22. Owen 62.

But if this were not amendable by the Common Law, it is amendable by Statute.

The first Statutes for Amendments were 14 *Edw.* III. cap. 6. 9 *H. V.* cap. 4. and 4 *H. VI.* cap. 3. which extends to the Amendment of a Letter or a Syllable; but the Judges were wonder'd at in Parliament for their great Nicety, when they ask'd the Question there, whether they might not amend a whole Word; as appears in 39 *Edw.* III. f. 21. And 40 *Edw.* III. f. 34. b. they were told that undoubtedly they might.

Now here is nothing to be amended but a Figure: And this Statute being general, seems to extend to our Case.

The Statutes most to our Purpose are 8 *H. VI.* c. 12. whereby it is enacted, that the Judges may reform and amend all Defects in any Record, Process, Plea, Warrant, Writ, Pannel or Return (except Appeals, Indictments of Murder, and Outlawries for the same; and Additions left out in original Writs, Exigents, and other Writs of Proclamation, contrary to the Statute of *H. V.*) so that by such Misprision of Clerks, no Judgment shall be reversed or annull'd. And again, the Statute of 8 *H. VI.* cap. 15. ordains, that the King's Justices, before whom any Misprision or Default shall be found, be it in any Records and Processes depending before them, as well by way of Error as otherwise, or in the Returns of the same, by Misprision of the Clerks, or other Officers or Ministers whatsoever, in minute Matters (such as this is) they shall have Power to amend such Misprision, upon Examination thereof, according to their Discretion; except the Processes and Records

of Felonies and Treasons and the Dependancies thereof.

Now by Reason of the particular Exceptions in these Statutes, and by reason that the following Statutes of *Jeofail*, in 32 *H. VIII.* 18 *Eliz.* 21. *Jac.* I. &c. do not extend to criminal Cases, an Opinion hath been taken up among some Persons, that no Amendment can be made in criminal Matters by any Statute; which is a strange Mistake.

For these two Statutes of 8 *H. VI.* cap. 12. and cap. 15. being general Laws, and in general Words, they, in Cases not excepted, extend to Amendments to be made by the Judges in criminal Prosecutions, as well as in Civil Causes, without Distinction: And the special Exceptions, after the general Words, are the highest Proofs imaginable. For nothing could be more absurd and vain, than carefully to except, what the Words precedent, without such Exception, would not have reach'd or extended to; and that would highly reflect on the Wisdom of Parliament.

This will appear more fully by the following Series of Authorities, whereby the Judges have amended Discontinuances of this nature; in criminal Prosecutions at the Suit of the Crown.

2 *Cro.* fol. 502. *Harris's Case*. An Indictment for a Nuisance was prosecuted against *Harris*; and a Trial was had, and a Verdict against him. Afterwards it was removed by *Certiorari*; and upon View of the Record, it was found, that no Issue was joined: For the Clerk of Assize had omitted to enter the Issue, and so the Verdict was without an Issue. And upon Motion, the Court of *King's Bench* order'd it to be amended; for it was the Default of the Clerk. And this was done divers Years afterwards, and in the Time of another Clerk of Assize. And it was order'd, that the Clerk of Assize which then was (for the former was removed) should amend it; which was done by inserting these Words, *Et Richardus Warer* (who was the former Clerk of Assize) *qui pro Dom. Rege sequitur similiter*, &c. And it was there said by the Court, That if such Faults should not be mended, many Trials upon Indictments should be overthrown.

There is another Case in the same Book: 'Tis in 2 *Cro.* fol. 529. *Parker vers. Sir John Curson & Ux.* It was an Information against *Sir John Curson* and his Wife for Recusancy; and the Issue was, *Quod præd. Magdalena dicit, quod ipsa non est inde culpabilis; & de hoc ponit se super Patriam, & Attornatus Domini Regis similiter.* Upon a Trial at Bar, a Verdict was given against the Defendants. It was afterwards moved in Arrest of Judgment, that there was no Issue joined; for it was only the Plea of the *Feme Covert*, and no Issue joined, or Plea pleaded for the Husband. And yet in *Regnard*, the Docket was right, which was the Warrant for the Roll; and the Omission of the Husband was the Misprision of the Clerk: Therefore it was amended in so material a Part, even in another Term.

Another Case is in *Cro. Car.* fol. 144. *Sir Humphry Tufton's Case*. A *Quo Warranto* was brought against the Corporation of *Maidstone*, for claiming divers Liberties. Judgment was enter'd by Disclaimer; and it was intended to have been only a special Disclaimer of all Privileges, by Pretence of a Charter bearing Date 17 *Jac. Regis*: But the Clerk in entering the Judgment had omitted those Words, *Virtute vel Prætextu Literar. Patent. govern. dat. Anno decimo sept. Jac. Regis*: But upon Examination, the Court finding that it was merely the Mis-

Misprision of the Clerk, the Court was of Opinion that it was amendable by the Common Law, as well in the King's Case, as in the Case of a common Person; and in another Term too; for so it was, and it was amended accordingly.

There is a Case in 1 *Siderfin*. fol. 243, 244. The King *v. Percival, Godfrey, & al.*

Upon an Indictment for a Riot and a Battery, and Not Guilty pleaded, a *Venire Facias* was awarded *Vicecomitibus* of the City of Canterbury; and upon a Trial at Bar, a Verdict was given against the Defendants: And it was moved in Arrest of Judgment, that the *Venire Facias* and other Process, was directed *Vicecomitibus* of Canterbury, and the Return was made by one Sheriff only; but the Court amended it, by endorsing upon the Writ, that there was but one Sheriff of Canterbury. And this Amendment was made by the Common Law, and not by the Statutes of *Jeofails*; altho' it was said at the Bar, that it was amendable within the Statute, because it was not a Case within any of the Exceptions; it being an Information at the Common Law. And the Case of *Sherington* and *Talbot* was cited, and the Book of 39 *Hen. VI.* 40. for the same Purpose. And with this Case in *Siderfin*, agrees our present Case; for it is not an Indictment or Information upon any Penal Statute, but an Information at Common Law.

Now, if this Opinion, as reported by *Siderfin*, be Law, then this Discontinuance is plainly made good by the Statutes of *Jeofail*.

So in the Case of *Dolphin* and *Clark*, 2 *Cro.* fol. 64, 65. The Appearance and Issue were in *Hillary Term*, 1 *Jac.* the *Venire* awarded did bear *Teste* 23. *Jan.* 1 *Jac.* so the *Venire* awarded before the Issue or Appearance; but yet amended, for the Roll is the Warrant of the *Venire*, which was right. So where the *Teste* was upon a *Sunday*, it was amended: for it was the Default of the Clerk, in the mis-awarding of Process. So if *Teste* out of Term. So if it be *Vicecom.* and says not of what County: Or if the King's Reign be mistaken; 2 *Cro.* fol. 78. *Lea v. Lacon.* The Roll being right, and a Judicial Process, it may be amended.

So *Yelwart.* fol. 64. *Nevill v. Bates.* The *Venire fac.* was made returnable *Quind. Hill.* and yet bore *Teste* 12. *Feb.* which is the last Day of the Term: And yet, *per Cur.* it shall be amended in the Date of the *Teste*, for it is but the Default of the Clerk. And other like Instances there put.

The like in *Cro. Car.* f. 38. *Ayleworth v. Chadwell.*

So in *Cro. Car.* fol. 90, 91. *Moor v. Hodges.* The Issue was in *Trinity Term*; and the *Venire* and *Disstringas* were of Days in *Easter Term* before; and yet amended: For the Roll of awarding the *Venire Facias* was well enough; and the misdating the *Venire Fac.* which is a judicial Process, shall also be set right.

So in later Cases, *Trin.* 2. *Jac.* II. the King *v. Edes.* The Defendant was convicted of a Misdemeanor, upon an Information exhibited *per Robertum Sawyer, &c.* The Continuance was, *Ideo dies datus est prefat. Sam. Astrey*; resolved it might be amended.

And *Hill.* 3. & 4. *Jac.* II. the King *v. Holmes.* Upon an Information for a Riot, and the Defendant convicted; the Mistake of *Ostabis Martini*, instead of *Ostabis Hill.* amended.

We are here in a much stronger Case. The Defendant hath been found Guilty upon a fair Trial: And the Preamble of the Statute of 32 *Hen. VIII.* takes notice, That the setting aside of Verdicts, for

Discontinuances and other Misprisions, is a great Slander to the Common Law and Judges. The *Venire* and *Disstringas* are duly awarded upon the Roll; and the making the *Teste* of the *Disstringas* 24. *Oct.* instead of 23. *Oct.* is a plain Misprision: It is in a judicial Process; and it is in the same Term. And we humbly insist upon it, That it is amendable, both by the Common and the Statute Law. For according to my Lord *Coke*, in *Blackmore's Case*, f. 156, b. 157, a. it is hard to say, what the Court cannot amend in the same Term. For, says he, at Common Law, the Judges might as well amend their Judgment, as any other Part of the Record, in the same Term. For during the Term, the Record is in the Breast of the Court, and of the Judges, and not in the Roll. And therefore we pray this Misprision may be amended, if it stand in need thereof.

Mr. *Att. Gen.* My Lord, because this Matter has been press'd with so much Warmth, I must beg Leave to observe some few Things, in Answer to what has been said.

This is a Thing that not only concerns this single Prosecution, but it concerns all the Prosecutions for the Crown; and in all Cases, not only Criminal, but Civil. And, my Lord, if the Statutes of Amendments extend not to any other Cases but what they urge, the Case of the Crown is worse than that of the Subject. It is worthy of Consideration, what Things are amendable by Common Law; for if the Crown be left to the Mercy of the Clerks, it cannot but be of very ill Consequence. Therefore I hope we may take the Benefit of the Common Law.

My Lord, I would beg Leave to recite some few Precedents, to shew how the Common Law formerly stood. And the first I shall take Notice of, is the Preamble of the Statute, 32 *Hen. VIII.* cap. 30. There it is said, The staying of Judgment after the Verdict, is a great Scandal to the Common Law, and the Ministers of the same. And, my Lord, there is another Thing to be consider'd; That admitting the Common Law stood as it did before, there is a great Difference between the Proceedings of the Crown at the Common Law, and Civil Cases. The Crown had many Privileges at Common Law, which the Subject had not. And it will sound very harsh, that the Crown shall be left without those Helps by the Statute of Amendments, when so many of the inferior Subjects did not want the Help of them. For it is impossible this should not be thought of in Parliament, that some Care should be taken for the Crown in those Matters where it needed.

Now there is, in all our Books, Notice taken of a greater Privilege that belongs to the Crown, than to the Subject. There shall not be a Demurrer to the Evidence in the Case of the Queen, without her Council's Assent; yet in the Case of a Subject, there may be a Demurrer to the Evidence. So the Crown may either insist on a Demurrer, or waive it, and take Issue at Pleasure.

There is this likewise: Before Judgment, in a Criminal Case, the Queen may amend, but the Subject not.

Also by *Hardress Reports*, fol. 504. before Judgment, no Discontinuance may be in the Queen's Case, altho' the Issue was tried. The Attorney takes Issue to one Part; and it is pleaded, that this is a Discontinuance to the other. Now there can be no Discontinuance before the Verdict. And that Book goes further, and says, That the want of Con-

tinuance in that Case, cannot be objected before Judgment, &c. And in 2 *Buls.* 35. an Indictment is said to be amended even after Verdict.

Now there is great Reason, that such Misprisions in Writs at the Queen's Suit shall be amended by the Common Law. And in *Fitzherbert's Abridgment, Tit. Amendment, Placita* 22. if the King bring any Writ which wants Form, &c. it shall be amended. But it is otherwise in the Case of the Subject. So says 8 *Coke* expressly, fol. 156. An Original Writ is not amendable in the Case of a common Person, but it is amendable in the Case of the King.

Now it has been the constant Practice, that these Privileges have been preserved to the Crown. The Queen may at any time amend her Information after Trial, but a Subject cannot.

These Privileges have been preserved to the Crown, even at the Day of Trial: And many Mistakes of Clerks, in Informations and Indictments, have been so amended. This is a Right of the Crown by the Common Law.

In the next Place, my Lord, I would observe, what is the Matter we are going to amend. It is not what alters the Party's Defence. It alters not the Issue, or Trial; nor is it any thing that tends to his Prejudice: And by the Common Law, that may be amended, which is not a Prejudice to the Party.

The Defendant has a Day given by the Roll; and the same Day the *Distingas* is awarded, he appeared: Every one must own, there was no Prejudice to him, whether the *Distingas* be of one *Teste* or another. 'Tis true, there is the Year-Book, 20 *Hen. VI.* fol. 18. which is also in *Brook's Abridgment, Tit. Amendment, Placit.* 4. There was a *Misnomer* in the *Capias* and subsequent Process, and in the *Exigent*: And the Court held, that the *Capias*, &c. might be amended, but not the *Exigent*; because of the Prejudice, if one might be outlaw'd on such Process, to which he never appear'd; and therefore it might not be amended for that Reason. But this Case stands clear of all Objections of that kind. He had a Day to appear, and make his Defence: He came in, and did appear accordingly; and no Prejudice happen'd to him.

Now, my Lord, as to the Exception they make, I must beg Leave to say, it can be of no Weight. I agree, the Award of the *Distingas* must be according to the Writ of *Venire*: But, with Submission, I observe not the Necessity that the *Distingas* should be *Teste'd* the same Day. No Authority of Law requires it, and by reason it should be otherwise. For suppose the Award is made by the Court the first of *January*, the Clerk has all that Day at least to make it. For after the Court has made the Award, the Award is to be drawn up and delivered to the Clerk to make the Writ, and it cannot be supposed to be made at the same Time as the Award is. The Court awards one Day, and the *Distingas* is made the next Day, which is as proper and convenient a Time as can be; I see nothing in the Reason of the Thing against it.

My Lord, the Authorities they cite, that where Process issues another Day, and not the same 'tis awarded, do not prove it a Discontinuance; and many Cases are otherwise; as an Award to give Notice of Trial, &c. Also there is a Book of *Fitzherbert's Natura Brevium* 20 G. & *Brook Title Discontinuance* 59. which says, if the Plaintiff does not assign Error the same Term, then it is a Discontinuance. Now tho' a Writ of Error is returnable at a Day cer-

tain, yet he has all that Term to assign Error; but if he omits it a whole Term, it is a Discontinuance.

My Lord, I do not see but this is a regular Prosecution on a Writ not liable to Exception. There is another Book, 21 *Ed. IV.* that says, There shall be the same Day given to the Jury by the *Distingas*: but I see not the Necessity that the *Teste* should be that Day, *Brook Discontinuance*, 53. At the Return of the *Venire Facias* the Defendant was *essoyn'd*, and the *Essoyn* adjourn'd: Now the *Habeas Corpus* shall have the same Day as the *Essoyn* had by Adjournment, and so not the same Day with the Return of the *Venire*; for, says the Book, you shall continue the *Venire* to the same Day of Adjournment; but that does not shew that the Process shall be issued that Day, but rather the contrary. Now in this Case there is all done that is necessary, the Process is continued, the Jury is adjourn'd to that Day that it is by the Roll, the Parties are continued to that Day. I know no Case that shews a Necessity of the Writ bearing Date the same Day but one, and that I think is against them: 'Tis the Case of *Bradley and Banks*, in *Yelverton* 204. and that was in an Appeal, and that it was so, there was a Discontinuance in an Appeal, if there be any Time between the Return and the *Capias*, tho' the Defendant hath appear'd, yet all the Process are discontinued; for in that Case the *Teste* ought to be the same Day as the Process was. Now if that were a general Rule, it would be against us; but that was founded on a special Reason, and does them no Service. For all Appeals are to be without Intermission, and if they are intermitted any Time, the Appeal is lost; for the Common Law is not alter'd by the Statute of *Gloucester*, therefore there can be no Imparllance after Appeal; for if an Imparllance be thereon, it is a Discontinuance, and therefore that Case will be of no Authority to them.

But there is a Case in *Crook. Eliz.* (N. B. The Case intended seems that of *Rogers* vers. *Bird, Cro. Eliz.* 572. *sed vide ib.* 433. *contra.*) where this Process is taken notice of as good, and that is, that the Process is very next Day. There a *Venire Facias* was awarded *Craft. Trin.* the *Distingas* was issued the Day after, and by that it ought to be so; and the Return was amended, and the Process was the next Day after the Return. Now that being so particularly stated, seems to be an Authority that it may be so.

L. C. J. Holt. How does it appear to be a Day after?

Mr. Att. Gen. The *Venire Facias* was *Craft Trin.* the *Distingas* was *Die Veneris*, &c. which was the Day after. (*Quare Cro. El.* 433.)

Mr. Broderick. In a Criminal Case it is not allow'd.

Mr. Att. Gen. I do not tell you whether it was a Criminal or a Civil Case, but the Exception was taken notice of, and it was amended; but this I only premise. Now, my Lord, with great Submission, I don't know that there is any Necessity (it being a Process at the Suit of the Crown) to have it *Tested* on any Day certain; for it seems to be well on any Day. If it be in the same Term, and Notice having been given to the Jury, and they and the Party appearing thereon, I cannot see why it may not be well. In Criminal Cases the Course of the Court is to amend Errors (of Form) in Indictments and Informations the very Day of the Trial, and that has always had its Weight in Criminal Prosecutions; but, with Submission, if it be not right, it is to be made right; if it be a Mistake of the Clerk, it may be amended. If you award a Writ, it is the Clerk's Duty to make it out; and if he mistakes in Form, or varies

varies from his Instructions, &c. all these Matters are amendable by the common Law, and therefore need not the Aid of any Statute. But I cannot give up that neither; for the Crown has certainly the Benefit of the Statutes of Amendments, and I think *Coke* is of that Opinion too, on the Statute of 14 E. III. That Statute is general, and to say it comes only to Causes between Party and Party, and not to Causes of the Crown, I cannot understand, for there is nothing in it that leads that way. And yet because it speaks of Causes between Party and Party, this Rule has been laid down, that it extends not to the Crown; this Rule has indeed prevailed: But where a Statute is in general, and the end of it is to suppress Fraud, according to all the Rules laid down for expounding Statutes, the Crown ought to have the Benefit of it. It is to take off the Scandal of the Law, and the Ministers thereof, as the Statute 32 H. VIII. says. Now the Stat. of 14 E. III. is general, that by the Misprision of a Clerk no Process shall be annulled or discontinued by mistaking a Letter or Syllable, but as soon as it is perceived it shall be amended. Now I think there is no Reason to be given why it should not extend to Processes of the Crown as well as of the Subject, unless they thought the Subject only wanted it. I do not understand why a general Law may not extend to the King, as well as the Subject. Now as this Statute is general, I mean the Statute of E. III. so there is the Statute 16, 17 Car. II. Cap. 8. which is likewise general, and yet it has been always taken to concern the Crown, as well as the Subject. And why not one Statute as well as the other I cannot conceive. Now, my Lord, we are not without good Opinion that the Benefit of the Statute 16 and 17 Car. II. does belong to the Crown. 'Twas the Opinion of the Lord Chief Justice *Hales* in the Case of the Lord *Fitzwater*, there the *Venire* was directed to one Place, when it should have been to two; and the Question was, whether this could be help'd by the Statute of 14 Car. II. He adher'd to that Opinion, and the Jury thereupon gave their Verdict. It was indeed set aside; but Judge *Hales* always abode by that Opinion. And so is first *Sydesfin* 148. The King against *Wright*. There it is said the Statute of *Jeofails* does extend to it; and even by the Rule in *Blackmore's* Case the Statute does extend to it; For there, says my Lord *Coke*, that Statute does not extend to Appeals, or Indictments, Pleas of the Crown or any Proceedings thereon, for they are excepted. That is his Opinion, where they are excepted, it does not extend to them. Now all Pleas of the Crown are not excepted, but only Appeals, Indictments, &c. and therefore Informations on particular Statutes are not excepted. Now on the reading of the Act, no Pleas of the Crown are excepted, but only Appeals and Indictments; therefore my Lord *Coke's* Opinion must be, that that Act extends to all Things that are not excepted therein, and consequently to this Case. In *Dyer* f. 153. there is indeed another Question, whether it be a Discontinuance in the King's Case on the Statute of 32 H. VIII. (*Vide Dyer* 353.)

Now if he make a Query on that Statute, I cannot imagine why he should not have doubted in other like Cases. But when he came after to *Fol.* 346, 347. in an Information on the Statute of Usury, the Book says the misconveying of Process and the misjoining of Issues, are amendable by the Statute of *Jeofails*, and accordingly Judgment was given against the Defendant, notwithstanding divers Errors in the Proceedings; so that the Judges were of Opinion in that Case, that the Statute did extend to Cases of the Crown.

L. C. J. Holt. The Judges there did not directly consider the Statute of *Jeofails*, 'twas but an Opinion *obiter*.

Mr. Att. Gen. These are the Words of the Book, *Tandem propter Statutum de Jeofails que parle de misconveying de Process, &c.* Judgment was given against the Defendant. But I shall have Occasion afterwards to take notice, that a great deal of the Practice of the Courts goes on the amending of the Returns. That Statute is for amending of Returns, and I think we are within the Statute, or if not, That the Common Law will help us: But be that as it will, we are now on the first Point; and I think it is amendable by the Common Law; and I think I can give you an Account of much greater Amendments made by the Court at Common Law, than this which we now ask. Now for *Blackmore's* Case, if we had left it there, we might have done it by that Case; for it appears by the 8th Rep. 156. b. without doubt there were Amendments by Common Law; and my Lord *Coke* gives Instances of it. Now I yield it was there in a civil Case; but I think no Man can pretend that at the Common Law there were any Rules to distinguish between Cases of the Crown and Cases of the Subject, unless the Crown had a much greater Power to amend than the Subject had; and that so it was, appears by many of our ancient Books. And there are Authorities in the Statute Law likewise that the Crown could amend further than the Subject. For *Coke* in *Blackmore's* Case says, That Variance of the Writ from the Original was amendable by the Common Law, and any part of the Record in the same Term; for that during the Term it is in the Breast of the Judges, but Misprisions of Clerks in another Term in Processes were not amendable by the Court. But I shall plainly shew, that Misprisions of Clerks were amendable at Common Law in Cases of the Crown; and this is prov'd by all the old Authorities. The old Books say, they shall be amendable in the same Term, and we are now within the same Term, and so hope we shall be deliver'd from that Question. Now that Rule of my Lord *Coke*, and the Reason of it, extends to criminal Cases as well as civil, and both Cases are within the Power of the Court to amend. For if a Fine be set within the Term, the Court may in the same Term amend it or discharge it. This is allow'd to be in the Power of the Court by the Common Law in the Case of the Crown. In *Trinity* Term, *vide* 4 Mod. 395. between the King and *Walcot*, there was an Error in the Writ of Attainder, and an Exception was taken, and it was amended in the same Term. For the Court finding the Form of Entry to be erroneous, they did the same Term order the Record to be razed, and made a Rule for the next Term; and this was done by the Power of the Court at Common Law. For while the Process and the Record is in the Breast of the Court, they have a Power by the Common Law to make a new Judgment.

My Lord, the next Matter I would observe is, That all Misprisions of Clerks, or their Assistants in the Caption of the Judgment, may be amended in the same Term. For that there is *Saunders Reports* f. 209. *Faulkners* Case. If an Indictment be mistaken in the Style of the Court, &c. the Court may amend any Thing to make the Caption right, first *Sydesfin* 259. King against *Glover*, and this was to amend a material Point. There is the like Case in 2d *Croke*. These are criminal Cases. It was an Inquisition taken *apud* — it was not said in *Portibus* Londini. The Clerk of the Peace was order'd to amend it. And in *Jones's Rep.* *Stafford's* Case, first Abridgment 196, there

there was an Error in the Reversion of an Attainder. The Certificate was, that he was arraign'd the 18th of *March*, and convicted the 20th of — In that Case Judge *Barclay* was of Opinion it might be amended by Common Law, and the Lord *Coke* agreed; but Judge *Jones* was of another Opinion, and he gave it for a Reason, especially where the King had signified his Pleasure of desiring it; and afterwards it was not amended: But two Judges were of Opinion it might be amended. In *Palmer's Rep.* 480. in *Plums* Case, there was an Indictment in *Essex*, and it is *Exactus est ad Comitatum*, without *meum*, and a *Certiorari* was awarded to the Coroners, to certify whether it was exact *ad Com. meum*, and amended accordingly. So 7 *E. IV.* 15. The *Nisi Prius* was *Mens. Mich.* and the Roll was *Quinden. Mich.* and that was amended. Now this seems likewise to be warranted by the Statute of *E. III.* and whether that Statute extend to it or not, yet the other Statutes extend to all.

For the old Books, I would only trouble you with some Cases that were before the Statutes of Amendments; and there 'tis plain, both as to civil and criminal Actions, it was the same thing. For in both Cases it was frequently amended; so in 5 *E. III.* 25. an Entry of a Continuance was mistaken, and it was amended by the Court: So in the Case of *Chambers* against *Barrow* — 430. there was a *Scire Facias* obtained, and it was returnable *Sexto* and the Entry is *Septimo*. This upon a Demurrer was objected, and that all was thereby discontinued; it was answer'd, the Court might do it at all Times by the Common Law, and this may be amended by the Common Law.

My Lord, this is an express Authority for us, that the Process is amendable at any Time before the End of the Term, and the Judgment is in the same Term. In the Book 9 *Ed. III. Placita* 3. The Default in Process may be amended at any Time before Judgment; wherever the Roll is contrary to the Writ, it shall be amended by it. After Issue join'd, the *Distingas* was awarded, where no *Tales* was awarded the Clerk found the Award of the *Venire Facias*; and there it is said it is amendable, being in the Breast of the Court.

Sir *Bro. Title Amendm. Placita*, 62. The Original was in *Suffex*, and the Prosecution in *Essex*; yet 'twas held amendable, and no Discontinuance. These are all by Common Law. So 40 *E. III. Placita* 13. and *Brook's Amend. Placita* 17. There was a Writ issued against three: Two appear'd; and one made Default; against whom Process issued, and the next Day he appear'd; and this was amended because it was amendable by Common Law. Likewise *Fitzberbert's Amend.* 6. There was a Variance by the Default of the Defendant, and it was amended, and it was after a Default. So 39 *E. III.* In the Record it was — and in the *Nisi Prius* it was — and it was amended. Now there is a modern Case, *Croke Eliz.* 222, 256, &c. in the *Venire* one of the Jurors was called *Samuel Sutton*, and in the *Distingas Saul*: But it appearing to be the Misprision of the Clerk, and that the Writ was right, they held it was amendable by Common Law. And *Brook's Amend. Placita* 27. the Count or Declaration was *ad damnum* an hundred Pounds, the *Nisi Prius* was to the Damage only of an hundred Shillings, and the Court ordered the *Nisi Prius* to be amended, as being only the Misprision of the Clerk. Now that goes a great Way, for the *Teste* there had no Writ to try it; but yet that is adjudged to be amendable. And so in that Book *Placita* 24. and in divers other Places. So that it hath been always observed in common Prac-

tice as amendable, as being *Vitium Clerici*, *Brook's Placita* 26 and 29. *Fitzberbert* 16, 17 and 29. These are all Cases at Common Law, and so far will justify the Amendment in our Case. And in *Fitz. Amend.* 43. There is a Case to shew, that where there is a Prejudice of the Party an Error may be amended, a *Distingas* is return'd, where there was a Default in the *Teste* and the Jurors Names. The *Teste*, &c. was amended, for they took it before the Roll was made up. There is another Case the 40th of *E. III.* the Process was discontinued after the Appearance of the Defendant, and it was amended. There is likewise 44 *E. III.* (For I meddle not with those since the Statutes of Amendments). There was a Writ awarded against *M. and G.* the Process was against *M.* only; and afterwards it was amended; and there it is said both the Roll and the Writ may afterwards be amended, and they were amended accordingly.

My Lord, I cite these Cases to shew that Amendments were made by the Common Law, and the Statutes cannot make any Alteration, tho' they should not extend to the Crown. I believe there are not in the old Books many Instances of Proceedings by Information; but that seems a great Argument to me, that this Nicety that hath crept into these Proceedings are not by Common Law; in our old Books they are very little taken notice of; but it seems these Exceptions were not taken then, if they had we should have found them; but the Books are quite otherwise. Now if the Amendments were allowed at Common Law, I believe none can distinguish and say, That it shall not be amended in our Case, for I think they cannot be distinguished.

There are some other modern Cases wherein greater Things have been done. First the Case of Sir *John Ashby*, that has been cited (*ante* 677.) that it is an Amendment of a Judgment that was entered by Disclaimer. In the *Nisi Prius* it was right, but all was left out in the Judgment. And it was objected that it was not amendable, because it was not in the same Term, and that none of the Statutes of Amendments extended to such Cases; yet upon Examination it was amended, because it was only a Misprision of the Clerk by mistaking his Book, there it was thought to be in the Power of the Court by Common Law to do right. Then in the Reversal of the Attainder of the Lord *Stafford*, there were Proceedings in Court fourteen or fifteen Years; but by Neglect of the Clerk there were no Foot-steps of any Thing appear'd, and yet there was a Rule for a Record to be made, whereby there was a Judgment of Reversal enter'd. Now this Court did think they had a Power to set the Records right, and they gave them leave to make a Record, in order to make a Reversal of that Attainder: And if it may be done against the Crown, no doubt it may be done for the Crown, for that it is but setting Things right. There have been other Cases cited, as *Harris's Case* in *Cro. Jac.* 502. *post.* 704. and that was a very extraordinary Amendment. It was an Indictment for a Nuisance. Not Guilty was pleaded indeed, but the Clerk who entred it join'd not Issue, and the Verdict was against the Defendant, and no Issue join'd; that was omitted; but the Return was allow'd. Now if we had done so, we should have had a great Noise about it. But here the Court allow'd Amendment to be made; and it was amended, as being done by the Clerk's Negligence, and this in the Time of another Clerk: And these Words were inserted for it.

And it was said, if such Faults should not be amended, many Courts would be deprived of their Jurisdiction. And I am sure, if the Courts will
not

not amend these Matters, it will overturn many Trials.

There is another Case: 'Tis in *Crooke James*, 529. *Parker vers. Sir John Curson & Ux.* And that was a Trial at Bar. The Issue was enter'd, *Et prædict. Johannes Curson & Magdalena veniunt, & prædicta Magdalena dicit, quod non est inde culpabilis; & de hoc ponit se super Patriam, & Attornatus Domini Regis similiter.* After the Trial at Bar, it was amended by the Docket; and there it was only, *Quod J. Curson, Mil. & Magdalena Ux. ejus, placitant non Cul.* which was only a short Memorandum: Which, I think, goes a great way further than what we labour for.

There is that Case too, 1 *Siderfin*. 243. between the King and *Godfrey*. There the Award was *Vicecomitibus*, when it should have been *Vicecomiti*; for there was but one Sheriff: But upon Examination, they found it was the Misprision of the Clerk; and they set it right.

L. C. J. Holt. They indeed set it right; but how? Not by Amendment: But it was inserted as a Memorandum on the Roll, and there was but one Sheriff.

Mr. Att. Gen. My Lord, with Submission, that's as well: For we do not do so much; for that was done after the Trial.

L. C. J. Holt. There was no altering the Writ.

Mr. Att. Gen. If we should ask the Court to alter what we did before the Trial, it would be said we should have mov'd it before, and not after. Now to enter that after the Trial, was much more than we ask.

There is another Case which had the Opinion of the Court, the Case of the Warden of the *Fleet*; where you were of Opinion to amend, &c.

L. C. J. Holt. It is not amended yet.

Mr. Att. Gen. My Lord, I cite it as an Authority, that you would have amended it, if you had any thing to amend it by.

L. C. J. Holt. I did not tell you what I would have done.

Mr. Att. Gen. My Lord I was not in Court, but I heard it was so. If it was not, I was misinformed. There was a Commission taken out against him, as being guilty of several voluntary Escapes, and a Day was given to appear at the *King's Bench* the 8th of *January*. The Appearance was the 20th of *January*; but the Record was not enter'd itself till the 3d of *February* following; so that there was a perfect Discontinuance.

This was not seen at first; but on Consideration of the Court, they found it out; and the Council moved the Court to see it right. The Court made a Doubt of their Power; but they enquired when it came in, whether in time or not; and what Minutes were for it. It seems the proper Minutes were not to be found. Now that being so, it would be strange for the Court to make any Amendments, without any Copy to amend by. If the Clerk's Man had come in, and produced the Minutes, I take it, the Sense of the Court was, that they would amend it; tho' that was agreed to be a Discontinuance.

Now I cite that Case, not that you did amend it; but would have done it, if you had any thing to amend it by: And there was a Discontinuance of the Party. Now if they could have amended that, this may be done here for a much better Reason. There was a Discontinuance, both before and after the Trial. I think we have

much stronger Reason for Amendment, than was in that Case: Tho' I must say, as to that Case, the Bar were of Opinion, that the Clerk might have enter'd it as on that Day, and ought to have done it; and therefore they thought it was amendable. And if that were true, no question it was amendable. But however the Opinion of that Case was, it is an Argument to me, that the Court would have amended it, had they any thing to amend it by: For it was the Opinion of this Court it is amendable. But I think that Case is no Authority for them: And whether that be done by the Help of the Statute or no, is not material: And the Court would have amended it, if it had been the first Day of the Term.

This I take to be the Opinion of the Court; and that they did not amend it, because they had no Authority to amend it by.

There is one Matter more, which is, That this Slip is the Fault of the Clerk: For that the Mistaking of the Writ is the plain Act of the Clerk; and in all the Cases it has been held, Acts of the Clerk to be amendable by the Common Law: And for that there are a thousand Cases. This is in Point of Law.

I would beg Leave to cite a few Authorities in *Crooke's Eliz.* 'Twas agreed, a *Venire Teste'd* out of Term, is a Misprision of the Clerk.

L. C. J. Holt. There are abundance of the like Cases.

Mr. Att. Gen. I believe a Thousand, therefore I will not cite them.

We submit to your Lordship, whether it be right, and wants no Amendment: Or if it be not right, whether it be not amendable by Statute or Common Law. And I hope we shall have the Benefit of the Verdict.

Mr. Serj. Darnel. My Lord, There has been so much said already, that I shall say very little. I shall only cite two or three Cases. The Question is only this: Whether a Misprision of the Clerk, is not amendable in the same Term? For that we have 10 *Ed. III.* 20. there was an Error amended of 63 for 59. I think all the other Cases have been mentioned already. The 5th of *Ed. III.* has been cited, and it is strong. I have thought it always sufficient, without any Statute of Amendments: And those that have been amended by Common Law, will be Authorities in this Case. Now that the Court have always taken on them, as their Duty to amend the Faults of the Clerks in any Entry, or Process, or Continuance, the Books are full in it; and I hope it will be amended here.

Mr. Broderick. I pray your Lordship's Favour, to spare me a few Words on the other Side. I see so much Warmth in this Case, that I must beg Leave to preface something, before I speak to the Point of Law.

Mr. Att. Gen. You might have wav'd that.

Mr. Broderick. The Occasion of my saying that, was, That *Mr. Attorney* said, There had been a Noise about the Town concerning this Exception. And that a whole Party—

Mr. Att. Gen. There has been so—

Mr. Broderick. I would not be believ'd to concern myself any otherwise for this Man, more or less, than for any other Client. Nay, what I am concern'd in, and have to say at present, doth concern every Subject in *England*, as well as *Mr. Tutchin*.

But

But when 'twas said, That there was a Discontinuance in the Case of the Warden of the *Fleet*, which, after the long Transaction of that Cause, was not observed by the Council for him; and that they were clearer-sighted for the *Observer*; I could not take that otherwise, than as meant to myself, who was Council for the Warden of the *Fleet*, and am now for this Defendant. I confess, I did not observe that Fault in the Case of the Warden of the *Fleet* (nor ever had a perfect Copy of that Record, to enable me to do it): And I must own at the same time, that I had not the Fortune to make the Discovery in the present Case. The Exception was taken before I was any ways concern'd in the Cause: And when 'twas made, I thought it a good Exception; and made no Difficulty of accepting my Fee to speak to it.

Mr. *Att. Gen.* I had another Meaning in it. I knew not that Mr. *Broderick* was Council for the Warden of the *Fleet*.

Mr. *Mountague*. My Lord, I believe Mr. *Broderick* is afraid of my Fate in this Case: I have been very much reflected upon for being Council in this Case; and it has been spread about all the Counties in *England*, by *Dyer* the News-writer, That I broach'd seditious Principles at the Trial, and was reprimanded by your Lordship for it: And I believe Mr. *Broderick* is afraid of the like Scandal.

L. C. J. *Holt*. You must not be afraid of Scandals. *Dyer* is very familiar with me too sometimes: But you need not fear such a little scandalous Paper of such a scandalous Author.

Mr. *Mountague*. My Lord, I am not much concerned at it, seeing it comes from him.

Mr. *Broderick*. I must agree, That this is a Point of great Concern to the Crown; because all Prosecutions for the Crown may be affected by it, as Mr. *Attorney General* said: But on the other Side, I beg Leave to say, That (whatever the Person now before the Court may be) it is of great Concern to the Subject too: For the Rule in this Case, will be a Rule in the Case of every other Subject of *England*; so that the Concern is great on both Sides.

I must beg Pardon of the Court, if, in answering off-hand to very learned and elaborate Arguments, from the short Notes which I have been able to take of them, I happen to be disorder'd in Method: I must take Leave to offer such short Observations upon them, and give such Answers to them, as I can at present; as my Memory suggests the Objections to me, tho' not in the same Order in which they were deliver'd. But I will use my Endeavour, not to omit the taking some short Notice of the general Heads, under which I apprehend all the Objections will fall.

I would observe (which I think would be an Answer to a great deal that has been said on the other Side) That our Law-Books make a very great Difference between the King's Prosecutions in his own Name, as a Civil Right, and Prosecutions wholly in his Capacity of King, as he is Head of the Commonwealth; and in the Exercise of his Royal Office, to affect the Subject with, or punish him for Crimes thereby charged upon him. I agree, the Cases cited by Sir *Thomas Powis* and Mr. *Attorney General*, of Amendment of the King's Writ of *Qu. Impedit*, and some others; and that the Common Law gave greater Indulgences to the Crown, in the Prosecution of its Civil Rights, than to any Subject. The King was known to be employ'd in the Concerns of the whole Kingdom; to have the

Care of all his People upon him: Whereas the Subject had only his personal and private Affairs to look after. And 'tis no wonder that the Law should adjudge, that great Allowances were to be made to the Crown, as to its own particular Rights; That it should not be tied up to so strict Rules as the Subject, who was supposed to attend his own Affairs only. This is the Reason generally given, why the Crown had such a Prerogative, that greater and more favourable Allowances should be made in its Suits, than in those of its Subject.

But it has hitherto (as far as I have been able to observe) been taken, That the Law was very nice and tender in all Prosecutions, that aim at the charging the Subject with Crimes and Penalties. It seems to be a new Light, sprung up of late, which has discover'd, that there is a greater Necessity for that Privilege in Criminal Prosecutions, than in Civil. The Opinion of the successive Ages, which have made favourable Acts for amending and curing of particular Defects in Legal Proceedings, seems to have been much otherwise. In many of these, all Criminal Prosecutions, of all kinds, are expressly excepted: And where they are not, I must say I have not heard yet quoted; nor can find any Case of Authority, where those Statutes were interpreted to extend to Prosecutions for Crimes. I perceive, the Council for her Majesty in this Cause, have in their Arguments relied very much upon Amendments made by the Common Law. I can't pretend to be now prepared to run through each particular Case: In general, it cannot be denied, that several Amendments were made, by a Power that the Court had at Common Law; but we think there never was any which came up to this Case. And indeed, if all the Amendments in the Multitude of Cases that have been cited in these elaborate Arguments, are allowed as good at Common Law; it would make one wonder, where the Necessity was of making an express Statute, for the Amendment of a Letter or Syllable (and of the nice Doubts upon that) or of the other subsequent Statutes of *Joefails* and Amendments. The Court, to me, by these Authorities, would seem to be arm'd with a sufficient Power to have done the Business, without the Help of any Statute.

Tho' her Majesty's Council rely principally upon the Statute of 8 *Hen. VI.* yet in regard they do not wave, or give up the Aid of the Statute 32 *Hen. VIII.* (For Mr. *Attorney* takes notice, that there is a *Quare* in my Lord *Dyer* (*Dyer* 353) Whether the King, in an *Information* of *Intrusion*, should not have the Advantage of that Act? And he has cited Lord *Dyer*, 346. of an *Information Qui tam*, &c. to be within the Act: And that Lord *Hales*, in Lord *Fitzwater's* Case, held, That 'twas reasonable, that Criminal Prosecutions should be aided) I think it will be very proper to consider how the Law has been taken upon that Statute: And to see whether the Reason of those Cases, won't go as far backwards as to the Statute, 8 *Hen. VI.* The Words of the Statute, 32 *Hen. VIII. C. 30.* are not expressly restrain'd to Actions or Suits between Party and Party; though the Word *Party* be mentioned in the Statute, both as to the Plaintiffs or Demandants, as to the Tenants or Defendants. And the enacting Clause is, *That from thenceforth, after Issue try'd for the Party Plaintiff or Demandant, or for the Party Tenant or Defendant, in any Manner of Action or Suit at the Common Law; the Judges should proceed to give Judgment in the same, notwithstanding any of the Mistakes*

Mistakes therein mentioned, in like Form as if no such Default or Negligence had been. It is true, as Mr. Attorney has cited it, that 'tis left a *Quare*, as it stands printed in my Lord Dyer, which was in the 18th Year of Queen Elizabeth: But even in that very Case, 'twas held, 22 Eliz. that the Statute did not extend to it: As appears in 1 *Rolls Reports*, fol. 447. as well as by *Blackmore's Case* 8. Cro. 163. where 'tis expressly said, That the Statute 32 H. VIII. extends not to *Pleas of the Crown*. And this Point is expressly agreed by the whole Court, in *Sherington Talbot's Case*, 1 Cro. 312.

A *Venire Facias* bearing *Teste* out of the Term, and an Issue tried upon it, is a *Misconveyance of Process*, salved after Verdict, by those Words in the Statute of 32 H. VIII.

So a *Venire* awarded, which bears *Teste* on a Sunday, is adjudg'd to be aided within those Words.

Yet in *Theobald and Newton's Case*, Style 307, there was a Suit upon the Statute of *Inmates*; and the *Disfringas* bore *Teste* on a Sunday, and out of Term. Exception was taken to this after Verdict, and held not to be aided by the Statutes of *Jeofails*. I thought it necessary, by mentioning the two former Cases, to state which of the Statutes it was, which would have remedied the Fault, if the Statute had extended to the *Suit itself*; because the Reporter (which is no Wonder in him) so far mistook the Sense of the Court, as to omit the material Statute, and to mention the 18th of Eliz. and 21. Jac. in neither of which Laws there are any Words which reach the Case; tho' in this Act of 32 H. VIII. there are.

And in Lord Fitzwater's Case, cited by Mr. Attorney, tho' my Lord Hales does say, *The Case of the King will often stand in need of the Amendment of a wrong Venire*; and therefore he was of Opinion, to bring him within the Statute of 16 and 17 Car. II. which has very extensive Words; yet he allows the Distinction between his Criminal Prosecution, and Civil Action; as appears in 3 Keb. 485, 519.

In Percy's Case, 21 Car. II. 1 Vent. 17, 35. an Information of *Forgery* at Common Law, laid the Forging to be of a Release at *Sherborn*; and the giving it in Evidence, to be at *Dorchester*. The Defendant was convicted by a Jury *de Vicineto* of *Dorchester* only: 'Twas adjudg'd to be a Mis-trial; and a new *Venire* was awarded. For the King, 'twas laboured to support the Trial by the Word *Suit*: For, say they, the Information is *Secuta Domini Regis*; so that the Word is extensive enough to reach this Prosecution: And 'tis plainly out of the Exception, which excepts no Information, but those upon Penal Statutes. But the Court held, *Any Information, tho' at Common Law, was not remedied by the Words or Intent of the Act*.

In the principal Case of *Sherington Talbot*, 1 Cro. 311. Jones, 320. 2. Ro. Ab. 619. Information, in nature of a *Quo Warranto*, for claiming Liberty of free Warren in three Villis, in the Forest of D. Defendant disclaims in the Forest, and in all but one Vill; and says, That that Vill is Parcel of the Manor of S. and prescribes for free Warren in his Manor; Issue on that Prescription, and the *Visne* is from the Vill, not from the Manor; held to be mistried, and not aided by any of the Statutes of *Jeofails*: Tho' not within the Exception; because the Statutes do not extend to the King's Case. He not being named. The then Judges thought this a Reason; which will equally extend to the King's Case, upon the former Statutes of Amendments. And Mr.

Noy, a very learned Predecessor of Mr. Attorney General's, did not venture to carry the Point further for his Master, than to a *Peradventure* he might have the Advantage of those Acts, in case of a *Quare Impedit*, or the Civil Right, where the Suit is in the King's proper Name, and not by his Stile of King only.

Nothing is more plain, than the Difference which the Law makes between Cases where the King prosecutes his Right in his own Name, as for a Civil Right, and where the Prosecution is in his Capacity of King, and in the Exercise of the Royal Authority. If the King (*Henricus Rex*) brings a *Quare Impedit*, and dies before Judgment, the very Writ abates; because *Henricus Rex*, who was named by his proper Name, ceases to be. But if the Prosecution be *pro Domino Rege*, tho' the King in *individo* be dead, yet *Dominus Rex in genere* not being dead, the Information or Indictment shall stand, to be prosecuted by the Successor. Yet all Process upon them, wherein his own Name is used, and not his Name of Kingly Office only, shall fall; because the particular Person is dead.

According to this Distinction, I do agree, That where the King sues in his own Name for a Civil Right, his Suit has more Favour allow'd to it than that of a common Person. And so far goes the Case in *Blackmore's Case*, 8 Cro. 156. before-mentioned, cited by Sir Thomas Powis; That a Writ of *Quare Impedit*, which was *presentere* for *presentare*, was amended; being the King's Case. Tho' had it been the Case of a common Person, it could not have been amended: For no original Writ was at Common Law amendable in the Case of a common Person. But that an Information or Indictment ever found Favour beyond, or equal with a Civil Action, I never heard before; nor find any Authority quoted to warrant it now. I would take Leave to mention the Case, 13 Car. II. in *Scan. Hardress*, 217. (9) *Pitober and Jones*: 'Twas an Information upon the Act of Navigation for importing Spices, being the Growth of Asia, Africa, or America, from Holland beyond the Seas, not being the Place where such Goods were first and most usually shipp'd for Transportation, *contra Formam Statuti*. The Defendant pleaded, he did not import them *contra Formam Statuti*, and Issue upon it; and Verdict against the Defendant. He moved in Arrest of Judgment, That 'twas not laid, that these Commodities were not of the Growth of Holland. To this 'twas said, That the Verdict would help that, it necessarily implying it: For that they were laid to be of the Growth of Asia, Africa, or America, and imported from Holland; which shews those were distinct Places: And the Defendant could not else have been found guilty, *contra Formam Statuti*. Yet, after long Debate, the Exception was held to be a good one, and the Judgment was arrested.

I must observe, That the Council for the Informer in this Case, had not the Courage so much as to hope for Aid from, or mention the Statutes of *Jeofails* in this Case. They cite there *Johnson's Case*, 2. Cro. 609. and *Cholmley's*, P. 1. Cro. 464. where in Criminal Prosecutions reasonable Intentments after a Verdict, are allowed at Common Law. But tho' nothing was wanting in this Case, but an Averment that Holland was not within Asia, Africa, or America (which must necessarily be proved at the Trial, else the Defendant could not have been convicted) they either did not know, that the want of an Averment of a thing necessary to be averred, if Issue be taken upon another Point, is aided

as a *Mispleading*, by the Statute 32 Henry VIII. (tho' the Cases of it are numberless); or they did not think there was any Colour for offering to extend that Statute to a Penal Law, with regard to the Interest the King has in the Prosecution, tho' a common Person was the Informer; and tho' there is no Exception of Informations on Penal Laws.

As to the Cases cited on the other Side, of Amendments at the Common Law by the King's Prerogative; I must rely upon the Difference I have already taken between *Criminal* and *Civil* Cases; and that there are not any Instances of Amendments in *Criminal* Prosecutions. As to several other Cases, which have been cited by the other Side, of Amendments upon Returns to *Certiorari's*, Returns upon *Writs of Error*, &c. Those, with Submission, will not come up at all to the present Case. When a Record is certified upon a *Certiorari*, &c. the Parchment annexed to the Writ, is supposed to be the real original Record; and that remains in the Court here, and is become by the Return a Record of this Court. Where, by the Course of the Court, 'tis enter'd upon a Roll here, if in the Entry it varies from that that is the true Record, it is the Duty of the Court to take Care, that the Mis-Entry be rectified; and the Record, which is transcribed here, made agreeable to the Original. The rectifying such Mis-Entries, or Mis-Copyings, are not Amendments of Faults in a Record (for that faulty mistaken Entry is not really the Record) but making true Entries of the Record. And upon the like Reason was the Mistake rectified in *Sir H. Tufton's Case*, 1. Cro. 144. where there was a Consent of the Parties for entering a Judgment by Disclaimer, by *Virtue or Pretence of Letters Patents*, bearing Date 7 Jac. which Words were inserted in the Paper-Book, by the Attorney General's own Hand; yet omitted by the Clerk, in the entering it upon the Roll: There, upon great Examination, and Consideration of the Circumstances, all Parties consenting, that Mis-Entry was corrected; being, as the Book says, no more than *when a Special Verdict is mis-enter'd; which is rectified by the Notes of the Clerk of the Assize*. But it is very much insisted on, That the Statute 8 H. VI. C. 12. shall extend to this Case, because there are particular *Criminal* Prosecutions excepted therein, of which this is not one. I do not find that there has been one Authority cited, when it was ever held, that that Law extended to any *Pleas of the Crown*. And I take the uniform Opinion of near three Centuries, since that Statute, to be against it.

Mr. Attorney relies much upon the Case of the King against *Percival* and *Godfrey*, and others, *Sid.* 244. where the *Venire* for the trying the Defendants, upon an Indictment for a Riot, was directed *Vicecomitibus de Canterbury*, and returned by *R. S. Vicecomes*; the City having in truth but one Sheriff: There, upon Examination of the Sheriff himself upon Oath, in Court (who swore that City had but one Sheriff) there was an Amendment. But what was that? Not of any thing that was the Act of the Court: But the Sheriff adds to his Endorsement upon the Writ (when he had answered single) There that was not any other Sheriff; as it appears in the same Book, and in 1 *Keb.* 900 (17) 901 (75): And this the Court held to be well, upon the Authority of the Book of 39 H. VI. f. 40. where a Writ was directed *Coronatoribus*, and returned by one Coroner only, yet held to be well: For, say the Court, we won't take notice there are more Coroners than one. And so Just. *Wyndham*

said, in this Case, We shall intend but one Sheriff, unless more appear; 1 *Keb.* 901.

A good Part of Mr. Attorney's Argument seems to tend to the making it not necessary, or at least disputable whether it be necessary, that the *Disfringas* should be *Teste'd* on the same Day that the *Award* is. Won't that Argument turn another way than 'tis intended? If it be a doubtful thing, whether it be right or not; I doubt it will be an Error in Judgment, like the making out an improper Writ in the *Debet* and *Detinet*, where it should be in the *Detinet* only: And then, tho' it is a Default of the Clerk, 'twill not be such a Default as will be within the Aid of the Statute, if that should be held to extend to the Case. If it were a doubtful thing, it can't be said he had a certain Rule to walk by: But he ventur'd upon his own Judgment, in which if he has chanced to mistake, 'tis not amendable as a thing of course. But in truth, if it were to be enquir'd into, I believe 'twould be found not to be an Error in Judgment in the Clerk, but a Mistake of a Matter of Fact, in taking *Sunday* to be the first Day of the Term.

Mr. Att. Gen. That will not alter it.

Mr. Broderick. There has been another Case cited; the King and *Walcut*; where a Reversal of an *Attainder* was pronounced, and the Judgment of Reversal actually enter'd up; yet being done by Surprise, the Entry of the Reversal was set aside, and razed out of the Record. Surely that cannot be an Authority for any. There the Entry was wholly irregular, contrary to the Rules of the Court: For the Judgment of the Court is not complete, till the End of the Term.

L. C. J. Holt. 'Tis in the Breast of the Court during the whole Term.

Mr. Broderick. And if any one within the Term, without the Direction of the Court, will enter a Thing as the Act of the Court; shall not the Court have a Power to reform that Irregularity, and do themselves right? This is not an Amendment of a Record, but a Reforming of an ill Practice; a preventing of an Attempt to make that an Act and Record of the Court, which really is not so. Neither does my Lord *Macclesfield's* Case bear any Proportion to this.

There is no Question but that a Court, which is intrusted with the Custody and Preservation of the Records wherein other Persons are concerned, may take care upon any Mischance; and that they have a Power to put things into their right State: As in case of Fire, or any inevitable Accidents, the Court, incident to their Trust of the Custody of the Records, and by the Authority they have to do Right and Justice to all Persons, must have a Power to supply such Losses.

As to the Case of the *Warden of the Fleet*, there was no Amendment made: But if there had, it would not have come up to this Case. I may, I am sure, safely affirm, that the Court did declare, That was not to be esteem'd a *Criminal* Prosecution; in regard there was not to be a Judgment to punish the Party, but the Proceeding was only to transfer the Estate to the Crown by way of Forfeiture.

The Council who have argued for the Queen, have not cited any one Authority, of an Amendment in a *Criminal* Case, within the Statute of 14 E. III. or 8 H. VI. C. 12. or proving, that those Statutes extend to Cases of that kind: But they call upon us, since the Words seem to be large enough to reach both (especially those of 8 H. VI. where there

there are some particular Criminal Prosecutions mention'd and excepted) to produce some Authority, to establish the Distinction between Criminal and Civil Cases. We think the daily Practice in Civil Cases, and the want of a single Instance in a Criminal one, carries a strong Argument, if we could go no further: But I think we do not want an express Authority in this Point too. *Orde and Morton, Trin. 11. Jac. I. Ro. Ab. 201.* There a Writ of *Venire Facias* out of the B. R. was *Venire Fac. duodecim, &c. coram Nobis apud Westmonasterium, ubicunque fuerimus in Anglia*: But the Roll was well, omitting the Words *apud Westmonasterium*. 'Twas adjudg'd the Writ might be amended by the Roll; for 'tis but Matter of Form. This was a Default in the Body of the Writ, and amended by the Statute of 8 H. VI. as a Default of the Clerk.

Yet *Brigs and Thompson's, &c. Tel. 60. 111.* In an Information upon the Statute 21 H. VIII. against *Spiritual Persons taking Farms*, the Award of the *Venire Facias* upon the Roll was right, returnable *ubicunque*, but the Writ itself was returnable *coram nobis*, omitting *ubicunque*, and so it did not answer the Award upon the Roll. This certainly had been amendable in a Civil Plea; but the Report tells us, that Judgment was staid upon it. And, my Lord, I will beg the Liberty to make this Observation upon the Case of the King against *Percival and Godfry* (which is so much relied on). There are some Cases of so odious a Nature, and move such Indignation, that there is a Danger of Things being pass'd over unobserved, which would not have been admitted in another Case. That was the Case of one of the King's Messengers, employed in His Majesty's immediate Service, barbarously insulted and abused in his Inn at *Canterbury*, by the Defendants and a great Rabble of People: As the Offence was very flaming, the Repentment of the Court ran high; and they thought it reasonable to do in that Case, what perhaps in an ordinary one they might not easily have done: Yet what was then done, is now to be cited for a Precedent in every Criminal Case whatsoever. I must say the same in this Case; whatever my Client is charged with, the Rule given in his Case may affect every Man in *England*, who shall hereafter be charged criminally: And therefore I doubt not your Lordship will very well consider of it.

I hope, my Lord, I have given some Answer to most of the Things that have been insisted on; and that upon the whole Matter, this Mistake will not be accounted a Thing amendable by Law.

Mr. Mountague. My Lord, in Answer to what has been said, I shall not preface what I have to say with any Apology for being of Council with *Mr. Tutchin*, tho' I have been egregiously misrepresented in what I did, as Council for him at *Guild-Hall*. I know your Lordship is no Respecter of Persons, but will have the same Regard to one Defendant as another.

Mr. Att. Gen. I am not concern'd at any Thing that has been written or printed about that Trial.

L. C. J. Holt. We will take no notice of that.

Mr. Mountague. My Lord, as to what *Mr. Attorney-General* and *Sir Thomas Powis* have said, I beg Leave in the first Place to take notice wherein it is we agree, and in what we shall differ. First, we agree that this Cause is a Cause of the greatest Consequence. *Mr. Attorney* tells your Lordship, it concerns all the Proceedings of the Crown; and I hope

I may be pardoned if I say, it is of no less Concern to the Defendant and the Subjects of *England*. I would therefore pay that Respect to the Court, not hastily to speak to a Point of this Moment, but shall desire to have Time to look on those Cases that have been mentioned.

L. C. J. Holt. If you will do this, you may consider the Statute of *H. VI.* for those Words are general, and not relative either to Civil or Criminal Cases in particular. It remedies the Mischief between Plaintiff and Defendant generally.

Mr. J. Powel. *Mr. Broderick* has not taken notice of that Objection that my Lord *Coke* takes notice of, Because they are not excepted, therefore they are included.

L. C. J. Holt. I would have you consider why it is not within the Words of the Statute. It is as plain that it is the Fault of the Clerk as can be; he had the Roll before him, therefore it must be the Mistake of the Clerk. The Award of the Writ is the Act of the Court, and that was the 23d; now this Writ did bear Date the 24th, and I believe we did not award the Writ the 24th, therefore it is to be judged they mistook the Time of the *Teste*. For the Record says the 23d, and this Writ says not till the 24th. Now why should not this be within the Statute of *H. VI.* for it is the Misprision of the Clerk? And then the Question is, whether that Statute does not extend to this Matter.

Mr. J. Powel. I do indeed question whether any Statute of *Jeofails* extends to it; but this Statute does not, as appears by 8 *Coke*, because they are excepted. There are Indictments of Felony and Treason that are excepted. Now that this is a Misprision of the Clerk, is plain, because he had the Award of the Court.

Sir T. Powis. I think all agree it was perfectly a Mistake, and that makes it a disputable Case; I do not stand on it as if it were right, but grant it was a perfect Mistake; and then that Objection is clear, that Criminal Matters are not within the Statutes of *Jeofails*, and it is certain most of them are excepted, viz. Indictments, in this Statute of *H. VI.* where it is said what are excepted, &c. 'Tis true you cannot amend what are excepted, where the Party was in Danger of Life; but it leaves out in inferior Matters; therefore it seems, that whatever was said of Criminal Matters, was intended of the greater Criminal Matters, and so was the Opinion in the Case of —

L. C. J. Holt. That was a Civil Cause, but we thought we could not amend it: For it would be contrary to our Duty as Judges, to alter a Record. And therefore we refused even in Point of Scandal in that Case; also on Examination we found that we could not amend it, contrary to Truth.

Sir T. Powis. My Lord, we had not in that Case any thing to amend by; but here we have a Roll to direct us.

Mr. Att. Gen. If your Lordship indulge them from Time to Time to put it off, we shall never have done.

Mr. Mountague. My Lord, I am not prepared to answer what has been said, for I did not expect this Motion would have been made.

Mr. Att. Gen. That we may be once at an End, I would fain hear what they have to say, and whether they have any more Exceptions.

L. C. J. Holt. Have you any more Exceptions to make?

Mr. Mountague. My Lord, we have no more Exceptions to the Matter we are now upon, which

is setting aside the Trial. You know, Mr. *Attorney*, there are two Things incumbent on a Defendant's Council. One is, to set aside the Trial if he can, and that is the Thing we are now upon: The other is, to move in Arrest of Judgment. Now Mr. *Attorney* well knows 'twill be a Waiver of our Motion for a new Trial, to stir any thing in Arrest of Judgment.

Mr. *Att. Gen.* He that makes Exceptions, should be prepared to give all his Exceptions together.

Mr. *J. Powel.* This is not a Motion to set aside the Trial.

Mr. *Mountague.* Yes, my Lord, it is to set aside the Trial; not to arrest Judgment being given upon the Verdict.

Sir *T. Powis.* My Lord, if they have any more Exceptions to offer, I desire they may let us have them now.

Mr. *J. Powel.* If there be an Error in the Writ there must be a *Disfringas de novo*, there must be a new *Disfringas* only issued, you cannot make it a Discontinuance of the whole Proceedings; but there must be a new Award of a *Disfringas*, the Error wherein is the Cause of Exception; if we should give our Opinion that it is not amendable, we should try him next Week.

Mr. *Att. Gen.* My Lord, they should lay down all their Exceptions together.

Mr. *Mountague.* My Lord, I know you do not expect in this Case any thing should be done otherwise than what is usual in all other Cases. Now I appeal to Mr. *Attorney*, if it be not the constant Course here, to move first for a new Trial; and if you object any thing in Arrest of Judgment, it is generally said, you have waved your Motion for a new Trial.

L. C. *J. Holt.* No, that is not so.

Mr. *Mountague.* My Lord, we are now in your Judgment, whether this Man shall be tried again, or not? And if we shall happen to prevail for a new Trial, then it will be a Disadvantage to our Client to have told our Exceptions to the Information, for then Mr. *Attorney* will pray to amend.

L. C. *J. Holt.* You are so far in the right, if indeed here were a Verdict ——— that is unquestionable, that is your proper Time to move in Arrest of Judgment; but if this Verdict be not right, it is too soon to make Exceptions to the Information. Then we shall tell you what we have to do.

Mr. *Att. Gen.* I am content they should keep their Learning to themselves; but, my Lord, if they will not do that, I hope you will not give them further Time.

L. C. *J. Holt.* We shall give them but till To-morrow.

Mr. *J. Powel.* Mr. *Mountague*, it is a strange Thing that you shall make an Exception, and not be ready to maintain it; at this rate any Prosecution whatever may be hung up and delayed. If this be the way, we must give you the less Time.

Mr. *Mountague.* My Lord, I shall entirely submit to what the Court shall think fit to order; but 'tis now pretty late in the Day, and your Lordship knows 'tis a Sitting this Afternoon in *Middlesex*, and To-morrow is another Sitting in *London*, where I am already retained to be, and I know not how late your Lordship may keep us in both Places: Your Lordship seldom discharges us till late at Night, and it will be impossible for me to look into the Authorities which have been quoted, much

less to consider of any thing that will be fit to offer in Answer to both these learned Arguments, in a Matter which I must profess is altogether new to me.

Mr. *J. Powel.* There are Amendments made every Day.

Mr. *Mountague.* My Lord, I hope I shall shew you it has not been done yet, in any such Case as this, neither can it be done, with Submission.

L. C. *J. Holt.* You should have prepared for it. I will tell you a Case at *Hicks's-Hall*, where I myself took the like Exception, but it was over-ruled by Sir *William Smith*, the then Chairman of the Sessions. In an Indictment against —, for a wrongful Entry, &c. there was a Mistake in the Time of the Entry alledged, &c. And they amended the Fault by the Statute of E. VI.

Mr. *Att. Gen.* My Lord, I hope you will give them but till To-morrow.

Mr. *Mountague.* I hope you will not press that, Mr. *Attorney*, who have been so lately a *Nisi Prius* Practicer.

Mr. *J. Powel.* You are not press'd in it; none can imagine you came here in this Case, and that you were not provided to defend it. I hope you are as ready as Mr. *Broderick*; he is but your Assistant, and yet he was ready.

Mr. *Mountague.* It will be impossible for me to be more ready To-morrow. I will rather go on with it now, than do it To-morrow. This is a new Motion, and I did not in the least expect it.

Mr. *Att. Gen.* This is no new Motion, I believe none would believe but it would be made.

Mr. *J. Powel.* Why can't you be as ready as Mr. *Broderick* is?

Mr. *Mountague.* I do not pretend to set myself upon the same Level with Mr. *Broderick*: Tho' he be ready to give an Answer *extempore* to the Arguments that have been made, I hope your Lordship will indulge me with a Day or two more to consider of what has been said, since the Question now before the Court is of that Concern to all the Subjects of *England*. My Lord, I desire we may have but till *Thursday* next, and by that Time I will undertake to be ready.

Mr. *J. Powel.* When you make an Exception, you ought to be ready to defend it.

Mr. *Mountague.* It was impossible for me to foresee what Course the *Attorney General* would take to obviate the Objections I have made. I must own, I did not expect this Motion for an Amendment; I thought of that the least of any thing, because I never knew the like Attempt in a Criminal Prosecution. And since Mr. *Attorney General* has been pleased to countenance the Exception I have taken, with a Week's Consideration of it; I ought in Civility to pay as much Respect to the Arguments he has made in Answer to it. And therefore I must beg a little Time of your Lordship, as well to shew my Respect to Mr. *Attorney General*, as to discharge my Duty to my Client.

Mr. *Att. Gen.* I desire none of your Respect.

Mr. *Mountague.* I hope, Mr. *Attorney*, you are not angry because I would pay Respect to you.

Cur^r. Well, take Time till *Thursday*.

November 23. 1704.

L. C. *J. Holt.* Mr. *Attorney*, have you any thing to move?

Mr. *Att. Gen.* My Lord, I attend here only upon the Account of Mr. *Tutchin*.

L. C. *J. Holt.*

L. C. J. Holt. Who is for Mr. Tutchin?

Mr. Mountague. My Lord, I am of Council for Mr. Tutchin, and I am To-day to shew your Lordship Cause why the Motion made the other Day by the Council for the Queen to amend the *Teste* of the Writ of *Distingas* cannot be allow'd. And since the Court hath been pleas'd to indulge me with a little Time to think of the learned Arguments that have been made both by Sir Thomas Powis, and Mr. Attorney General; and to look into the Authorities which have been cited, I hope I shall take up less of your Lordship's Time than if I had been put to answer *extempore* to the several Matters that have been insist'd upon. For I must beg Leave to say, that upon Consideration of what was then offer'd, I do find that a great many things that were then said, do not carry that Weight along with them as I did then apprehend. And tho' I do not question but every thing that can be thought of has been said for the obtaining such an Amendment, yet I have the Satisfaction at last to find that there is but one Case, and that is what your Lordship was pleas'd to mention, of the Judgment of Sir William Smith, that looks like a Precedent for this Amendment. My Lord, in speaking to this Matter, I shall not trouble the Court with many new Citations out of Fitzherbert and Brook's Abridgment, Title *Amendment*; for I perceive the Gentlemen on the other Side have looked over the Bed-Roll of Cases which are to be met with there, and find that they have taken notice of every thing that will make to their Purpose; my Business therefore shall be, closely to apply myself to the Consideration of what they on the other Side did insist on; and I hope I shall be able to shew to your Lordship that nothing they have said will warrant this Amendment.

But before I enter upon the Argumentative Part, I must beg Leave shortly to state the Case itself, and shew how it now stands before the Court; and if I mistake in giving an Account of the least Matter of Fact, I desire Mr. Attorney General would interrupt me so far as to set me right; for if we do not agree in the State of the Case, our arguing will be to very little Purpose.

Mr. Att. Gen. It is the Record that is in Dispute, it is not Matter of Fact.

Mr. Mountague. Mr. Attorney, there is something of Fact besides the Record, which is now before the Court. This Information was exhibited in Easter Term last, and the Defendant pleaded to it in Trinity Term; and Issue being then joined, a *Venire Facias* was awarded, and made returnable the first Day of this Michaelmas Term. On that Day (the Roll says) all the Parties did appear; but none of the Jury came, and thereupon the Court did order, that a *Distingas* should issue, and be returned hither, *Die Jovis proxime post Crast. Animarum*: On the Return of the Writ of *Distingas*, which is now before the Court, the Defendant appear'd in Court, and by his Council took Exception to the *Teste* of this Writ, because it was not issued as the Roll hath awarded, on the Day he was present in Court, which was the 23d Day of October, but on the next Day, which was the 24th Day of October, when he is supposed to be out of Court; so that the Award has plainly not been complied with, and therefore the Writ which is now before the Court was taken without any Authority from the Court, and the Trial cannot be supported, because the Day and Place mentioned in the *Distingas*, was not appointed *per formam Statuti*, in the Presence of the

Parties. For these and other Reasons, it was pray'd in his Behalf, that all the Proceedings upon this *Distingas* should be vacated.

Mr. Att. Gen. The Day is right when the Persons are to appear, and the Award of the *Nisi Prius* is as it should be.

Mr. Mountague. The Return is *Die Jovis prox. post Crastin. Animarum*, as it is in the Roll, but the *Teste* of the Writ is the Day after it was awarded.

L. C. J. Holt. The Award is right.

Mr. Mountague. My Lord, we own the Award is right on the Roll.

L. C. J. Holt. But the Question is, whether the *Teste* of the Writ be as it should be?

Mr. Mountague. My Lord, the Writ that is now before you being *Teste'd* on the 24th of October, cannot be said to be taken out upon any other Day than the 24th of October, and in that it is not pursuant to the Roll. Upon the taking of this Exception, Mr. Attorney was surprized, and could not then say much to it; but desired time to enquire how it came to be so.

Mr. Att. Gen. I could have said as much to it then, as after four Days; it became you to have been as ready.

Mr. Mountague. My Lord, Mr. Attorney is a little too hasty for me in this Matter. I intend to do him right, if he'll have Patience to hear me out.

L. C. J. Holt. Come to the Point.

Mr. Att. Gen. This is a popular Argument, and spoken *ad captandum Populum*.

Mr. Mountague. Mr. Attorney did ask some time to have this Matter enquired into, and that Request was agreed to: And upon Examination it appears that this Writ was actually taken out after the first Day of the Term; and the Clerk being doubtful with himself how to make the *Teste*, ask'd the Master how to *Teste* it, and he directed it to be *Teste'd* the 24th of October; and upon this arises this Motion. The Gentlemen that are of the Queen's Council pray that it may be amended, and the Question is, whether it can be set right; and with Submission, I think it cannot, and that no such Obliteration ought to be made, though the Defendant were found guilty of six times as many Crimes as he stands now charged with. I must agree with Mr. Attorney, in what he says with relation to the Consequence of the Determination of this Point, that it will be a Precedent that will affect all the Proceedings of the Crown in all such Cases. And this it is that makes it to be a Matter of wonderful Consequence to the People, as well as to the Crown; for tho' under the present Administration of Affairs innocent Men may think themselves very safe, yet no body can be sure in after-ages that they shall not fall under violent Prosecutions; and then Slips and Mistakes may be of Service. My Lord, hitherto I may say, all Advantages of this kind have been allowed to Defendants in Criminal Cases; and upon this Occasion it may be observed, that even Actions *Qui tam* upon Penal Statutes, have always been excepted out of the Statutes of *Jeofails*; and from hence, I think, arises an Argument *a Fortiori*, that the *Jeofails* of Clerks in Prosecutions more penal, are not to be amended. Sir Thomas Powis, in his Argument, did, as I remember, insist upon these two Propositions, and as I take it, he was seconded in them by Mr. Attorney; First, That the *Teste* of this Writ is amendable by the Common Law: and if not that, Secondly,

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It is to be amended by the Statutes of Amendments, either by that of 14 E. III. or that of 8 H. VI. And two Reasons were given for this Opinion; First, Because it appears to be a plain Mistake in the Clerk; and Secondly, because they come to move for the Amendment in the same Term wherein the Writ was sued forth and returned.

Now, my Lord, in Answer to both these Reasons and Assertions, I hope I shall make it appear in the first Place, that this *Teste* cannot be altered, either by the Common Law, or by the Statute Law: And in the next Place, I hope to shew your Lordship that the making the *Teste* of this Writ to be upon *October 24*, is not purely a Slip in the Clerk, but does proceed from the Nescience of him that was advised with about it. And altho' this Motion for an Amendment be made the same Term the Error has been committed in; yet it is not in the Power of the Court to set it right.

As to the first of these Particulars, I shall readily agree with Sir Thomas Powis and Mr. Attorney General, That by the Common Law many Things were to be amended without the Help of any Act of Parliament; but the Thing that I deny, and which, with Submission, hath not yet been proved by any Authority that has been quoted, is, That no Error in the *Teste* of any Process that does issue out of the Court and is returned back again by the Sheriff, can be alter'd by the Rules of the Common Law, and I hope by and by to make it appear, not by any Act of Parliament neither. My Lord Coke in *Blackmore's Case*, Lib. 8. Fol. 156. b. 157. a. does say, as has been observed, that the Judges by the Common Law may amend the Entry of their own Judgment, or any other Part of the Record, the same Term; but he does not there say, that they may amend any Writ made out and returned by any Officer or Minister of the Court. And the Reason given why they may amend their own Judgments and the Continuance enter'd upon the Roll is, because such things as they themselves do, are said to remain in their own Breasts till the End of the Term: But surely the Actions of another Person, his Disobedience to the Order of the Court, can never be look'd upon as an Act of the Judges. And I cannot see how a Writ taken out in *Pais* which is never in Court till it be brought thither by the Hands of the Sheriff, can be said to remain in the Breasts of the Judges. The Instances of Amendments by the Common Law which are given by my Lord Coke, are in the Entries of Essoigns and Continuances, and such like Misprisions del Court *Mesme*: As for Instance in 5 E. III. Fol. 25. W. brought a *Præcipe* against B. who vouches C. to warranty, and he enters into the Warranty and pleads to Issue, and a *Venire facias* is awarded, and the Jury is afterward put in respite, and the Entry of that upon the Roll was in this Manner, *jurata inter B. and C. that is between the Tenant, and the Vouchee poniter in Respectum*, and so it appears on the Roll, whereas it should have been *inter W. the Demandant, and C. quem B. vocavit ad Warrantum*. Now this was look'd on as the Clerk's Mistake in the Entry of the Order of the Court, and so it was amended, Coke's 8th Report, f. 157. b.

Now, my Lord, with Submission, this Case and all the rest of the Cases that have been mentioned for Amendments at the Common Law will only justify an Amendment of the Roll. And indeed had there been an Error in the Entry of the Award of the *Distingas*, I should rather think that amendable than this; for 'tis certainly more reasonable

that the Court should intermeddle with their own Acts than with the Acts of another. Till this Writ was return'd, annex'd to the *Nisi prius* Roll, the Court had nothing to do with it. And now this Writ is before the Court, your Lordship is only to judge, whether it be pursuant to your Award or not; if it be not made right, it must be imputed to the Fault of the Person that made it out; and the Court can never be said to be in Fault, if the Clerk employ'd makes out a Writ contrary to Direction; and if the Party concern'd suffer by such Mistake, he may thank himself for employing such an Agent. But Sir Thomas Powis says, that this Amendment is pray'd on Behalf of the Queen, whose Prerogative it is to have many Advantages in Pleading, which the Subject shall not have. My Lord, with Submission to better Judgments, I conceive that for this very Reason the Queen's Council have the less Reason to pray an Amendment. For since they have other Prerogatives to have recourse to, they ought not to ask this besides. Your Lordships will often hearken to us when we move for new Trials in Actions of Debt upon a Bond where the Verdict and Judgment are conclusive: When you will not give Ear to such a Motion in Ejectment, where the losing Side may have fresh Actions if they will. But, my Lord, not to rely altogether on this Answer, I shall add this one Word further, that according to my small Observation these Advantages in Pleading do not belong to the Throne in the Pleas of the Crown, but in such Actions as *Quare impedit*, and the like. As to the particular Instances that have been mentioned, I conceive they do not come up to the Case in the Question. The first Case which I have taken down as cited by Sir Thomas Powis, is *Brook's Abridgments*, Title *Amendments*, f. 32. and that is, That if Judgment be enter'd otherwise than the Truth is, it shall be amended in the same Term, because the Record is, *in les Cores des Justices mesme le term & nemy in le Roll*. This Case is one of the Authorities taken notice of in the 8th Report, to warrant the Amendments of the Acts of the Court, but does not in the least relate to the Amendment of Writs and Process which are sued out and executed in *Pais*.

The next Case was 4 H. VI. f. 16. which is only, whether he that casts an Essoign for a Tenant in a *Formedon* shall be permitted to take Exception to the Writ which appears to be vicious. The Demandant there was the Ward of the Crown, and he that cast the Essoign for the Tenant, took Exception to the Writ. The Exception was this; That in the Style of the King he is said to be *Dux Hibernie* instead of *Dominus*, and he would have had the Writ for that Reason to be quash'd. And there *Martin* demands whether the Writ shall not be amended *sicome le Roy mesme soit parte*, and the Case concludes with *quare Legen*.

As to the Case of *Fitzherbert*, Title *Amendment* f. 19. that is what my Lord Coke takes notice of in *Blackmore's Case*, when he says, that in a *quare impedit* brought for the King, the Word *presentere* was put instead of *presentare*, and it was held that it should be amended, but how does the Book say it was amended? Why the Writ itself was brought into Chancery, *& la suit Amend*. Now I take that to be tantamount to the issuing of a new Writ. Most of the other Cases mention'd out of the old Year Books, are relating to Amendments in Civil Cases, and therefore I shall spend no more Time in taking notice of them particularly.

My Lord, the next Thing to be considered is, Whether any Statutes do direct such an Amendment as this ; and I hold they do not. Indeed the first of these, which is 14 E. 3. Chap. 6. is pretty home ; the Words are, that by the Misprision of a Clerk in any Place wheresoever it be, no Process shall be annull'd, or discontinued, by Mistake in writing one Letter, or one Syllable, too much, or too little ; but as soon as it shall be perceived by Challenge of the Party, or in any other Manner, it shall instantly be amended in due Form. Now here are as large Words to fit the Purpose, as Mr. Attorney can desire, and if he were now to frame an Act of Parliament, I don't know how Mr. Attorney could make it fuller ; and I must confess, if I were to argue this Point within a Year after the making of such an Act of Parliament, I should reckon my self to have a difficult Province to maintain, that this Misprision does not come within the Purview of such an Act : All therefore that I shall say to it is, that it is now a great many Years since this and all Statutes of Amendments have been made, and no one adjudged Case as I know of, does say, that criminal Proceedings are within the Purview of this Statute. Mr. Attorney General, as I remember, did, in his Argument admit that this Statute of 14 E. III. Chap. 6. did not extend to criminal Cases.

Mr. Att. Gen. I deny that ; I did enforce it.

L. C. J. Holt. I do not remember he did admit that.

Mr. Mountague. Then I acquit him of it, and to shew him that I meant him no wrong by supposing he said so, I will mention some Authorities that are express in this Point.

Mr. Att. Gen. I did enforce that Statute by subsequent Statutes, particularly by the Statute of 8 Hen. VI. Chap. 12. for there the Word Process is included.

Mr. Mountague. Perhaps Mr. Attorney General did so ; but if he had admitted it, he would not have been in the wrong, if my Lord Coke be in the right in what he says. For in the same Case of *Blackmore*, fol. 157. speaking of the Extent of the Word Process, he says, " This Statute must be understood to mean Process in all Actions, Real, Personal, and Mix'd ; and not Process in Pleas of the Crown." And my Lord Coke does not here assign it for a Reason, because they are excepted ; for in this Statute of 14 E. III. C. 6. there is no Exception : And therefore speaking of this Statute, he could not say, Pleas of the Crown are there excepted ; yet he is positive this Statute does not extend to any other Process, than what issues in Actions, real, personal, and mix'd. Now what can be the Reason, that Process in all criminal Cases should be excepted out of this Statute, by the Interpretation of the Judges in all Ages ; when the Words are so full, that no Process whatsoever shall be annull'd by any Misprision, wheresoever it be ? Truly, I can't conceive otherwise, but that the Judges in all Ages have thought it reasonable, all Advantages should be allow'd to People under such Prosecutions.

Mr. Attorney General did seem to give another Reason, That the Crown not being named, was a great Argument that it did not want the Aid of such an Act of Parliament ; but that the King had a Right by the Common Law to make Amendments. And for this he cited *Hardress*, fol. 504. That before Judgment, there can be no Discontinu-

ance in the Case of the King ; and 2 Cro. fol. 211. *Beecher's Case*. Now if this be so, as he would have it, that all Process in the King's Case is amendable by the Common Law, and all other Process by this Statute ; how comes there to be any Occasion for my Lord Coke to caution us about the Extent of this Act of Parliament, by saying, it extends to Process in Pleas real, personal, and mix'd ; but not in Pleas of the Crown ? What does it signify, whether this Process be amendable at Common Law, or by the Statute, if it be amendable ? But on the other Side, one may strongly infer, that if no Process were amendable before the Statute 14 E. III. and that Statute says, all Process hereafter shall be amended ; it was then fit for my Lord Coke to tell us, That tho' these Words in the Statute seem very extensive, yet it has been the Opinion of all Ages since, that no Process, but what issues in Actions real, personal, and mix'd, are meant by it.

I do take it therefore, with great Submission to Mr. Attorney, that the right Inference to be made from this *Notamen* of my Lord Coke, is to caution the Reader not to conclude over-hastily, from the Comprehensiveness of the Words of the Statute, that Process may be amended in criminal Cases. That way his Admonition may be of Service : But the other way with great Respect to his Memory I speak it ; it will signify little. As to the Case of *Beecher*, and the other Quotation out of *Hardress*, nothing more can be infer'd from them than what already has been taken notice of ; that after the Term they may enter Continuances before Judgments. This appears by the Case in 3d Levin. 430. where all the Cases cited by Mr. Attorney to this Purpose are taken Notice of.

Now we come to the next Act of 8 H. VI. The Words of which Statute, as I apprehend, Mr. Attorney did strongly rely on : For there, says he, are Exceptions of Appeals, Indictments of Treason, and of Felonies, and of Outlawries for the same ; and nothing is said of Informations ; and the King's Judges have thereby Power to amend all that they think the Misprision of any Clerk, in any Writ, Warrant of Attorney or Panel in Affirmance of Judgments. Now the Answer that I would offer to this Statute, is, That the Words in the enacting Part, are not larger than the Words are in the 14th of Edw. III. that is, they are not larger as to this Purpose. The Words indeed of this Act are, That all Misprisions of Clerks, in all Writs, shall be amended. The Words in the Act of Edw. III. are, That all Misprisions, in all Processes whatsoever, shall be amended. And I take the Words, *all Process whatsoever*, to be as extensive to the present Case, as to say, All Writs shall be amended. Therefore I cannot see, from the enacting Part, why one Act, to wit, that of Henry VI. should include criminal Proceedings, when that of Edw. III. does not include them. Thus much for the enacting Part.

Now I shall take Notice of the Exceptions. There are indeed some Things mention'd to be excepted out of the Purview of this Act of Henry VI. which are not excepted out of the former in Edward III's Time ; as Appeals and Indictments : But I think they were put in *ex abundanti Cautela*, to shew, that the Law-Makers did not intend to include criminal Proceedings. And tho' some Particulars are only mention'd ; yet I hope the Rule of *Expressio unius*, shal't hold in the Exposition of Acts

Acts of Parliament, to exclude every Thing else that is not named.

By *Littleton*, Sect. 21. it appears, there are many *Estate Tails*, besides those that are particularly mention'd by the Statute of *West. 2. de Donis Conditionalibus*. And there are many Offices not within the Purview of the Statute of 5 and 6 *Edw. VI. Chap. 16.* that are of more Consideration than the Park-Keeper's Place, which are not mentioned in the Exceptions of that Statute, against the buying and selling Offices. And therefore I can't think any great Weight is to be laid upon the Statutes mentioning Appeals and Indictments; especially since the Opinion of all Ages, since the making the Statutes of Amendments, seems to concur against extending the Power of amending to criminal Cases.

My Lord, It would be an endless Thing to enumerate the several Indictments and Informations, that have been quash'd within the Compass of my Memory, by reason of Clerks Mistakes. I shall instance but in one, and that is the Case of the Queen and *Frankling*; where no longer ago than the Beginning of this Term, your Lordship and the whole Court quash'd an Indictment, because the Clerk had writ in the Caption, *Præsentant Existit*, instead of *Præsentat Existit*. Here was but a Letter to amend: And this must plainly be the Clerk's Mistake, not his Fault in wanting Skill in such Case. But I take it, the Case now before the Court is of a different Nature. The *Testeing* of this Writ the 24th of *October*, cannot be accounted a Slip of the Clerk, but did proceed from wrong Advice. And this is the third Thing I propos'd to speak to: If this Writ with the *Teste* had been entered upon the Roll, and transcribed only thence to deliver to the Sheriff; perhaps the varying from the Day mentioned in the Roll, might be accounted a Slip of the Clerk: But when this Writ was made out, it was certainly a Day after the Time it ought to have issued; and upon Advice ask'd, it was directed so to be *Teste'd*. So this is not a Slip.

If it be insisted upon, That this Mistake happen'd thro' Forgetfulness of the Day the Term did begin on; to that I must answer, That all Knowledge is said to be nothing but *Reminiscentia*. If a Man forget any Thing that he has read or heard of, he may be said to be as ignorant of that, as if he had never known it. Now it plainly appears, that they who were advis'd with about the *Teste* of this Writ, did not then know on what Day the Term did begin, and therefore *Teste'd* the Writ the 24th, instead of the 23d. I must therefore, in Behalf of my Client, insist upon it, that this Error proceeds from the Nescience of the Adviser, and not from the Slip of the Writer. And this Point will set us clear of all the Statutes of Amendments, if they did extend to criminal Cases.

As to the grand Case of *Harris*, reported in *Crooke James*, fol. 502. that has been so very much relied on, I hope, upon Consideration, it will not appear to be so great a *Goliath* as it was represented to be. There was an Indictment for a Nuisance remov'd hither by *Certiorari*; and the Record that was transmitted, was found imperfect, in a Point which was inconsistent with the Verdict: For in Truth the Plea of Not Guilty was omitted. And what did the Court do hereupon? Why, they sent for the Clerk of Assize, in whose Time the Record was filed below; and he was order'd to amend that which was come hither by the *Certiorari*, and

set it right: I suppose, by making it agree with the original Proceedings, which remain'd upon the File below. Now, does Mr. Attorney think this is like the Amendment he would make, supposing all in *Harris's* Case were rightly done? Does Mr. Attorney think, that this will justify the Amendment now propos'd? Which is, indeed, making this Writ to be another Writ than it is: For a Writ that is *Teste'd* on the *Monday*, does as much differ from a Writ *Teste'd* on a *Tuesday*, as one Day differs from another. And I take it, with Submission, that the Amendment now pray'd, will alter this Writ, as much as the Amendment that is so much taken notice of by Justice *Ingham*, 2 *Rich. III.* fol. 10. did the Amercement in that Case. There was an Amercement recorded of Thirteen Shillings and Four-pence; and because it was a poor Man's Case, it was afterwards agreed to make it Six Shillings and Eight-pence. There was a Diminution in the Sum. And here Mr. Attorney would have a Diminution of a Day.

L. C. J. Holt. Was that done judiciously, or clandestinely?

Mr. Mountague. My Lord, How it was done, does not appear: But it is said to have been done out of Pity and Commiseration to the Poverty of the Defendant. And yet that Amendment was look'd upon to be illegal.

Mr. J. Powell. That was not done by the Court.

Mr. Mountague. It comes to be mentioned in King *Richard III's* Days, upon a Question that was put to the Judges by the King, when they were together in the *Star-Chamber*: "What if a Justice of Peace shall procure an Indictment, not found by the Jury, to be filed among other Indictments, as if it really had been found by the Grand Jury; what Punishment ought to be inflicted upon him hereupon?" They take notice of that Obliteration that had been made in a Record by Justice *Ingham*, and of the Punishment he underwent for it.

But to come to the present Case. Suppose it were *Teste'd* the 14th Day of *October*, instead of the 4th; would Mr. Attorney then say it were to be amended? Suppose the Return was out before the *Teste* of this *Disfringas*, that would come nearer to *Gage's* Case in the fifth Report. There was a Writ of Covenant, *Teste* the 24th of *April*, and made returnable the 15th of *April*. The Lord *Coke* indeed says in his Reports, It is a Misprision in the Clerk, that is amendable. But your Lordship knows, in his own Book of Entries, Fol. 250. Part 9. the contrary to that appears; and that it was not permitted to be amended.

Another Thing they have said, is, That this Writ shall be amended by the Award of the Roll in Court. But, with Submission, there is nothing there to amend the *Teste* by. We know there is a right Order of a *Disfringas* on the Roll; but that will not help an Error in the *Teste* of the Writ issued forth: And for that I will cite a Case out of *Crooke's Eliz.* fol. 825. *Carew. v. Marler*; and another Case was tried before your Lordship in *Michaemas* Term, in the 11th of King *William*, between *Child* and *Harvey*. There the *Disfringas* was made returnable *Die Jovis prox. post tres Septimanas Sanctæ Trin.* instead of *Sancti Michaelis*: So the Day of the Return happen'd to be the same Day that the Cause was to be tried upon, before your Lordship, at the *Nisi Prius*.

L. C. J. Holt.

L. C. J. Holt. It was actually tried at another Day.

Mr. Mountague. We came afterwards to the Court, and pray'd the *Distingas* might be amended by the Award on the Roll, which was right *Die Jovis prox. post tres Septimanas Sancti Michaelis*: But the Court denied our Motion; and we were forc'd to take out a new *Venire Facias*, and try the Cause again.

The next, great Case is that of *Curson*, which is in *Crooke James's Reports*, fol. 529. There is an Information upon the Statute of *Recusancy*, against *Baron and Feme*; and the Declaration demands 220*l.* for ten Months *Recusancy*. But the Wife was charged for being absent thirteen Months from Church. There the Wife only pleaded Not Guilty; and after a Verdict, this Mis-joining of the Issue was amended by the Docket. How agreeable to Law this Case is, must be left to your Lordship's Consideration. There less is demanded, than (of the Plaintiff's own shewing) appears to be due: For 'tis laid, that she had been absent thirteen Months, yet 220*l.* is only demanded; so it does not appear how the rest was satisfy'd. And besides this, it may be observed, that *Mr. Hugbes*, who has abridg'd the three *Crookes*, in his Abridgment of this Case, has not thought this Resolution worthy his taking Notice of.

L. C. J. Holt. A good Authority indeed! Did you know him?

Mr. Mountague. I did not know him; but I have heard him accounted a learned Man: And he did not, belike, think this Point worth his remembring. Whether he had any Scruple in the Case, I know not; but he omits it.

Then there is the Case of *Sir Humph. Tuston*, in *Crooke Charles*, 144. There was a *Quo Warranto* brought by *Sir Humph. Tuston* against the Corporation of *Maidstone*; and there a Judgment is enter'd by Disclaimer, with Consent of Parties, says the Book. And that Disclaimer is afterwards amended, and made of less Consequence than it was before. But how was that Amendment made? Why, upon the Certificate of the Attorney General, that he with his own Hands had inserted in the Paper-Book from which the Record was transcrib'd, the Words which the Clerk had omitted. Now upon this Case I may observe, That the Judgment had been enter'd by Consent, though the Amendment pray'd was to the Disadvantage of the Crown: Tho' that Amendment was pray'd in the Case of a *Quo Warranto*, which is in Nature of a Civil Action. Tho' *Mr. Attorney General* did consent, yet a Difficulty was made in doing it. For all which Reasons, I do humbly conceive, that that Case is for me, rather than against me: Especially since so great a Man as *Mr. Noy* does there assert, That none of the Statutes of Amendments extend to Cases of *Quo Warranto*, or Suits where the King is Party. Now tho' this Saying of *Mr. Noy's* were only as he was of Council for those that oppos'd the Amendment; yet this must have been look'd upon as a strange Assertion, by the Judges at that Time, if they had been as clear of Opinion as *Mr. Attorney* is, that the Statute of *Hen. VI.* did extend to criminal Prosecutions. And the learned Judge that reports that Saying of *Mr. Noy*, would hardly have let it pass, without taking some Notice that the Law was otherwise, if he had thought so.

As to the Case of *1 Siderfin*, fol. 244. it was answered by your Lordship the other Day: For tho'

the Writ is *Vicecomitibus*, where there was but one Sheriff: Yet the Return is help'd by a Suggestion that was enter'd, that there is but one Sheriff.

The Cases out of *Dyer*, 353, 346. have been taken notice of by *Mr. Broderick*; and the Query is, Whether any Discontinuance in *Casu Regine* be aided by any of the Statutes of *Jeofails*? Now I cannot but think, that the Makers of those Laws would have taken as much care to except *Criminal Informations*, as well as Actions *Qui tam*, if there had been Occasion. And to shew your Lordship, that none of these Statutes do extend to Informations at the Common Law, I would mention a Case out of *1 Vent. f. 17*. It is *Perry's Case*. There in an Information for a Forgery: There happen'd a Mis-trial; and it was adjudg'd that it could not be help'd by any of those Statutes. The Error was, That the Defendant is charg'd to have forg'd a Lease in *Sherborn*, and to have given it in Evidence at *Dorset*: And the *Venire* was awarded only to *Dorset*. And this Case puts me in mind of the late Case of *Paul Tracey*; where the Trial was set aside, because the Defendant himself had sued out a wrong *Venire*; tho' the Prosecutor there, at the same Time, had sued out a right one, in order to have try'd him thereupon, if he had not put in his wrong Writ.

L. C. J. Holt. How was that Writ?

Mr. Mountague. The *Venire* was to the Parish of *St. Clement's Danes* only; whereas it should have been to the Parish of *St. Giles's in the Fields* as well.

L. C. J. Holt. Was it try'd on that Writ?

Mr. Mountague. The Trial was had upon the Writ the Defendant had taken out, and for that Reason set aside.

As to the other Case, in *1 Siderfin*, fol. 259. the Case of the King against *Glover*, an Amendment was made of an Inquisition *post Mortem*; but that is of no Consequence. For in all these Cases, that Inquisition is to be travers'd afterwards: And the Jury, when they deliver such Inquisitions in, are ask'd, Whether the Clerk shall not have leave to amend any Defect in Form, or false *Latin*; and it is always allow'd, provided nothing in Substance be alter'd. And in this Case of *Glover*, the Amendment was of a Matter of Form: For the Inquisition said, the Deceased *seipsum submersus fuit*; but did not say he threw him himself into the Water.

The Case of *Sampson*, in *1 Jones* 420. tho' it has been cited on the other Side, yet I take it to be a strong Case on our Side. That Case plainly shews, that it was the Opinion of the Judges, that there was no such Thing as an Amendment of Indictments by Common Law. Both *Jones*, and *Keeling*, who (I suppose) was Clerk of the Crown, do affirm, no Precedent can be shewn of any such Amendment made. And therefore I may question the Authority of *Harris's Case*, which is said to be adjudg'd *Mich. 16. of K. James's*; and this Case of *Sampson* was in the 14th of *K. Charles I.* And there *Jones* says expressly, That if a Record be certify'd by the Clerk of Assize that is faulty, it cannot be amended, either by the Common Law, or by the Statute Law.

My Lord, I doubt I have taken up too much of your Time. There are other Cases that have been mentioned out of *Brook* and *Fitzherbert*; but I hope none of them will any ways affect the present Case. I have taken notice of those which I think the most material; and I hope I have made it appear, that the Error in the *Teste* of this Writ can neither be amended by Common Law, nor by the

the Statute Law. And that this Mistake of a Day is not only a Slip of the Clerk, but an Error in Judgment: And I humbly pray, there may be no Rule made for an Amendment.

Mr. Parker. My Lord, Mr. Mountague has spoken fully to the particular Cases that have been offered on the other Side: Therefore I will not go thro' them again: But I beg Leave to take notice of some general Heads, from which they have argued, and to which most of their Cases are reducible; and to distinguish them shortly from the present Case.

1. In the first Place, I take it, that the Cases of Captions of Indictments, removed hither by *Certiorari*, and amended the same Term they are brought in, come not up to the present Case. For the *Certiorari* commands the Return, not of a Copy of the Indictment, but the very Record it self; And the Indictment return'd, is, in Judgment of Law, the individual Parchment that was in the Court below. And so it is in Writs of Error: Except Writs of Error to the Court of *King's-Bench* in *Ireland*; and in that Case, the Books take notice, that only a Transcript is to be sent, by reason of the Hazard of losing the Original by the Danger of the Seas: And in case the Transcript arrive here safe, it is then said to become, in Consideration of Law, the very Record. And tho' it be found expedient, for the Convenience of keeping the Records, and is now become the general Practice in other Cases, to make a Transcript in another Parchment, and file that; yet if in transcribing there be a Mistake made, your Lordship will amend it, if it be discover'd in the same Term: For, in truth, that's not amending the real Indictment, but only amending the Return of the Justices to whom the *Certiorari* was directed; and providing that a false Indictment be not foisted in amongst the Records, instead of the true. Which cannot justify the mending the very Writ it self; the Thing prayed in the present Case.

2. Their Cases of Amendments of Judgments in the same Term they are given, and so of other Inrolments of what's done in Court, will not make any Thing in this Case. The Reasons given in those Cases, are, That the whole Term is, in Judgment of Law, but one Day: And the Judgments and Determinations of the Court are, that whole Day, in the Breast of the Court. And these being only Amendments of what themselves do in Court, which is not compleat till the Term be ended; they are not so ty'd up by the Clerk's hasty Entry of it, but that the Thing may be alter'd as they see Cause. But this is not applicable to a Writ which has pass'd the Seal of the Court, and thereby receiv'd all the Sanction it can have, and has then issued out to a proper Officer, and is by him return'd back to the Court. The Term is, in the Judgment of Law, but one Day, with respect of what is the Act of the Court and passes perfectly in the Court. But it is impossible to say, without manifest Absurdity, that the Term is to be consider'd as but one Day, in respect of a Writ that is issued out one Day in the Term, to command Jurors to appear at another; or that the Day when the Officer comes into Court, to give an Account of his Obedience to a Writ, is the very Day of issuing it. And therefore a Distinction is to be made between Things done in Court, which are incompleat during the Term: And the Court's giving Di-

rections to an Officer out of Court by Writ, which is perfect, and gone out from them in order to be obeyed.

3. I should think likewise, that the Cases they have mention'd, of the Favour allow'd the Crown, do not come up to this Case; because, tho' in Suits for the Recovery of Right, there be great Favour allow'd to the Crown; and by the Statutes of Amendments and *Jeofails*, much Indulgence is given to the Subject, for the Recovery of Right; yet it is not so in Prosecution of Criminals, which is a Matter *stricti Juris*: And no Argument can be drawn from the Favour shewn in one Case, to infer, that the like Favour is to be allowed in the other; for they stand on quite different Grounds.

4. I think, with Submission, in the next Place, that the Instances of Amendments of Process, where nothing is done upon it, but barely to entitle the Party to some Process farther; as of a *Capias*, in order to an *Exigent*, &c. will not come up to this Case, where the Writ is executed and returned, and the Trial had upon it.

In the Case of *Rogers and Bird*, that was cited on the other Side, 3 *Cro.* 572. there was a *Venire Facias* returnable *Die Sab. prox. post Octab. Trin.* but on the Roll, it was awarded returnable *Cro. Trin.* And because that was the Authority for making it out, it was amended in the Return; because the Trial was not had upon it, only it was return'd in order to the *Disfringas*. But *Popham* there expressly says, that if the Trial had been upon the *Venire Facias*, it were erroneous, and would not have been amendable.

Mr. J. Powel. Where is that, Sir?

Mr. Parker. 3 *Cro.* 572. There is likewise the Case of 34 *H. VI.* 20 *Brook's* Amendments, *Placit.* 10. There were twenty four Jurors returned upon the *Venire Facias*, and in the *Habeas Corpus* one of them omitted: And there the Opinion of the Court was, That they should make out a new *Habeas Corpus*. And tho' there it was plainly the Mistake of the Clerk, that mentioned only twenty three, instead of twenty four; yet the Court was of Opinion that it could not be amended, but they must begin again where the Fault was made. 19 *H. VI.* 39. A Juror was return'd upon the *Venire Facias*, by the Name of *J. Hod*; and in the *Disfringas* he is named *J. Hord*; and upon him the Sheriff return'd *Nihil*, &c. And there was a new *Habeas Corpus* awarded. Which Cases seem to prove, that where there is something done upon the Process, more than a mere formal Return, that it is not amendable within the Statutes of *Edw. III.* and *Hen. VI.* which were both of them made before these Cases.

5. In the next Place, I beg leave to observe, That there is a Difference between such Cases as have been cited, where the Thing was really done right, but by Mistake enter'd wrong; and this Case, where really it was not done right. As where upon a *Disfringas* a right Juryman is really sworn, but set down by a wrong Name, the Name shall there be amended; because the Thing done was really right, only the Mention of it wrong. But in this Case it cannot be said, that the *Disfringas* was really taken out right. The Writ was awarded the 23d of *October*, on which Day they would have it bear *Teste*: But it is not pretended that it was really taken out till the next Day, when it

it now bears *Teste*.—And as to what has been already offer'd, that the *Nisi Prius* ought to be awarded in *Præsentia Partium*; and therefore not upon any other Day than the 23d, when the *Venire Facias* was returnable, and the Parties in Court: I might here, I hope not improperly, add this farther; That that must be understood, that the making of the Writ should be in the Presence of the Parties: For the Entry upon the Roll, tho' commonly called an Award of the Writ, is really an Entry of a Writ supposed to be then actually made; it is not so properly a Direction to the Clerk to make a Writ, as an Entry or Memorandum upon the Roll, or a Recording that there is a Command to the Sheriff, to distrain the Jurors to appear at a certain Day, &c. And therefore if the *Nisi Prius* is to be awarded in the Presence of the Parties, the Writ is to be made in their Presence.

Mr. J. Powel. Do you mean, that they should be in the *Crown-Office*?

Mr. Parker. The Writ is in Judgment of Law issued in Court, tho' actually wrote and sealed in the Office; and if *Teste'd* of that Day, is understood to be made in Court that Day; which is in Presence of the Parties; that being the Day given 'em in Court, and their Appearance then enter'd. And we apprehend, that the Court does not command, by the Entry of the *præceptum est* in the Roll, but by the Writ. The Sheriff, who is absent, cannot be commanded by the Roll, but by the Writ which is sent to him: Therefore the Court then commands, when the Writ is made: And therefore the Entry upon the Roll, *præceptum est Vic.* is an Entry that there is such a Command, which this Writ, on which this Trial was had, cannot be, because it bears *Teste* after. But this is only by the by: For however taking the Entry as an Award of the Writ, yet the Writ must be taken out as the Court awards it, and when the Court awards it; or else it is without Warrant, and void. Indeed if it should in Fact be made at a subsequent Day, and not actually wrote and sealed the same Day it is awarded, yet if it bear *Teste* upon that Day, your Lordship will not enquire into that Matter: But finding such a Writ was awarded, and that it appears by the *Teste* to issue the same Day; will presume it did really issue that Day, and that it is right. But the Writ being here awarded the 23d, and bearing *Teste* the 24th; if it did not issue the 23d Day, to alter the *Teste*, so as to make it appear to issue that Day, were to make it contrary to the Truth.

This we take to have some Resemblance to the late Case of the Warden of the *Fleet*; where your Lordship was against altering the Day of bringing in the Record, when the Alteration would have been against the Truth of the Fact. And to make the Amendment here desired, would be to make the Writ appear to have issued the 23d of *October*; when the Writ it self imports it was the 24th; and this was the Truth of the Fact.

Mr. Whitaker. My Lord, I beg the Favour of a Word or two on the same Side: After so much has been said for the Defendant, I shall only mention a Case or two, to shew that such an Amendment as this has not been allow'd by the Statute of 8 *Henry VI. Cap. 12.* in any Civil Action between Party and Party.

28 *Hen. VI. 3.* There was an Action of Debt, and the Parties were at Issue: The *Venire* was re-

turn'd; upon which the Plaintiff had a *Habeas Corpora* with a *Nisi Prius*: And instead of saying in the *Habeas Corpora*, in *Placito Debiti*, it was made in *Placito Compoti*, &c. on Motion in Arrest of Judgment. The Council for the Plaintiff desir'd to amend this, after Verdict for the Plaintiff: The Court did indeed not give any Rule, as appears by that Book, only that they would consider of it; but nothing was done further, as appears by that Book just after.

In the Case 34 *Hen. VI. 20.* In an Action of Debt brought by the Prior of *St. Bartholomew's*, the Parties were at Issue, and a *Venire* return'd; and on the Return of the *Venire*, there were twenty four Persons return'd: But in making out the *Habeas Corpora*, the Clerk omits one of the Names of the twenty four. This appear'd to be the Misprision of the Clerk. He had the *Venire* and the Return before him; as the Clerk had here in the Case now before your Lordship. He had the Roll and the *Venire*; but this was held not to be amendable: And this was in few Years after the Statute of *Henry VI.*

I shall mention another Case in 2 *Siderfin 7. 12.* A Writ of *Capias ad faciend.* for a Debt, was made returnable a Day after the Term. It appeared to the Court, the Attorney for the Plaintiff had given the Clerk that made the Writ, true and right Directions to make it returnable the last Day of the Term; but though it was his Misprision, yet the Court would not amend it: So it is adjudged in that Case.

I shall not mention any more Cases; but answer the Case of *Plume*, in *Palmer 480.* cited by the Queen's Council. I have had particular Occasion to look into that Case this Term, in a Cause which hath been in the Paper this Term. We did search for that Rule express'd in *Palmer's Reports*, in order to amend an Outlawry after Judgment, in an Action of Debt in the *Common Pleas*; but on producing that Rule, the Court of *Common Pleas* did not take it as an Authority to amend our Outlawry, which wanted an Amendment in the Return of the Exigent.

L. C. J. Holt. What was that Amendment?

Mr. Whitaker. *Ad. Com. meum*, the Book says: And upon this, says the Book, they did grant a Rule, to award a *Certiorari* to the Coroner. The Rule mention'd in *Palmer* was search'd for; and, as I am inform'd, my Client did produce it in the *Common Pleas*; and yet they would not let us amend our Outlawry: And my Client, for want of an Amendment of the Return of the Exigent, is likely to lose an honest Debt by the Reversal thereof.

The Council for the Queen have relied on the Statute of the 8th of *Henry VI.* that this Fault of the Clerk is amendable within that Statute. By the Books I have cited, the Misprisions of the Clerks, tho' in Civil Actions, have not been allow'd to be amendable. Above two hundred Years are past, before any Thing of this kind was done, to amend such a Misprision of a Clerk as this is, in criminal Cases.

How far the Queen's Council would go on with Amendments, I cannot tell: But in the Case cited by the Queen's Council, *Sampson's Case*, 1 *Rolls 196.* there was the same Mistake of a want of Continuance; as in this Case. No Man can believe, the Clerk of Assize knew not what Days the Commissioners of *Oyer and Terminer*, and Goal-Delivery did sit, and continue their Sessions on such

Commissions. And yet, on a Writ of Error to reverse that Judgment (in *Sampson's Case*) being brought, the Court of *King's Bench* would not amend this apparent Misprision of the Clerk of Affize's want of Adjournment from Day to Day.

This Matter of amending in criminal Proceedings such a Misprision of a Clerk as this is that is now desired, has not been thought of since the Time of the 8th of *Henry VI.* until now. And if the Queen's Council can shew no President in all this Time, wherein such an Amendment, even in a civil Cause, by virtue of the 8th of *Hen. VI.* hath been, much less in a criminal Case. I humbly hope, your Lordships will not let them amend this Writ of *Distringas*.

SIR T. Powis. My Lord, having heard what has been said on the other Side, I beg Leave to trouble you a little by way of Reply.

Mr. Broderick and Mr. Mountague make a Distinction, which they think will govern this Case. They say, that the Crown has a great many Privileges, beyond what the Subjects hath, where the Case concerns Civil Rights: But they will not allow the same Privileges to the Crown, where there is a criminal Prosecution. I know of no such Distinction. For if this Privilege belongs to the Crown, in the Case of the Revenue; surely the restraining of Crimes is much more for the publick Benefit: And by Consequence, the same Reason that gives the Crown a Privilege in a lesser Matter, ought to carry it further in a greater Thing.

In the next Place, they do admit, that all the Acts of the Court may be amended; as being in the Breast of the Court, during the same Term. And they deny not, but that the Judgment of the Court, which is the highest Act of the Court, may be revers'd, or any way alter'd or chang'd in the same Term, without any Danger of building Clock-Houses. And can any one say, that if these highest Acts of the Court may be alter'd, that the Acts of their Clerks may not be alter'd? That the greater Things may be done, but not the inferior, when there is a pure Mistake?

No Man can but think it strange, that a Mistake of a Clerk may not be alter'd; but a Mistake even in the Judgment of the Court may.

We come next to another Distinction. They say, an original Writ may be amended in the Case of the Crown; as in the *Quare impedit*, in *Blackmore's Case*. For which they assign two Reasons: First, It was a Writ of the Crown, for Recovery of a civil Right; for it was a *Quare impedit*, And secondly, The Judges observing the Fault in the Writ, did (as it seems) carry it to the Court of *Chancery*, and there it was amended. From whence they would infer, as if it were a new Writ. But that cannot be supposed; for it was agreed, that it was the same Writ amended, and not a new Writ.

Now see if that will not come to our Case. For if the Court of *Chancery* could amend a *Quare impedit*, as coming from thence; cannot this Court amend a Writ that comes from hence? Here we are in the Case of a judicial Writ that comes from hence; and therefore it may be amended here, as well as that could be amended in the Court of *Chancery*.

But the great Matters endeavour'd to be avoided, are the two Acts of Parliament of *Edw. III.* and *Hen. VI.* for the Cases cited: I will not go over

them again. And I do believe it is very true, what these Gentlemen insist on: That it has been the common Opinion, that these Acts, or other Acts of Amendments, do not extend to Cases of the Crown. And, generally speaking, it is right; because all the later Acts of Amendments except Prosecutions on Penal Laws: And the Statute of *Henry VI.* has so many Exceptions in criminal Matters, that a Mistake might from thence arise, that all are excepted.

It is certainly true what my Lord Chief Justice *Vaughan* says, fol. 169, 170, 419. That upon doubtful Words of an Act of Parliament, that are dark and dubious, an ancient Interpretation, submitted to for a long Time, is fit and reasonable to be relied on in a doubtful Case. But a thousand Resolutions, against a plain Act of Parliament, cannot prevail. Tho' it would be good Reason, well to consider such a Law, and to weigh it well; but no such Resolutions can alter the Act.

Here are two Acts of Parliament: That of *Edward III.* is in general Words of All: And how can any one say then, that it shall mean and extend only to Some?

As to the Act in the 8th of *Henry VI.* to say that the Words shall not go to every Thing that is not excepted, is to overthrow all Rules of Construction. They have offer'd nothing against that Statute; but that it has been thought it did not extend to these Cases.

The Case of *Siderfin*, shews, that we do not advance a mere new Notion, with respect to that Act. Therefore, I say, we have the Acts of Parliament on our Side; We have the Privilege of the Crown on our Side: The Award of the Roll is right, and with us; and the Error was purely the Mistake of the Clerk: For no Man can think it otherwise.

We have this likewise on our Side, That we desire it may be amended in the same Term. For as the Court can set right their own Judgment in the same Term, much more what is the Act and Mistake of the Clerk.

Therefore we insist upon it, That our Cases we have cited, are of good Authority for us; and we hope we shall have an Amendment, if it be necessary.

Mr. *Att. Gen.* My Lord, we humbly hope, that notwithstanding what these learned Gentlemen have urged, our Assertions by Law and Authority will prevail; and that this Mistake is amendable.

What has been said before by Mr. Broderick and Mr. Mountague, they have laid it down for a Rule, That there is a great Difference between the Privileges belonging to the Crown in Matters of a civil Nature upon the Statute, and criminal Prosecutions: And that all those Favours for the Crown, were only for Matters relating to the Right of the Crown in civil Cases, and not what belongs to the Crown in its politick Capacity. Tho' Mr. Broderick did not consider: For sure, by the Common Law, there was a greater Latitude for the Crown in criminal Prosecutions, than for the Subject.

In Cases of Treason, they had no Benefit of Council; and that was far more to their Disadvantage, than in civil Cases. It's true, that Inconvenience has been regulated by the late Statute, That in the Cases of Treason, the Party may have a Copy of the Pannel and Indictment. But you see what

what the Difficulties were formerly in criminal Prosecutions for the People: All they had to do, was merely to plead Guilty or Not Guilty. I think that answers their Objection as to that.

Now there is in the next Place to be consider'd, what Mr. Mountague says, That no Error in Process was amendable by Common Law; and cites Lord Coke for it. He should have gone on with that Citation; for it is certainly otherwise. 8 Coke 156, says, Their own Acts are amendable by the Common Law, in the same Term; but at the Common Law, the Misprisions of Clerks in another Term, were not amendable. But we are in the same Term; and sure they are amendable before Judgment. And Lord Coke tells you, they are amendable in the same Term.

Now Mr. Mountague has gone a great way. He agrees, if it were a Misaward of the Roll, you would amend it, but not the Writ. Now for that the Law is quite contrary: If you are wrong in the Roll, you cannot set it right; but if it be in the Writ or Process, you may amend it by the Roll. Now here the Roll is right; and we desire the Writ may be amended by it.

If it had been in the Roll, I cannot tell whether we should have applied to amend that. For if you have any thing amiss, you cannot amend it, but by something to amend it by. But it may be amended in Case of the Crown, better than in that of the Subject. And tho' Mr. Mountague says, you may make use of them in Civil Cases, but not in Criminal; yet we make use of this Argument, that the Crown has a Privilege more than the People. We rely on that; tho' Mr. Mountague says, That is not to be relied on.

In the next Place, Mr. Mountague says, This is within none of the Statutes of Amendments, either of Edward III. or of Henry VI. And that my Lord Coke says, fol. 157. b. That the Statute of Edw. III. does not extend to the Pleas of the Crown. And therefore Mr. Mountague's Opinion is, to go quite through, and exclude this Case from all the Statutes of Amendments.

Now I can give an Argument, why it should not be amended by the Statute of Hen. VI. tho' by the Statute of Edw. III. it is amendable. But why is it not amendable by the Statute of Henry VI. Cap. 12, and 15, which go further than the Statute of 14 Edw. III. does?

I do agree, there is an Objection against the Statute of Edw. III. For there is the Word *Party*, which seems to imply civil Cases only. But even by that Statute, so soon as the Slip appears by Challenge, or any other way, it shall be amended. The Lord Coke might well on these Words make a Doubt, whether the 14th of Edw. III. did extend to amend Cases relating to the Crown: But the Opinion of Coke in the Statute of 14 Edw. III. is absolute; but the other of 8 Hen. VI. is with a Reason. And why is it? Because it is excepted. Now they should have shewn us some Reason, why the Statute of Henry VI. Cap. 12. should not extend to Amendments in Cases of the Crown.

And there is not that Objection to the Statute of Hen. VI. Cap. 15. For it follows the Words of the Statute of Edw. III. and says, *That no Man shall have, &c.*

Now Mr. Mountague says, the Exception was put in *ex abundanti*; and it may be intended they were but Instances of like Cases. Now I have hardly ever heard, that Instances of Treason and Felony

should extend to other Cases of an inferior Nature: There is no Reason to carry it further than what is express'd. So that we think these Statutes stand for us; and are applicable to all Records, as well for the Crown, as any else.

Mr. Mountague says, They have the Opinion of all Ages against it. But, my Lord, I deny that; because there were Exceptions in many Statutes before and after the Statutes of *Jeofails*, that were not consider'd: But when they come to be consider'd, this must be determined by considering the Words of the Statute; and not by general Opinions, taken up without Consideration.

There was in *Cro. Car.* 25. a Case on the Statute 32 Hen. VIII. where the Question was, If Assignees of Copyhold Lands were within that Statute? And till a little before the *Revolution*, it was a received Opinion, that the Assignee of a Copyholder was not within the Statute of Henry VIII. And there is a Case in *Yelverton*, 223, wherein it was so resolved: But when that Statute came afterwards to be considered, it was settled here, and has prevail'd ever since, that the Statute did extend to it; tho' before it was the prevailing Opinion that it did not. And accordingly the Practice has since been. So that Opinions that pass *sub Silentio*, that is, without Consideration, may be alter'd when they come to be stated and consider'd. And therefore I hope this Point will not prevail.

My Lord, I agree that this Thing is of very great Consequence: For if their Plea be allow'd, it will follow, that Criminals will escape for little Slips in all Cases. And I know that even in Perjury, and other Crimes, few that have been convicted, but have got off; by Reason of Errors in the Proceedings, tho' I have seen a great many convicted thereof. This is a great Inconvenience and Mischief: And sure Criminals are not to be the Favourites of the Law.

But as to these Prosecutions, there is another Consideration: That it is more for the Honour of Justice to have the Advantage to lay aside this Slip, than to suffer a Criminal to escape. But however, every one must have Justice: And if we rely on the Statute of Henry VI. no Construction can avoid it.

Then Mr. Broderick cites the Case of ——— Where it is said, that the Statutes of *Jeofails* do not extend to Cases of the Crown. Now sure that is not a Reason: It is contrary to all the Reasons of Statutes. Where Statutes are to promote Justice, the Crown is bound as well as the Subject; it is for the publick Good. Now Mr. Broderick has cited a Case against that; and that is in *Styles*, fol. 107. (*Vid.* Fol. 307) the Case of *Theobalds* and *Newton*. There that Case was on the Statutes of 18 Eliz. and of 21 Jac. Now it's plain they had no Consideration of any thing else: And why? Because in Prosecutions on Penal Statutes, the Court often rely on Exceptions: But however the Authority goes no farther, but they rely on the Exceptions. Now if they had said it was excepted by the Statute of Henry VI. and that all the Books go on it as excepted by that Statute; if they say it is excepted by the Statute of Hen. VI. would that be taken as an Objection to the Statutes of 18 Eliz. and 21 Jac.? No; it is a Mistake.

He has also cited *Yelverton*, fol. 60. *Brigg's* and *Thomson's* Case. Now there was an Information on the Statute of 21 Hen. VIII. against a Clergyman, for farming Lands; and a *Venire* was awarded returnable *ubicunque*: But the *Venire* itself, and

and the *Disstringas*, were made returnable *coram nobis*, &c. which was said to be erroneous. An Exception was taken, and *per Cur'* Let it stay. But it appears not that it was considered.

These Authorities are no Authorities. The first is not within either of those Statutes we are now upon: And the other was never determined by any thing, as appears in the Case. And there is a great Difference between the Statutes on which they were founded, and our Case.

Mr. Mountague has gone a new Way. He would have this to be not a Misprision of the Clerk; because he is afraid that a Misprision is amendable: For the Clerk had enquired, whether the Writ should be *Teste'd* the 24th of *October*; so that he says it is a Forgetfulness, or Negligence, but not a Misprision.

Now I would fain know what he means by that? Whether all Forgetfulness of the Clerks, is not a Misprision of the Clerk? That is, any Negligence, whatever it be, it is the Misprision of the Clerk. *Coke* says, It is a Misprision of the Clerk, under the Word *Negligence*: And Negligence and Misprision are by him frequently put for the same thing. See 8 Co. 159. b. 160. b.

So upon one Part of it; that is, suppose the Clerk steal it away; he says, that is under the Word *Misprision*; and an involuntary Negligence of the Clerk, is a Misprision. So this Clerk's Negligence is a Misprision, because he did not look on the Almanack and the Roll. These are Misprisions by the Statute of *Henry VI.*

As to the Cases that have been cited, Mr. Mountague has answered but some of them.

As to that of *Percival* and *Godfrey*, *Siderfin*, fol. 43. he says that was not such an Amendment, but a Suggestion of the Roll. But if the Roll could amend that which is a stronger Amendment, to present a Verdict; the rectifying of that makes it stronger for us, than it would be otherwise.

He says, as to *Harvey's* Case, he denies it to be Law: But I believe the Authority of the Judges is to be prefer'd before his Opinion.

And then for the next Case, *Parker* and *Curson*, he questions that Opinion, because not taken notice of by *Hughs*. Now I believe the Judges that reported it, did understand it better than he that abridg'd it. But whether he understood it or no, it alters not the Case.

And then for *Tuiston's* Case, he says it is a Civil Case. But my Lord, it is a Criminal Case. A *Quo Warranto* is brought: They must plead Not Guilty to the Usurpation. So that these Cases are under the same Consideration as this is.

Then there is the Case of *King* and *Glover*: That was, where a Coroner was to amend an Inquisition of Murder: But it was not proved that he did murder himself, &c.

Mr. Mountague admits, the Jury may amend Matters of Form: But in that Case, when it is brought into Court, it is not the same Verdict as before.

He cited the Case of — and *Harvey*: But your Lordship gave him another Reason for that Case.

And for the Case of *Paul Tracy*, that Point was never determined.

L. C. J. Holt. The *Venire Facias* never mentions the Time of, &c.

Mr. Att. Gen. Now that is not within the Statute of *Henry VI.* So that we have nothing to do with it.

And as to the Case of *Dyer*, fol. — that does not concern the Statutes of *Jeofails*. And in *Fitzberbert's* Case, the Court was of Opinion, they could not amend, by reason of the Exception. Whereby they shew plainly, they thought the Statutes would have extended to that Case, had it not been particularly excepted.

I do not observe any other Matter, but that of the *Nisi Prius*. If the Writ must be made out in the Presence of the Parties; they say, that immediately when the Persons appear, the Writ is to be issued. But that is impossible, and contrary to Reason and Authority.

We think, on these Reasons we have troubled you with, we have the Law on our Side. Only one thing I must beg Leave to answer to what Mr. Broderick says as to *Percival's* Case: It was a crying Thing, and it might be an extraordinary Judgment. Where Judgments are given, they are to go according to the Course of Law: Justice is to be done to all. And as no extraordinary Method is to be made use of against a Criminal, so none is to be used to save him.

My Lord, we think the Statute of *Henry VI.* does allow such an Amendment as we desire; and that no Statute does restrain it: And therefore, I hope we shall be allowed to amend this Error.

There is one Matter more. Lord *Coke*, in his 8th Report, 163. a. says, The Statutes of *Henry VIII.* and that of 41 *Eliz.* do not extend to Pleas of the Crown; because they are excepted in the Act *Eliz.* and that of *Henry VIII.* does not extend to 'em.

We agree with the Lord *Coke* in every Thing, that the King can't amend by that of *Henry VIII.* tho' there is no Exception: And the Reason is, because it speaks only of Suits between Party and Party. And the other Statute of 18 *Eliz.* is not large enough, extending only to Treason or Felony, because they only are excepted.

My Lord, We think we have my Lord *Coke's* Authority with us, and even the very Words of the Act of 8 *Hen. VI.* And tho' this Case has not been so fully consider'd before; yet we hope it will be consider'd now; and that we shall be allow'd this Amendment.

Mr. Broderick. I thought not to have said any thing more: But because I have been named two or three times by Mr. Attorney, I desire —

Mr. Att. Gen. The Reply is ours.

Mr. Broderick. My Lord, I beg Leave to explain myself in something that has been misunderstood. I think I did not say what I am charged with. Mr. Attorney tells you I said, that none of the Queen's Prerogatives extend to criminal Prosecutions.

Mr. Att. Gen. I say, you said, there is great Difference between civil and criminal Cases: And that the Queen's Prerogative is intended only of Amendments in civil Cases, but not applicable to criminal Prosecutions.

L. C. J. Holt. Mr. Broderick said it did extend to Amendments in Civil Cases, but not in Criminal.

Mr. Broderick. And I do make a Difference between 'em. For in criminal Prosecutions by the Crown, an Amendment can't be: But in the Case of a *Quare impedit*, which is a civil Case, there it might.

Mr. Att. Gen. The Reply is ours; and they ought not to break in upon us.

L. C. J. Holt.

L. C. J. Holt. If you will say any thing as to what has been mistaken, you may. The Case of *Sherret* and *Talbot* is not to the Point: That was an Amendment, not in Behalf of the Crown, but of the Subject; and in a Civil Case. 'Twas in a *Quo Warranto*; wherein if the Subject take a limited Disclaimer, and the Officer on the Roll enter a general Disclaimer without Limitation, God forbid but that should be amended. But then, even on the King's Side, if the original Indictment be right, and the Plea Roll be mistaken; sure the Plea Roll shall be rectified by the Indictment; and the Plea is to be made according to that.

The Cases of *Tufson* and *Harris* are strong Cases. In that of *Harris* there was an actual Trial; and yet no Issue joined. He was indeed indicted as Criminal, and the Issue was enter'd; *Et de hoc ponit se super Patriam*, but without any Joinder thereupon, and so no compleat Issue. 'Tis true, in capital Cases, they are free to join Issue or not: But in other Criminal Cases 'tis otherwise; there must be a Joinder. And as to the Case of *Tufson*, that was an Amendment that went very far. That was an Information for Recusancy against the Husband and Wife for Recusancy of the Wife. The Wife comes in, and she alone (whereas it should have been the Husband and Wife) pleads Not Guilty; and Issue join'd thereon: And it was mended by the Docket: for that was right. It has been held, that the Statute of *Hen. VI.* did not extend to Criminal Matters; as Lord *Coke* (in *Blackmore's Case*) is expressly.

Mr. Att. Gen. But, my Lord, he gives the Reason of that Exception.

L. C. J. Holt. Now the 8th of *Henry VI.* has this Exception: And in *Stiles*, 304. no mention is made of the Statute of 8 *Hen. VI.* but that was by reason they thought it would not help them. And then the Query is, Whether this Case be within that Exception, and (as in Civil Cases) may be amended? But this is a Case of a different Nature; and I will not say any thing now in the Point of this Case, because of the Consequence: Tho' I suppose it is not excepted by the Statutes: And I believe you don't desire our present Opinion.

Mr. Att. Gen. Yes, my Lord, I desire the Opinion of the Court in this Case; and I think it is of great Consequence to us to have it now.

L. C. J. Holt. If you insist on it, I must see if I can form an Opinion; but I would willingly defer it.

Mr. Att. Gen. My Lord, I lay it before you with Submission.

Mr. J. Powel. It is a new Thing, and taken up against the current Opinion. Perhaps they might take it on Lord *Coke's* Opinion; and did not examine it, as they should had done.

Mr. Att. Gen. My Lord *Coke* does not say so himself.

Mr. J. Powel. No: But because he says it is excepted, they gave Credit to his Words, and did not examine into the Business: And I believe that was the Foundation of this Opinion. But if you think it is amendable in the same Term, because the Court may amend their own Judgments the same Term; you must speak to that Point.

I do not know that they can amend their own Judgment in this Term: Though indeed, if it be amendable at all, it is amendable this Term. Besides, I should make no Difficulty but that it is a Misprision of the Clerk; and it was his Negligence not to do it by the Warrant. And if this

were in a Civil Process, I believe it might be amended in any other Term: But this being in a Criminal Matter; and the current Opinion being that none of the Statutes did extend to Criminal Matters, it ought to be well consider'd; for the current Opinion is a great Thing.

Mr. Att. Gen. There is no doubt of it, it ought to be consider'd; but it is fit for me to desire your Opinion.

Mr. J. Powis. I believe these Statutes were never so scann'd before; and I believe this Matter has been more search'd into now, than ever it has been before. But it has been the general Opinion, that none of the Statutes of *Jeofails* did extend to Criminal Cases: That may arise, because all the Statutes take in so large a Compass. All Indictments and Informations, and no doubt the latter Statutes, do not extend to such Cases. And the Opinion might arise from that.

But now this Statute of the 8th of *Hen. VI.* has Exception of Felonies and Treasons, and none else; and you cannot extend the Exception further. It is a Case of Difficulty, but it arises from the common Opinion; otherwise we might give our Opinion now without Difficulty: For the Words are as clear as may be; and it is against Reason, to except Things that that Statute did not except. But being a Thing that is not so particularly confin'd to this Term (for the Statute mentions nothing of Terms) if it be amendable, it may be amended in another Term.

But indeed, for Matter of Judgment, because the Judgment must be in the same Term, in the Case of the Amendment, we may as well do it in this Term: And we may take some Time to consider of it, and tell you what our Opinion is.

Mr. J. Gould. I shall not now say any thing in this Case, but reserve myself entirely till the Court give their Opinion.

But as to that Case you were citing, *Perry's* Case, the Case was *Perry* and *Munday*; for I was of Council in the Case. There was an Information against *Perry* and *Munday* for forging a Bond: They laid their Forgery at *Sherborn*. The Publication was at *Dorchester*; and the *Venire* was *Dorchester*. The Verdict was for the King. They brought an Arrest of Judgment afterwards; and the Question was debated on the Statute of 16 and 17 of *K. Charles II.* whether this were not within the Statute. Now they are agreed, that that Information, because at Common Law, was without the Purview of the Statute.

L. C. J. Holt. That was an Information upon a Penal Law. They question'd whether it was within the Purview of the Statute; and they thought it was not help'd by any Statute. That shews the Opinion of the Lawyers: They thought it not within any of the Statutes of *Jeofails*; and the Verdict was set aside.

Mr. Broderick. Yes, my Lord; and the Court awarded a new *Venire Facias*.

L. C. J. Holt. There is a great Regard to be had to Practice. There were great Men at the Bar at that Time; and they did not think at that Time that it was within the Statute.

As to what you say of Copyholds, it has indeed been held, that the Statute did not extend to an Assignee of Copyhold Lands, or to a Covenant on the Alienation of the Copyhold by Lease.

Mr. Att. Gen. It was here argued that —

L. C. J. Holt. It was my Opinion, that all Statutes extend to Copyholds, if it be for the Benefit

nefit of the Copyholder, and not one Jot to the Prejudice of the Owner: And therefore the Resolution of *Jobbin's* Case was that we went on. You must stay till the last Day of the Term.

Mr. *Att. Gen.* My Lord, I think we have shewn that it is amendable by the Statutes; and if not so, by the Common Law. And we have all Points with us.

Sir *T. Powis.* My Lord, I doubt it will be insisted on, that in another Term it cannot be amended.

L. C. J. Holt. Move us the last Day of the Term. It is certainly the Misprision of the Clerk.

November 28. i. e. *The last Day of Michaelmas Term.*

Sir *T. Powis.* My Lord, we come in the Case of the Queen and Mr. *Tutchin*, if your Lordship be ready to give your Opinion.

Mr. *Att. Gen.* Call Mr. *Tutchin* (*who appeared*).

L. C. J. Holt. I must desire you to stay in this Matter till the first Day of the next Term.

Mr. *Att. Gen.* My Lord, we did expect your Lordship would have given your Opinion now.

L. C. J. Holt. For my Part, I should rather desire Time till the next Term: But if you are not willing to stay till then, you must take such an Opinion as we can give.

Mr. *Att. Gen.* I submit to what your Lordship shall determine.

L. C. J. Holt. It may be, I may be then of the same Opinion I am now; but then I may defend my Opinion better. I would only put it off to the first Day of the next Term.

Mr. *Att. Gen.* My Lord, I have laid the Matter before you; and I acquiesce in what you shall think fit.

Sir *T. Powis.* Upon the Observation of *Blackmore's* Case, where Lord *Coke* says, the Court cannot amend Misprisions of Clerks in Process in another Term; if we have not Judgment this Term, we shall lose that Advantage.

Mr. *Att. Gen.* There are two Points in this Case: One is, that it is amendable by Common Law; the other, that it is not excepted by the Statute of *Henry VI.*

Now my Lord *Coke* says, Error in Process is amendable in another Term. But we submit to the Court: I press nothing.

Mr. *J. Powell.* *Coke* say so: But I believe no Man will say, that ever a mistaken Writ was amended in another Term. Therefore he must intend the subsequent Proceedings, or Process: It may be the Proceedings of the original Entry on their Award, that may be amended in another Term; and *Coke* must mean that. There have been Entries of Awards amended in another Term; but the Mistake of a Writ was never amended in another Term, that I can find.

L. C. J. Holt. If we put it off to the next Term, and our Opinion should be against the Amendment, he can be try'd in that Term.

Mr. *Att. Gen.* My Lord, I submit it to you.

Mr. *J. Powell.* We cannot now give so full Reasons; yet I have enter'd my Opinion in the Case.

Mr. *J. Gould.* I was sometime of Opinion, that it was amendable by the Statute; but really looking on the Cases that have been cited, that is, the Cases that are in Pleas of the Crown, it is not amendable

by the Statute of *Henry VI.* I say, I formerly thought it might be amended by Virtue of the Statute: But upon Perusal of *Blackmore's* Case, &c. it seems to alter my Judgment. But notwithstanding, I hold, that at Common Law it may be amended. For what means all the Cases that are now extant; the Cases of Informations, as the Case of Sir *Humphry Bond*, &c.?

The Case cited by *Telverton*, in 2 *Bulstrode* 35. is very strong. There were two indicted for Felony, and found guilty. The Judge saw that it was in the singular Number, and stay'd Judgment: And they moved afterwards in another Term; and there, by the Judgment of nine or ten Judges, it was amended; and the Men were both hang'd.

Why now, it must be by the Statute Law, or by the Common Law, that it was amended in that Case. By the Common Law, I say, it is amendable.

There is a Case in *Raymond's* Reports, 440. It is an Indictment on a Certificate of a Justice of Peace, that *Inglefield*, being a reputed Papist, had refused to take the Oath of Supremacy, &c. Upon Not Guilty pleaded, the Jury found the Commission *in hac verba*, &c.

It was objected, That the Certificate was not found under Seal of the Justices, but only *in hac verba*: And they did amend it.

This is the same Case. And I take it, that such a Fault, as does not alter the Issue, nor the Trial, or Crime, is a Thing that is amendable.

Now there is Sir *John Curson's* Case, in 2 *Cro.* It is a strong Case. There is an Information against him and his Wife for Recusancy. The Wife only pleaded Not Guilty. The Question was, Whether this were right? And whether they should amend it? And it was resolved, that it should be amended.

The Case in *Siderfin*, that is (1 *Siderfin*, 243.) the Case of *Percival* and *Godfry*, I do not doubt, for my Part, but it is amendable; and take it as strong as this is. They were indicted for a Riot: A *Venire Facias* issued *Vicecomitibus Cantuariæ*; and it was return'd by one Sheriff. They examin'd into the Truth of the Case, and they found there was but one Sheriff: And the Question was, Whether this was amendable? And it was resolved it should be amended; and also that it was amendable at Common Law.

I must confess, I do not see that there is any Reason in the World against it. There is but only one Case that seems to be against it; that is the Case of *Theobald* and *Newton*, *Styles* 307. There indeed, by *Rolls* Opinion, it was not amendable, &c. But that is only a single Opinion.

And as to the Case between the King, and *Read* and *Dawson* (it should have been two Cases) there 'twas held, That the Statute of *Jeofails* does not extend to Informations of Intrusions; and yet it was ruled, that it should be amended.

Indeed, my Lord *Hales*, in *Keble*, 191, 215. [He means *Twisden*; *Vid. Keble*, 191, 198, 215.] did hold, that it was amendable within the Statute; and that the Amendment would stand in need of it: But it was ruled *contra*; and that it needed not the Help of the Statute of *Jeofails*. And I must needs say, if the Case of *Bradley* and *Banks*, in 2 *Croke*, 283. and in *Telverton*, 204. were not in the way, I think the Writ had been good enough; for it is a Continuance from Day to Day, tho' the *Teste* is the 24th, and the Award the 23d.

Now

Now, in my Mind, an Award the 23d, of a Writ, the 24th, is a perfect Continuance. And the Case of *Bradley*, &c. as it is in 2 *Croke*, 283. does not contradict this; tho' indeed that Case of *Bradley*, as it is in *Yelverton*, is contrary; but that seems mistaken. So that I do think, on the whole Matter, it is amendable at Common Law.

Note, Powis accorded with Gould, that it was amendable; but Powel argued contra, that it was not.

L. C. J. Holt. I should have been glad to have had Time till next Term, to consider of this Matter: For tho' I am satisfied in my Opinion, yet perhaps I may not give others that Satisfaction concerning it, as I might have done if I had had a longer Time.

I am of Opinion, That this is not amendable, neither by the Common Law, nor by the Statutes.

First, It must be admitted, that this is a Fault in the Writ, in a Point that is material: That is, The *Teste*, which should have been *Die Luna*, the 23d of *October*, and it is the 24th: For the 23d is the Day that the Defendant has in Court on the Return; and that being the Day he has in Court, the *Teste* of the Writ to continue the Process should have been that very Day.

Now I do not understand what my Brother *Powis* says, That there is no Interval between one Day and another. I would fain know, if a Day be appointed for a Man to appear on; and then he has another Day given him, when he appears not: As, if a Man appears the 23d of *October*, and there is a Day given, the 24th; will not this be a Discontinuance? No question but it is: Because he being in Court the 23d, and having no Direction the 23d when to come again, he is out of Court. Then shall you give another Day behind his Back? That cannot be in Reason. His Day in Court is the 23d of *October*; and that Day he should have another Day appointed. He has a Day in the Roll, but not in the Writ: That is issued behind his Back, the 24th; at which Time he is not in Court. Then if this be so, here is a Writ issued behind the Defendant's Back, and without any Award of the Court: For the Award is, *Die Luna prox. post tres Septimanas Sancti Michaelis*, which is the 23d of *October*; then there is a *Præceptum est* that Day. Now when this Writ issues the 24th; is this Writ warranted by the Roll? No, it is not; but another Sort of Writ, different from that which the Court awarded: Therefore being another Writ than what was awarded; where is there any Authority for it? Or how can the Jury be distrain'd upon it?

The Writ that issued the 24th, is another Writ: For there is a material varying between the Writ that issues, and the Award of the Roll; one is the 23d, the other is the 24th.

The Day of the Writ is material: And when it bears *Teste*, it is in the Judgment of the Law a Writ of that very Day; as it was adjudged in the Case of *Owen vers. Baily*, 17 *Ch. 2.* in a *Trover* and *Conversion*.

A Defendant, that is condemn'd in Debt and Damages, sells his Goods *bona fide*, between the last Day of *Trinity Term* and the first of *August*. After he had sold his Goods, the Plaintiff takes out a *Fieri Facias*, *Teste'd* the first Day of *Trinity Term*; which was before the Sale, tho' taken out after; setting forth, That the 4th or 5th of *July*, he had seized these Goods in the Hand of the Vendee;

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Tho' the Writ was not taken out actually in *Trinity Term*, yet bearing Date then, and the first of *August* the Goods were sold; yet the Writ being *Teste'd* the first Day of *Trinity Term*, 'twas held not amendable; and that the Hands of the Vendee were bound by it.

Now this Writ here is, in the Judgment of the Law, issuing out of this Court the 24th of *October*. If we should amend this, what Alteration should we make? We must make it another Writ: For a Writ that issues out of this Court the 24th, cannot be a Writ that issues out the 23d; and if we amend it, we make it as different as possibly can be.

Now why should we amend it? As we now take it, by the Statute of *Henry VI.* the Writ is good in it self; but it is not, as the Court awarded it. The Meaning of the Statute was not to amend mistaken Writs, but Mistakes in Writs: The Statutes meant nothing but that. Not that you should amend a Writ that was good in it self, and fit it to your particular Purpose.

Now here is a Writ executed in the same Term: Yet to make this Trial to be good, what must you do by this Amendment? You must make it to be another Writ: For you must make the Writ, even contrary to Truth, to be the 23d, which was the 24th: And therefore it cannot be made good; nor can the Trial be made good. You would make it the 23d, where it is indeed the 24th; and so you would change the Nature and Substance of the Writ. Is not this a material Variance, and different from the Award of the Court?

Before the Statute of *Jeofails*, if it had been in a Civil Case, it is help'd by the Statute of the 8th of *Henry VI.* because it is a Discontinuance of Process, it is help'd by that Statute; but that Statute extends not to this Case. I would fain know, whether there has been any Amendment, in any Case of this Nature, since the Statute of *Henry the VIth*? It's true, *Teste's* of Writs have been often amended; but that was, where it was a void *Teste*; as on a *Sunday*, or out of Term; or where it is impossible, as after the Return, &c. That is a void *Teste*, if it bear Date on a *Sunday*, or in the Vacation.

In Civil Cases it is amendable; because it is the Fault of the Clerk by mistaking a Day; as in making it on a *Sunday*, or in a Vacation-Time: There may be Reason for it; and it may be amended by the Statute of *Henry VI.* because plainly a Mistake of the Clerk. And on this Reason is that Case in *Yelverton*, 64. and the Case of *Bradley and Banks*, 204. There was a *Venire* returnable one Day; and the *Teste* of the *Distringas* was of the same Date, and the same Day with the *Teste* of the *Venire*; and that was held amendable, because it is impossible you shall distrain before the Return of the *Venire*; and the *Distringas* bore *Teste* the same Day with the *Venire*: So that the *Teste* was repugnant to the Writ it self; and therefore the Writ is naught in it self, because it was to distrain a Jury that was not summon'd. But the Law has always been, That if upon the Return of one Writ, there is to be another Writ awarded; that other Writ must be *Teste'd* on the very Day upon which it was awarded, and the Return of the former.

And that Case of *Bradley and Banks*, in 2 *Cro.* and *Yelv.* is very strong to this Purpose. There the Person came in on the Exigent, and pray'd *Oyer* of the Writ and all Mesne Process: And therein appeared a Gap, the first Process being returnable *Dacino sexto Octobris*, and the Appeal being returnable *Quindena Sancti Michaelis*, that is, the

D d d d

16th

16th of *October*, were well. But the *alias Capias* goes out *Teste'd* the 23d of *October*, which being seven Days after the Return of the former, that was wrong; for it should have borne *Teste* the 16th of *October*, then it had been right; but being the 23d, there was a Gap; and therefore it was held a Discontinuance.

And this is the Practice of the *Common-Pleas*, tho' not so much observed here in this Court, in Writs of Enquiry of Damages: But enquire of them in the *Common-Pleas*, and they will tell you, the subsequent Process ought always to bear *Teste* the Day of the Return of the former Writ. If you go to a *Capias*, either in Outlawry, or to distrain a Man; the second *Distingas* is always *Teste'd* the Day of the Return of the first; and the third is always *Teste'd* the Day of the Return of the Second: And if it bear *Teste* the next Day, all Process is discontinued.

Ay, but you say, it is a Mistake of the Clerk. It is so: But we are to judge of the Thing it self, whether it is by way of Negligence, or for want of Skill. For aught I know, it may be for want of Skill, that it is *Teste'd* another Day: But every Clerk does not know this. Nay, some have pretended to know, that it need not bear Date the Day of the precedent Writ's Return. Why then might it not be an Error in Skill? If he thinks it a right Writ, and says it must be *Teste'd* the 24th, this is want of Skill; and then it is not amendable. And then this being a wrong Writ, the *Teste* is material; and its being *Teste'd* the 24th, is a Mistake so material, that if it had been a civil Case, I should have been against the Amendment; and therefore much more in this Case, I think, it ought to be quash'd, and a new *Venire* awarded.

Mr. *Att. Gen.* If the Court decide it, I cannot tell what to say.

Mr. *J. Powis.* What have you to say?

Mr. *Att. Gen.* The Court is divided, and there it hangs.

L. C. *J. Holt.* I would not be understood otherwise than thus: I do not say, this Case is within the Statute; but I look on it to be so material a Variance, than it is not amendable.

Mr. *Att. Gen.* The Court being divided in their Opinion, I know not any Rule to stop Judgment.

Mr. *J. Powis.* I know not how far it may go in criminal Cases. That which sway'd with me, was, to see so many bold Amendments in many Cases; that went with me very far; and which were said to be done by Common Law.

What I said as to coming the next Day, I did not rely on it: Tho' it did seem to alleviate the Thing. But I was so tender in the Case, that I did think it might be better to have a new Trial. I have held, in my Opinion, with my Lord Chief Justice *Holt* and Mr. Justice *Powel* a great deal. I was tender before in the Point: And I do join with my Lord Chief Justice *Holt* and Mr. Justice *Powel*, that there ought to be a new Trial, and a new *Distingas*.

Mr. *Att. Gen.* With a Rule, I submit; but without a Rule, I would have signed Judgment.

Mr. *Mountague.* My Lord, We move to set aside this Trial, because it is irregular.

Mr. *Att. Gen.* If you make a Rule, we need not dispute it.

Mr. *J. Powel.* Judgment goes of course, unless you stop it.

Mr. *Att. Gen.* There is no Rule to stop it: And then I can sign my Judgment.

Mr. *Mountague.* My Lord, tho' the Court can make no Rule for an Amendment, because the Judges are divided about that Point; yet I humbly conceive, your Lordship, and the rest of the Judges do agree, that the Writ, as it now is, is naught; and therefore I hope you will let us have a Rule to stay Judgment.

L. C. *J. Holt.* Mr. *Attorney*, They have been moving to have a new Trial.

Mr. *Att. Gen.* 'Twould be a Breach of Duty in me, not to sign my Judgment, if you don't make a Rule while it is under Consideration.

L. C. *J. Holt.* Here was Leave given to move in Arrest of Judgment; and there is no Rule for signing Judgment.

Mr. *Att. Gen.* There is no Rule to stop it.

Mr. *Mountague.* What is the Rule that was made upon my first Motion?

Clerk reads, *Die Martis proximo, &c.*

Mr. *Mountague.* We take it, that tho' the Court be divided about the Amendment; yet since there can be no Amendment, the Writ being naught, we ought to go to a new Trial.

Mr. *J. Powel.* By all Means, go to a new Trial.

Mr. *J. Powis.* It is in a Case that was never so much look'd into before.

Mr. *Att. Gen.* If we must have a new Trial in this Case, we are in a worse Case than I thought we were; for we are to begin Process again. But if a Rule be made, we must submit.

Mr. *Mountague.* There was a Rule made at the Side Bar, upon my Motion there, That all Things should stay.

Mr. *Att. Gen.* That was not a Place to move for a Rule.

L. C. *J. Holt.* That is to stay *in statu quo* they were then. There is no Rule for Judgment to stay.

Mr. *Att. Gen.* If on Motion to arrest Judgment, the Judges of the Court are divided, I have heard it said, that Judgment may be enter'd.

Mr. *J. Powis.* I said at the Beginning, I was inclinable to have a new Trial.

L. C. *J. Holt.* I know not what you mean. You said, you were inclinable to have it amended: I would have it amended, if I had followed my Fancy.

Mr. *J. Powel.* If my Brother has changed his Opinion, he may: For we have been arguing, that we may change our Judgments.

L. C. *J. Holt.* You have any Time to-day to move it again. Put us in mind of it: I may change my Mind too, it may be.

Mr. *J. Powis.* I judge not how it may go in criminal Matters: But all are of Opinion, that it should not stand as it does.

L. C. *J. Holt.* The Court is divided that it should be amended; but not that it is well as it is: And that is Mr. *Attorney's* Motion, to alter what is to be amended.

Mr. *J. Powel.* Mr. *Attorney* makes no Motion for a Rule; but would have it stay as it does.

L. C. *J. Holt.* That it may remain *in statu quo*.

Mr. *Att. Gen.* If you cannot agree in your Judgment, I submit it to you, whether I may not enter Judgment for the Queen, tho' it be not amended.

Mr. *Mountague.* We hope Mr. *Attorney* shall not

not be permitted to sign Judgment in this Case: For tho' 'tis true, that there can be no Amendment, because the Court is divided; yet I do not apprehend that it is right as it is.

Mr. Att. Gen. If the Court be divided, no Rule can be made.

Mr. J. Powis. Let there be a new Trial.

Mr. Mountague. Mr. Attorney, The Court would have a new Trial: And I think you had better do so.

Mr. Att. Gen. I want none of your Directions.

Mr. Mountague. I may take notice of what the Judges say.

L. C. J. Holt. And he will make use of what we say, as far as is convenient for him.

Mr. Att. Gen. But Mr. Mountague must not pretend to give Directions, what I am to do.

Mr. Mountague. I don't give you Directions; but I hope I may take notice of what the Court says.

L. C. J. Holt. Mr. Attorney, We believe you don't want their Advice.

Mr. Att. Gen. But they are very ready to give it.

Mr. Mountague. I only took notice to Mr. Attorney, how far the Court was agreed: And only moved that the Rule, which I did conceive was pronounced by the Court, might be taken.

Mr. Att. Gen. You moved to no Purpose.

Mr. Mountague. I take it, that Mr. Justice Powis is for a new Trial.

Mr. J. Powis. Yes, I am so. It is a nice Case, and has never been consider'd fully before.

Mr. Mountague. I hope now we have done.

Mr. Att. Gen. If I hear what Rule the Court makes, I shall submit.

Mr. Mountague. I hear the Pleasure of the Court is, that the Rule shall be for a new Trial.

L. C. J. Holt. You must have a new *Venire Facias*.

Mr. Att. Gen. That cannot be, with Submission: A new *Venire* we cannot have.

L. C. J. Holt. You must have a new Trial. The Jury have given their Verdict; whereas they appeared to a wrong Writ, and so the former Trial is not warranted.

Mr. Att. Gen. I think they are warranted to appear by the Return of the *Venire*; and that we must go back, but where the Fault is, which is only but where the *Disfringas* is made out: So that a *Disfringas de novo* is to be for the same Jury. But I will meddle no more in it, without particular Order.

L. C. J. Holt. Do what you will; we will give you no Direction. We quash this Trial.

Sir T. Powis. My Lord, If you quash this Trial, then we are to begin again.

Mr. Att. Gen. If the Court is of Opinion that there ought only to be a new *Disfringas* issued, and we can go back no further; I am afraid we shall never come right.

Mr. J. Powel. The Difficulty is in right awarding the *Disfringas*, because it does not bear Date with the Return of the *Venire*. But then consider where you are: If you bring him on a new Trial, he can challenge any one that has given a Verdict before.

L. C. J. Holt. It is a *Disfringas* to summon that Jury, but it is without *Teste*: And that Jury having given their Verdict, they are not to serve again.

Mr. Att. Gen. I am sure, according to Authorities, they must begin where the Fault was.

L. C. J. Holt. I should have thought the *Venire de novo* had been proper: For this *Disfringas* bearing *Teste* out of Time, and that being erroneously executed, there ought to be a new *Disfringas*, which is to be founded on a new *Venire*.

Mr. Att. Gen. If you do quash this Trial, I suppose your Lordship will make some Award for a new one.

L. C. J. Holt. We leave it to you.

Mr. Att. Gen. I cannot enter it.

Mr. J. Powel. We must grant a *Venire de novo*, which we cannot do without quashing this Verdict; and that is the way to try him again.

Mr. Att. Gen. My Lord, I am far from thinking I can alter your Rule; but I can't tell how to follow it.

L. C. J. Holt. What we do is *ex abundanti*, more than we are bound to. We can leave you to do what you can: The taking out the *Venire* and *Disfringas*, are Things of course.

Mr. Att. Gen. I think there is a Necessity to explain my Meaning. I don't pretend to direct what you must do; but you must direct what is to be done: I cannot award a *Venire*.

L. C. J. Holt. It is taken out of Course. You may award that as well as the first, if it may be done.

Mr. Att. Gen. How can that be done, seeing you quash the *Disfringas*?

Mr. J. Powel. That is the Award of the Court, and does not hinder you from taking out a new *Venire*.

Mr. Att. Gen. I cannot do it without the Court. When you quash this, you must award another.

L. C. J. Holt. We do award it.

Mr. Att. Gen. I remember in the Case of *Fitzwalter*, when they quash'd the Trial, they order'd a new one should be had, &c.

L. C. J. Holt. If we make an Award, and you don't like it, you will not comply with it: Therefore we leave you to take it out as you will.

Mr. Att. Gen. You must order a new *Venire*; I cannot award a new one else.

L. C. J. Holt. You must have a *Venire Facias*.

Mr. Att. Gen. That must be the Judgment of the Court then. For if I award it, it must be by Order of Court.

Mr. J. Gould. You had better declare *de novo*.

Mr. Att. Gen. I am fearful of what I do. I hope the Court will discharge me.

L. C. J. Holt. When a Trial is quash'd and set aside for any Irregularity of the Trial, that Jury is discharged: All the Pannel is discharged, and there must be a new Pannel.

Mr. Att. Gen. How will that appear?

L. C. J. Holt. If it appear that the *Disfringas* did not issue as it ought, every thing shall be enter'd at large on the Rule: That the *Disfringas* did not issue till the 24th of October; therefore they will consider, that the Verdict shall be set aside,

Mr. Att. Gen. And that we shall have Leave to go to a new Trial.

L. C. J. Holt. *Presumptum est*.

Mr. Att. Gen. If you please to make the Rule then, I submit.

L. C. J. Holt. We will advise how to make the Rule.

It was never afterwards thought proper to try him again.



CLXXXI. *The Trial of Captain THOMAS GREEN, and his Crew, at the High Court of Admiralty of Scotland, for Piracy, March 14. 170⁴. 4 Ann.*

* Examination
before-hand.



HE Lords of Her Majesty's Privy Council having taken * Precognition of the Grounds of the Information against

Captain *Thomas Green*, and others of his Crew; they thought fit, and order'd, That the said Captain *Thomas*, &c. should be put to a Trial upon the Crimes informed, before the Judge of the High-Court of Admiralty. As also, the Lords of the Privy Council thought fit at the same Time, to appoint Assistants to the *Procurator-Fiscal* of the High Court of Admiralty, for the better ordering and carrying on of the said Trial, according to the Tenor of their Act following.

* about.

† Present.

AT Edinburgh, the Thirteenth Day of February, 1705 Years. Committee * anent Captain *Green* and his Crew, † Sederunt Lord Chancellor, Marquis of Anandale, Earls of Haddington, Leven, Ruglen, Lords Yester, Belhaven, Advocate, * Thesaurer-Deput. Anstruther, Sir John Home, and Ormiston, Younger. It's the Opinion of the Committee, That my Lord Chancellor should write to Court, for Remissions to Charles May, Chyrurgeon; Antonio Ferdinando, Cook's Mate; Antonio Francisco, Captain's Man; George Haines, Stewart; George Glen, Quarter-Master; Alexander Taylor, Fore-Mast-Man: And that the Trial against Captain *Green* and his Crew, should be pursued before the Admiral-Court; and that Assessors should be named to the Judges, and Assistants to the Procurator-Fiscal.

* Treasurer.

Sic subscribitur,

TWEEDALE, Cancel. J. P. C.

† These.

* Same.

† Approved.

The above Report of the Committee, anent Captain *Green* Commander of the Ship the *Worcester*, being upon the Day and Date of † their Presents, read in Presence of the Lords of Her Majesty's Privy Council, and the * samen was Voted and † Approven. And the said Lords did thereby Nominat and Appoint Sir James Stuart, Her Majesty's Advocate, Sir David Dalrymple, and Mr. William Carmichael, Her Majesty's Solicitors; Sir Patrick Home, Sir Gilbert Eliot, Mr. Alexander Mackleod, and Mr. Francis Grant, to be Assistants to Mr. Alexander Higgins, Procurator-Fiscal to the High Court of Admiralty, in prosecuting the Libel and Indictment to be given at his Instance, against the said Captain *Green* and his Crew, before the said Court, to the final End and Decision thereof. And the said Lords declared, That they would next Council-Day name five of their own Number, to be Assessors to the Judges of Admiralty, during the Dependance of the aforesaid * Process: And recom-

* Trial.

mended to the Lords of † Thesaury, to pay the Lawyers that are employ'd to † Treasury. be Assistants accordingly.

Extracted by me,

GILB. ELIOT, Cls. Sti. Concilii.

Whereupon the Judge of the High Court of Admiralty did present to the Lords of Council a Petition; "That since the Trial was order'd to be made before him, of the foresaid Crimes informed against Captain *Green* and his Crew; and that the Matter appear'd to be of great Importance; he might have, according to Custom in the like Cases, Assessors appointed and joined with him, by the Authority of Council, for his Assistance in the said Trial." Whereupon the Lords of Her Majesty's most Honourable Privy Council did Nominate and Appoint, the Earl of Loudoun, Lord Belhaven, Lord Arnistoun, Sir John Home of Blackadder, and John Cockburn younger of Ormiston, to be Assessors to the foresaid Judge; and assist and vote with him in the Trial, at the Procurator-Fiscal's Instance, against Captain *Thomas Green*, Commander of the Ship the *Worcester*, and others of his Ship's Crew, before the said High Court of Admiralty; for their being guilty of Piracy, and other Crimes; and that to the final End and Decision thereof; as an Act extracted and signed by the Clerk of Council, extant in the Records of the said High Court, bears.

Follows the Court of Justiciary of the High Court of Admiralty, with the whole Trial, as it proceeded before the Judge of Admiralty, and the Assessors above appointed.

CURIA JUSTICIARIA *supremæ Curie Admiralitatis tenta in Prætorio, vel nova Sessionis Domo Burgi de Edinburgh, quinto die Mensis Martii, 1705. per Judicem dictæ Curie, & per Honoratissimos Viros, Joannem Comitem de Loudoun, Joannem Dominum de Belhaven, Dominos Robertum Dundas de Arnistoun, Joannem Home de Blackadder, & Joannem Cockburn de Ormiston, Assessores.*

Curia legitime affirmata.

The said Day, the said Earl of Loudoun, Lord Belhaven, &c. produced the Act of her Majesty's Privy Council above-mentioned, appointing them to be the Assessors to the said Judge.

Thereafter the said Assessors took the Oath of Allegiance and signed the same, with the Assurance, and took the Oath *de fidei administratione*, and were thereupon admitted and received.

Intran.

Captain *Thomas Green*, Commander of the Ship called the *Worcester*, now in Bruntisland Harbour.

Captain

Capt. John Madder, chief Mate of the said Ship.

John Reynolds, second Mate of the said Ship.

Thomas Linstead, Assistant to the deceased Supercargo of the said Ship.

James Burn, Boatswain of the said Ship the *Worcester*.

James Symphon, Gunner.

Andrew Robertson, Gunner's-Mate.

John Brucklie, Seaman.

George Kitchen, Seaman.

Henry Keigle, Carpenter.

Samuel Urlines, his Mate.

George Haines, Steward of the said Ship.

Daniel Stringman, Cook.

Samuel Wilcocks, Chyrurgeon's Mate.

George Glen, Seaman there.

Henry Barnes, Seaman there.

Alexander Taylor, Seaman there.

And John Bannantyne, Seaman there.

All of them indicted and accused at the Instance of Mr. Alexander Higgins, Advocate Procurator-Fiscal to the High Court of Admiralty, for the Crimes of Piracy, Robbery, and Murder, in Manner mentioned in the two several Indictments

* Concerning the same.

† Contents.

raised against them * thereanent, and whereof † the Tenor follows: Captain Thomas Green, Commander of the Ship called the *Worcester*, now in Bruntisland Harbour, Captain John Madder chief Mate of the said Ship, John Reynolds second Mate of the said Ship, Thomas Linstead Assistant to the deceased Supercargo of the said Ship, James Burn Boatswain of the said Ship, James Symphon Gunner of the said Ship, Andrew Robertson Gunner's Mate, John Brucklie Seaman there, and George Kitchen Seaman there, all Prisoners;

* Every one. You, and * ilk one of you are accused and indicted at the Instance of Mr.

Alexander Higgins, Advocate Procurator-Fiscal to the High Court of Admiralty, of the Crimes of Piracy, Robbery, and Murder, in manner after-mentioned, viz. That by the Law of God, the Laws of Nations, of this, and of all well govern'd Realms, the Crimes of Piracy, Robbery, and Murder, are prohibited, under all highest Pains; and that by the Laws of this Realm, the said Crimes are prohibit

under Pain of Death, and † Escheat of Moveables. Nevertheless it is of Verity, that Captain Thomas Green, Commander of the Ship called the *Worcester*, now in Bruntisland Harbour, and his Crew,

* Of contriving and acting.

are guilty, * Art and Part of the said Crimes, or one or other of the same, in so far as the said Captain Thomas or his said Crew, having sailed from England, in the said Vessel the *Worcester*, upon Pretence of Merchandizing towards the *East-Indies*; the fore-said Captain, and his said Crew belonging to the said Vessel, did, upon one or other of the Days of the Months of February, March, April, or May, in the Year 1703. rencounter, or meet with another Ship or Vessel, sailed by its own Men or Crew, upon the Coast of Malabar, near Calcutte; and the said Vessel bearing a red Flag, and having English or Scots aboard, at least such as spoke the English Language; the said Captain Thomas Green and his Crew, after some * Intercommuning

* Discourse.

with them, did, without any lawful Warrant, or a just Cause, attack the said other Vessel, or Ship, while expecting no such Treatment; and invading her first by their Sloup,

which they had manned with Guns and other Arms for that Purpose, they fell upon the said other Vessel in an hostile Manner, by shooting of Guns and otherways; and after some Time spent in Fighting against her by their Sloup, and partly by the approaching of the said Thomas Green's Ship the *Worcester*, they overcame, and boarded the said other Vessel, and having seized their Men, they killed them, and threw them overboard, and then carried, or caused to carry away the Goods that were aboard the said other Vessel, to their said Ship the *Worcester*; and then disposed upon the said Ship, by felling her a Shore on the said Coast. Which Crime, being a wicked Piracy committed by Surprise in Parts so remote, and probably with all the Caution the Committers could use for concealing thereof, and for preventing Discoveries, comes now to be discovered in the several Parts and Circumstances of the Action, and by such as were present thereat; which being all conjoyn'd, does make up and infer the fore-said Crime objected, and are as follows, viz. That the fore-said Rencounter and Fight betwixt Capt. Green and his Crew, and the said Vessel the *Worcester*, and the fore-said other Vessel taken by her, happen'd on the said Coast as above: Likeas, at the same Time, one or more of the said Ship the *Worcester*, her Crew being on Shore, and at some distance from the Sea, heard the said Shooting, which brought the said Persons to the Shore, where they, at least the Chyrurgeon of the said Ship the *Worcester* one of them, saw her riding at a good Distance from the Shore upon her Birth (as they speak) and having the other Ship at the Stern, as it were tied or towed to her, as being the Vessel they had master'd or overcome, as said is.

Likeas, the said Chyrurgeon did see the Boat belonging to the said Ship the *Worcester* coming ashore from her, and the Chyrurgeon † demanding at such of the Crew as were † Asking. in her, what had brought them ashore: They answer'd that they had been *Busking* (a Sea-Term used for fitting and trimming a Ship for fighting) and they had drunk, spilt, or staved all their Water, and they were come for a new Supply: And when a little Time thereafter the said Chyrurgeon went aboard the said Ship the *Worcester*, he perceived the Deck thereof lumber'd and cover'd, and in a confused Manner, with Balls, Boxes, and Goods; whereof when he asked the Reason, John Madder, one of the * Panels, and a principal Actor in the Engagement, answer'd, Damn you, what

* Persons indicted.

have you to do to enquire, meddle with your Plaster-Box. And when the Chyrurgeon went down to his Station and Chest, he called for one of the Blacks Antonio Ferdinando, and one Duncan Mokay now dead, and another in order to dress them; but when he asked what way they came by their Wounds, they declined to answer; whereupon the Chyrurgeon refusing to dress them, if they would not tell him how they got their Wounds, the said John Madder came to the Chyrurgeon in a Passion, and asked what was his business to ask so many Questions, when he did see the Wounds so plain before him, calling him a Blockhead for not dressing them; and at length the Contest was so warm betwixt the said Madder and Chyrurgeon, that Madder charged him to ask no more Questions, and he charged the Men wounded, not to answer a Word: And further ordered him back to the Shore, which the Chyrurgeon was forced to comply with; where the Chyrurgeon meeting with Francisco

de Olivera the † Linguister, asked † Interpreter. him whether he saw any of the *Worcester's* Men that had carried the fore-said Ship so taken into *Keilon* River, and the Linguister answered, that he had not, but that they were some of the *Worcester's* Company, who as soon as they had brought her in and made her fast, took their Boat and went directly on Board: The Ship taken being carried into *Keilon* River as said is, where she was left with her Yards and Top-masts down, all unrigged: And the said Linguister told the Chyrurgeon further, that one *Coge Commodo* complained he had bought the said Ship taken too dear; whereby it appears that the said Ship taken by Violence, was sold in manner aforesaid. Likeas, for further Evidence of the said Piracy, since the Time that *John Reynolds* one of the Pannels was seized with the rest, for his Accession thereto, there was found a Letter wrote to him by one *Sarah Newlands*, bearing Date *January* the 6th, wherein she tells him, *That tho' he had been basely wicked, yet she should be sorry to hear he were guilty of any thing that might bring him to the Gallows; and therefore advises him to confess; adding, that in his own Letter which she had seen, he says, That some of their Men had basely confessed* (which says he) implies that they were guilty. And when *Reynolds* was questioned upon his Letter, he acknowledged that he had wrote a Letter to his Wife the said *Sarah's* Sister, which had occasioned her writing the said Letter to him; and thereupon he produced the Copy of the said Letter to his Wife, which agrees with what *Sarah* says, as the said Copy and *Sarah's* Letter both put in the Clerk of the Admiralty's Hands, to be seen by the Pannels, bear. And further, *George Haines* one of the Crew of the said *Worcester*, since his coming to *Scotland*, and when at *Bruntisland*, being asked by one *James Wilkie*, Taylor, † Burgess of *Edinburgh*, some Day in *October* last, about his Brother *Andrew Wilkie*, who went Chyrurgeon in Captain *Drummond's* Ship, if ever the said *Haines* had seen the said *Andrew Wilkie* in his Voyage, he flew in a Passion, and said, *what Devil was his concern with Captain Drummond?* Upon which *James Wilkie* forbearing a little till he should be calmer, asked the said *Haines*, whether he had heard or seen any *Scots* Ship coming to or from the *East-Indies* during their Voyage? *Haines* answered, that when they were upon the Coast of *Malabar*, a *Dutch* Ship informed them, that one Capt. *Drummond*, commanding a *Scots* Ship, and having a Sloop in Company, was turned Pirate. Upon which *Haines* and they manned their Ship to be in readiness, but saw him not; only a little thereafter *Haines* added, that he had in his Custody, the Time the said Ship the *Worcester* was seized, which he would not have fallen into the Seizer's Hands for twice the Value of the Ship, but that he had thrown it over-board; adding further, that there was still in the Ship what would never be found by the Seizers, unless they pulled her Board from Board, tho' he knew where the Thing lay. Likeas, when after the said *James Wilkie* departed, one *Anna Seaton* in *Bruntisland*, did at his Desire further enquire at *Haines* about Captain *Drummond's* Ship; he answered, that he saw they had a Design to pump him, but that they should not be the wiser of him: At all which Passages, *Kenneth Mackenzie* * Inhabitant. * Indweller in *Cannon-gate* was a present Witness. And the said *Anna Seaton* did further tell the said *Kenneth Mackenzie*, that when she expostulate with *Haines* for his being in Passion, as said is; he answered, that he knew more

of Captain *Drummond* than he would tell at that Time; and that if the said *Andrew Wilkie* was with Captain *Drummond*, he would not be seen again. And further, the said *Anna Seaton* heard the said *Haines* own and declare their said Wickedness; and she and *William Wood*, one of the Gunners of her Majesty's Artillery, with one *John Hendersen* † Writer in *Edinburgh*, being in *September* last, in *Anna Seaton's* Mother's House, after having drunk one Health or two; the said *Haines*, who was there present, fell in a melancholy Fit, and express'd himself, *That it's a Wonder, that since we did not sink at Sea, God doth not make the Ground to swallow us up for the Wickedness that has been committed during the last Voyage, on Board of that Old Bitch Bels, pointing to Captain Green's Ship.* And further, the said *Haines* said, That if what the said *John Madder* had done in the said Voyage were well known, he deserved as much as his Uncle *Madder* met with at *Amsterdam*, who was there burnt in Oil, for attempting to burn their Ships. And when at another Time, the said *Anna Seaton* told *Haines*, that she had an old Sweet-heart who went away with Captain *Drummond*, and would gladly hear some Tidings, whether he was dead or alive; the said *Haines*, who was then a * Suiter to *Anna Seaton*, assured her, she would never see him again, if he was in *Drummond's* Ship. And for a further Confirmation of the Truth of the said Piracy, when a Committee of Council was sent to *Bruntisland*, to cause Search and unload the said Vessel, it was found by the Skip-pers and Seamen employed, that the Goods aboard her were not stow'd as Merchant Goods used to be, but were found in the Hold in such Confusion, as if taken by Piracy, and no otherways. Likeas, when the said Ship the *Worcester* was seized, the said *John Madder* being question'd about Captain *Drummond's* Ship, he took out of his Pocket, or at least shew'd in his Hand, the Seal of the *African* Company, which he could never lawfully have got. By all which, they being joined and connected together (as a Discovery of such a Wickedness practised in such remote Parts, and so industriously and obstinately endeavour'd to be concealed, deserves to be) the same in all the Points and Circumstances thereof, at least such, and so many of them as are † relevant, and are offered to be proven by a cumulative Probation, do plainly amount to such a plenary Evidence, as may fully convince all impartial Men, that the aforesaid Captain *Green* and his said Crew, are all and each of them guilty, Art and Part, of the fore-said Crimes of *Piracy*, *Robbery*, and *Murder*, or one or other of them above charg'd; which being found by a Verdict of an † Assize before the Judge of the Admiralty, and the Lords Assessors appointed by the Lords of the Privy-Council, the forenamed Persons, and each of them, ought to be punished by Sentence of the said Court, with the Pain of Death, and Confiscation of their Moveables, to the Example and Terror of others, to do or commit the like in Time coming.

Additional Conclusion to the Indictment, at the Instance of Mr. Alexander Higgins Procurator-Fiscal to the Court of Admiralty, against Captain Green, &c.

Viz. THAT the Conclusion of the said Indictment given on *Saturday* the seventeenth Instant, bearing the Pain of Death, and of Escheat and

† Clerk for Law Business.

* Sweet-heart, or Wooer.

† Sufficient to bear an Indictment.

† Jury.

and Confiscation of Moveables, should extend to the Escheat and Confiscation of the said Ship and Cargo, by reason of the foresaid Crime and Piracy; and that the said Captain *Thomas Green*, &c. should answer to the foresaid Conclusion, as thus explained, and extended to the Confiscation of the said Ship and Cargo, as in Case of Piracy, the
 † *Appearance.* 5th of *March*, which is the Day of
 † *Compearance* assigned to the said Pannels, or at least upon the 6, 7, 8, or 9 Days of *March* thereafter, as the true Import, or at least a clear Consequent of the foresaid Crime and Indictment given thereupon: The List of
 * *Jurors.* Witnesses and * *Affizers* remaining the same, as subjoined to the foresaid principal Indictment. *Sic Subscribitur*

ALEXANDER HIGGINS.

Henry Keigle Carpenter in the Ship called *Worcester*, now in *Bruntisland* Harbour, Samuel *Urlines* his Mate, *George Haines* Steward of the said Ship, *Daniel Stringman* Cook of the said Ship; *Samuel Wilcocks* Chyrurgeon's Mate, *George Glenn* Seaman there, *Henry Barnes* Seaman there, *Alex. Taylor* Seaman there, and *John Bannantine* Seaman there; all of Captain *Thomas Green* Commander of the said Ship his Crew: You, and ilk one of you are accused and indicted at the Instance of Mr. *Alex. Higgins* Advocate, Procurator-Fiscal to the High Court of Admiralty, of the Crimes of *Piracy*, *Robbery* and *Murder*, in Manner after-mention'd, viz. That by the Law of God, the Laws of Nations, of this, and of all other well-govern'd Realms, the Crimes of *Piracy*, *Robbery* and *Murder*, are prohibite under all highest Pains: And that by the Laws of this Realm, the said Crimes are prohibite, under Pain of Death, and Escheat of Moveables. Nevertheless, it is of Verity, that Captain *Thomas Green* Commander of the Ship called the *Worcester*, now in *Bruntisland* Harbour, and his Crew, are guilty, Art and Part, of the said Crimes, or one or other of the Seamen, in so far as the said Captain *Thomas*, or his said Crew, having sailed from *England* in the said Vessel the *Worcester*, upon Pretence of Merchandizing towards the *East-Indies*, the foresaid Captain and his said Crew belonging to the said Vessel, did upon one or other of the Days of the Months of *February*, *March*, *April* or *May*, in the Year 1703, rencounter and meet with another Ship or Vessel, sailed by its own Men or Crew, upon the Coast of *Malabar* near *Calecute*; and the said Vessel bearing a red Flag, and having *English* or *Scots* aboard, at least such as spoke the *English* Language, the said Captain *Thomas Green* and his Crew, after some intercommuning with them, did without any lawful Warrant, or just Cause, attack the said other Vessel or Ship, while expecting no such Treatment; and invading her first by their Sloop, which they had manned, and furnished with Guns and other Arms for that Purpose; They fell upon the said other Vessel in an hostile Manner, by shooting of Guns and otherways; and after some Time spent in fighting against her by their Sloop, and partly by the approaching of the said *Thomas Green's* Ship the *Worcester*, they overcame, and boarded the said other Vessel, and having seized their Men, they killed them, and threw them over-board, and then carried, or caused to carry away the Goods that were aboard of the said other Vessel to their said Ship the *Worcester*, and then disposed upon the said Ship, by selling her ashore on the said Coast. Which Crime being a wicked Piracy, committed by Surprize in Parts so remote, and pro-

bably with all the Caution the Committers could use for concealing thereof, and for preventing Discoveries, comes now to be discovered in the several Parts and Circumstances of the Action, and by such as were present thereat: Which being all conjoyned, does make up and infer the foresaid Crime objected, and are as follows, viz. That the foresaid Rencounter and Fight between Captain *Green* and his Crew, and the said Vessel the *Worcester*, and the foresaid other Vessel taken by her, happen'd on the said Coast as above: *Likeas*, at the same Time, one or more of the said Ship the *Worcester*, her Crew being on Shore, and at some Distance from the Sea, heard the said shooting, which brought the said Persons to the Shore, where they, at least the Chyrurgeon of the said Ship the *Worcester* one of them, saw her riding at a good Distance from the Shore upon her Birth (as they speak) and having the other Ship at her Stern, as it were tied or towed to her, as being the Vessel they had master'd or overcame, as said is. *Likeas*, the said Chyrurgeon did see the Boat belonging to the said Ship the *Worcester* coming ashore from her, and the Chyrurgeon demanding, at such of the Crew as were in her, what had brought them ashore? They answered, that they had been *Busking* (a Sea-Term, used for fitting and trimming a Ship for fighting) and that they had drunk, split or staved all their Water, and they were come for a new Supply; and when a little Time thereafter the said Chyrurgeon went aboard the said Ship the *Worcester*, he perceived the Deck thereof lumber'd and cover'd, and in a confused Manner with Balls, Boxes and Goods; whereof when he ask'd the Reason, *John Madder* one of the Pannels, and a principal Actor in the Engagement, answer'd--*Damn you, what have you to do to enquire, meddle with your Plaster-Box.* And when the Chyrurgeon went down to his Station and Chest, he called for one of the Blacks *Antonio Ferdinando*, and one *Duncan Mackay* now dead, and another, in order to dress them; but when he asked what way they came by their Wounds, they declined to answer: Whereupon the Chyrurgeon refusing to dress them, if they would not tell him how they got their Wounds; the said *John Madder* came to the Chyrurgeon in a Passion, and asked what was his Business to ask so many Questions, when he did see the Wounds so plain before him? Calling him a Blockhead for not dressing them. And at length the Contest was so warm betwixt the said *Madder* and Chyrurgeon, that *Madder* charged him to ask no more Questions, and he charged the Men wounded not to answer a Word: And further, order'd him back to the Shore, which the Chyrurgeon was forced to comply with. Where the Chyrurgeon meeting with *Francisco de Olivera* their Linguister, asked him, whether he saw any of the *Worcester's* Men, that had carried the foresaid Ship so taken, into *Keilon River*? And the Linguister answered, that he had not; but that they were some of the *Worcester's* Company, who, as soon as they had brought her in, and made her fast, took their Boat, and went directly on board: The Ship taken being carried into *Keilon River*, as said is, where she was left, with her Yards and Top-Masts down, all unrigged. And the said Linguister told the Chyrurgeon further, That one *Cogo Commodo* complained he had bought the said taken Ship too dear; whereby it appears, that the said Ship taken by Violence, was sold in Manner foresaid.

Likeas, for further Evidence of the said Piracy, since the Time that *John Reynolds*, one of the Pannels, was seized with the rest, for his Accession thereto; there was found a Letter wrote to him by one
 Sarah

Sarah Newlands, bearing Date the 6th of *January*; wherein she tells him, That tho' he had been basely wicked, yet she should be sorry to hear he were guilty of any thing that might bring him to the Gallows: And therefore advises him to confes; adding, That in his own Letter, which he had seen, he says, that some of their Men had basely confessed; which, says she, implies, that they were guilty. And when *Reynolds* was questioned upon his Letter, he acknowledged that he had wrote a Letter to his Wife, the said *Sarah's* Sister, which had occasioned her writing the said Letter to him: And thereupon he produced the Copy of the said Letter to his Wife, which agrees with what *Sarah* says; as the said Copy, and *Sarah's* Letter (both put in the Clerk of the Admiralty's Hands, to be seen by the Pannels) bear.

And further: *George Haines*, one of the Crew of the said *Worcester*, since his coming to *Scotland*, and when at *Bruntisland*, being asked by one *James Wilkie*, Taylor, Burgefs of *Edinburgh*, some Day in *October* last, about his Brother *Andrew Wilkie*, who went Chyrurgeon in Captain *Drummond's* Ship; if ever the said *Haines* had seen the said *Andrew Wilkie* in his Voyage? He flew in a Passion, and said, *What Devil was his Concern with Captain Drummond?* Upon which, *James Wilkie* forbearing a little, till he should be calmer, ask'd the said *Haines* again, Whether he had heard or seen any *Scots* Ships, coming to or from the *East-Indies*, during their Voyage? *Haines* answered, That when they were upon the Coast of *Malabar*, a *Dutch* Ship inform'd them, That one Captain *Drummond*, commanding a *Scots* Ship, and having a Sloop in Company, was turn'd Pyrate: Upon which *Haines* said, they mann'd their Sloop to be in Readiness, but saw him not: Only a little thereafter *Haines* added, That he had in his Custody the Time the said Ship the *Worcester* was seized, which he would not have fallen into the Seizer's Hands for twice the Value of the Ship; but that he had thrown it overboard: Adding further, That there was still in the Ship what would never be found by the Seizers, unless they pull'd her Board from Board, though he knew where the Thing lay.

Likeas, when after the said *James Wilkie's* Departure, one *Anna Seaton* did, at his Desire, further enquire at *Haines* about Captain *Drummond's* Ship; he answered, That they had a Design to pump him, but that they should not be the wiser of him. At all which Passages, *Kenneth Mackenzie*, an Indweller in *Cannongate*, was a present Witness. And the said *Anna Seaton* did further tell the said *Kenneth Mackenzie*, That when she expostulat with *Haines* for his being in a Passion, as said is; he answered, That he knew more of Captain *Drummond* than he would tell at that Time: And that if the said *Andrew Wilkie* was with Captain *Drummond*, he would not be seen again.

And further, The said *Anna Seaton* heard the said *Haines* own and declare their said Wickedness. And she, and *William Wood*, one of the Gunners of Her Majesty's Artillery, with one *John Henderson* Writer in *Edinburgh*, being in *September* last at *Anna Seaton's* Mother's House; after having drank a Health or two, the said *Haines*, who was there present, fell in a melancholy Fit; and expres'd himself, *That it's a wonder that since we did not sink at Sea, God doth not make the Ground to swallow us up, for the Wickedness that has been committed during the last Voyage on Board of that Old Bitch Bess*; pointing to Captain *Green's* Ship. And further, the said *Haines* said, That if

what the said *John Madder* had done in the said Voyage were well known, he deserved as much as his Uncle *Madder* met with at *Amsterdam*; who was there burnt in Oil, for attempting to burn their Ships. And when, at another Time, the said *Anna Seaton* told *Haines*, That she had an old Sweet-heart who went away with Captain *Drummond*, and would gladly hear some Tidings whether he was dead or alive. The said *Haines*, who was then a Suitor of *Anna Seaton's*, assured her, she would never see him again, if he was in *Drummond's* Ship.

And for a further Confirmation of the Truth of the said Piracy, when a Committee of Council was sent to *Bruntisland*, to cause Search and unload the said Vessel; it was found, by the Skippers and Seamen employ'd, that the Goods aboard her were not stowed as Merchant Goods used to be; but were found in the Hold in such Confusion, as if taken by Piracy, and no otherways. Likeas when the said Ship the *Worcester* was seized, the said *John Madder* being question'd about Captain *Drummond's* Ship; he took out of his Pocket, or at least shewed in his Hand, the Seal of the *African Company*; which he could never have lawfully got.

By all which, they being joined and connected together (as a Discovery of such a Wickedness practised in such remote Parts, and so industriously and obstinately endeavour'd to be concealed, deserves to be) the samen, in all the Points and Circumstances thereof; at least such, and so many of them as are relevant, and are offer'd to be proven by a cumulative Probation; do plainly amount to such a plenary Evidence, as may fully convince all impartial Men, that the foresaid Captain *Green* and his said Crew, are all and each of them guilty, Art and Part, of the foresaid Crimes of Piracy, Robbery and Murder, or one or other of them above charged. Which being found by a Verdict of an Assize before the Judge of the Admiralty, and the Lords Assessors appointed by the Lords of Privy Council; the forenamed Persons, and each of them, ought to be punish'd by Sentence of the said Court, with the Pain of Death, and Confiscation of their Moveables; to the Examples, and Terror of others, to do or commit the like in Time coming.

Additional Conclusion of the Indictment, at the Instance of Mr. Alexander Higgins, Procurator-Fiscal to the Court of Admiralty, against Captain Thomas Green, &c.

Viz. **T**HAT the Conclusion of the said Indictment given on *Saturday*, the Seventeenth Instant, bearing the Pain of Death, and of Escheat and Confiscation of Moveables, should extend to the Escheat and Confiscation of the said Ship and Cargo, by reason of the foresaid Crime of Piracy: And that the said Captain *Thomas Green, &c.* should answer to the foresaid Conclusion, as thus explained, and extended to the Confiscation of the said Ship and Cargo, as in the Case of Piracy, the foresaid Fifth of *March*, which is the Day of

* Compearance assigned to the said * Appearance. Pannels, or at least upon the 6th, 7th, 8th, or 9th Days of *March* thereafter; as the true Import, or at least a clear Consequent of the foresaid Crime and Indictment given thereupon: The List of Witnesses and Assizers remaining the same, as subjoined to the foresaid principal Indictment.

Sic subscribitur,
ALEXANDER HIGGINS.

PURSUERS.

PURSUERS.

Mr. Alexander Higgins, Procurator Fiscal.
 Sir James Stuart, her Majesty's Advocat.
 Sir David Dalrymple, and Mr. William Carmichael, her Majesty's Solicitors.
 Sir Patrick Home.
 Sir Gilbert Eliot.
 Mr. Francis Grant.

Advocats.

Procurators in DEFENCE.

Sir David Cunningham.
 Sir David Tboirs.
 Sir Walter Pringle.
 Mr. David Forbes.
 Mr. George Alexander.
 Mr. John Spotswood.
 Mr. John Elphinston.

Advocats.

** had nothing against.* The Procurator-Fiscal declared judicially, he ** passed* from Samuel Urlines, Carpenter's-Mate of the Ship the Worcester, Henry Barnes Seaman, and Daniel Stringman Cook of the said Ship; whereupon they were dismissed from the Bar.

Alexander Higgins.

† Time of Prosecution. Her Majesty's Advocat for the Pursuers craved, that the *† Dyet* against Captain Thomas Green and others, contained in that Indictment with him, might be continued.

It was objected by the Pannel's Procurators, that the Dyet could not be continued against them; being contrair to the Act of Parliament for preventing wrongus Imprisonment, and contrair to an exprels Clause therein.

It was replied for the Pursuers, that the Act of Parliament is opposed; which only requires the Dyet of the Trial to be fixed within sixty Days after Intimation, which was done; but then allows to the Pursuers to insist, and to the Judge to determine by a final Sentence, within forty Days, if before the Lords of Justiciary, and thirty Days, if before any other Judge.

*Which Objection, with the Answers and Replies made thereto, being considered by the Judge and Assessors, they * repelled the Objection, and continued the Dyet against the said Captain Green and others, contained in the Indictment against him, till Wednesday next at Nine of the Clock; and ordained the Pannels to be carried back to Prison.*

JAMES GRAHAM, I. P. A.

** indicted.* It was alledg'd by the Procurators for the Pannels, that the Crime ** libelled* being alledg'd to be committed upon the Coast of Malabar, and by Englishmen; they ought to be remitted to be tried in England; and cannot be judged by the Judge of the High-Court of Admiralty and Assessors, who are not Judges competent.

The Procurator-Fiscal and Pursuers Procurators answer'd, That they opposed the Act of Parliament, 1681, which founds the Admiral's Jurisdiction in the Case libelled: Declaring expressly,

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That the High Admiral hath the sole Privilege and Jurisdiction in all Maritime and Sea-faring Causes, Foreign and Domestick, whether Civil or Criminal whatsoever, within this Realm; and over all Persons, as they are concerned in the same: And that he is his Majesty's Lieutenant and Justice General upon the Seas, &c.

*Which * Alledgeance and Answer, * Allegation. with the other Replies and † Du- † further Answer, being considered by the Judge and Assessors; they repelled the Alledgeance in respect of the Answer; and found that the Judge Admiral and Assessors are competent and proper Judges, to || cognosce || inquire into. and determine in the Case and Crimes libelled.*

JAMES GRAHAM, I. P. A.

THE Grounds of the Indictment, at the Instance of the Procurator-Fiscal, against Henry Keigle, George Haines, Samuel Wylcocks, George Glen, Alexander Taylor, and John Bannantyne here present, being fully debated *viva voce*: The Judge of the High-Court of Admiralty and Assessors continue the Dyet, at the said Mr. Alexander Higgins's Instance, against the said Henry Keigle, and other Pannels above-named, till Tuesday the 13th Instant, at Nine a-Clock in the Forenoon; and ordain both Parties to give in their ** Informations* betwixt and that Time; the Pursuer to give in his betwixt and Thursday next at Twelve a-Clock of the Day; and the Pannels to give in theirs betwixt and Saturday next, at Twelve Afternoon thereafter; in order to be recorded in the Court-Books: And ordains the Assizers and Witnesses to attend then, and at the other Dyet upon Wednesday next, against Captain Green and others, ** ilk * every* Person under the Pain of one hundred Merks; and the Pannels to be carried back to the respective Prisons.

JAMES GRAHAM, I. P. A.

CURIA JUSTICIARIA, *Suprema Curie Admiralitatis tenta in Pratorio, vel nova Domo Sessionis Burgi de Edinburgh, septimo Die Mensis Martii, 1705, per Judicem dictae Curiae, & per Honoratissimos Viros, Joannem Comitem de Loudoun, Joannem Dominum de Belhaven, Dominos Robertum Dundas de Arnestoun, Joannem Home de Blackadder, & Joannem Cockburn de Ormiston Assessores.*

Curia Legitimè Affirmata.

Intran.

Captain Thomas Green, Commander of the Ship called the Worcester, now in Bruntisland Harbour.
 Captain John Madder, Chief-Mate of the said Ship.

John Reynolds, Second-Mate of the said Ship.

Thomas Linseed, Assistant to the decess'd Super-Cargo of the said Ship.

James Burn, Boatwain of the said Ship.

James Simpson, Gunner.

Andrew Robertson, Gunner's-Mate.

John Bruckley, Seaman.

George Kitchen, Seaman.

E e e e

All

All of them indicted and accused at the Instance of Mr. *Alexander Higgins*, Advocat, Procurator-Fiscal to the High-Court of *Admiralty*; for the Crimes of *Piracy*, *Robbery* and *Murder*, in Manner mentioned in the Indictment raised against them thereanent, before insert in the Court holden the Fifth of *March* Instant.

P U R S U E R S.

Mr. *Alexander Higgins*, Procurator-Fiscal.
 Sir *James Stuart*, her Majesty's Advocat.
 Sir *David Dalrymple*, and Mr. *William Carmichael*, her Majesty's Solicitors.
 Sir *Patrick Home*.
 Sir *Gilbert Eliot*.
 Mr. *Alexander Mackleod*.
 Mr. *Francis Grant*.
 Advocats.

Procurators in D E F E N C E.

Sir *David Thoirs*.
 Sir *Walter Pringle*.
 Mr. *David Forbes*.
 Mr. *George Alexander*.
 Mr. *John Elphinston*.
 Mr. *John Spotswood*.
 Advocats.

The Grounds of the Indictment at the Instance of the Procurator-Fiscal, against Captain *Green* and other Pannels here present, and the Reasons why *John Reynolds*, one of the Pannels, who is a Witness cited in the *Exculpation, at the Instance of the other Pannels, should be tried first upon the Libel, to the effect, that if †affoizied, he may be adduced as a Witness for the said other Pannels in the foresaid Exculpation, being debated *viva voce*. The Judge of the High-Court of *Admiralty*, and Assessors, continue the Dyet at the said Mr. *Alexander Higgins*'s Instance against the saids hail Pannels, till *Tuesday* the thirteenth Instant, at Nine a-Clock in the Forenoon: And ordains both Parties to give in their Informations betwixt and that Time; the Pursuer to give in his betwixt and To-morrow; and the Pannels to give in theirs betwixt and *Saturday* thereafter, in order to be recorded in the Court-Books: And ordains the Assizers and Witnesses to attend with ilk Person, under the Pain of two hundred Merks; and the Pannels to be carried back to Prison.

J. A. GRAHAM, I. P. A.

* INFORMATION

* Plea, or Brief.

For Mr. *Alexander Higgins*, Procurator-Fiscal of the High-Court of *Admiralty*:

A G A I N S T

Captain *Thomas Green*, Commander of the *Worcester*, and his Crew and Complices.

* Indictment. T Here being two * Libels raised before the High-Court of *Admiralty*, and the Lords Assessors appointed by the Lords of Privy-Council, both at the Instance of the

said Mr. *Alexander Higgins*; but the first against *Henry Keigle*, Carpenter in the Ship called the *Worcester*, now in *Bruntisland* Harbour; *Samuel Urlane*, his Mate; *George Haines*, Stewart of the said Ship; *Daniel Stringman*, Cook in the said Ship; *Samuel Wilcocks*, Chyrurgeon's Mate; *George Glen*, Seaman there; *Henry Barnes*, Seaman there; *Alexander Taylor*, Seaman there; and *John Ballantyne*, Seaman there: And the second against the said Captain *Thomas Green*, Commander of the said Ship the *Worcester*; Captain *John Madder*, Chief Mate of the said Ship; *John Reynolds*, Second Mate of the said Ship; *Thomas Linstead*, Assistant to the deceased Supercargo of the said Ship; *James Burn*, Boatfswain of the said Ship; *James Simpson*, Gunner of the said Ship; *Andrew Robertson*, Gunner's Mate; *John Brucklie*, Seaman there; and *George Kitchen*, Seaman there; all Prisoners.

Both the Libels being the same, the Tenor thereof prefix to the Information is *verbatim* conform to the Indictments on the preceding Pages, in the Court holden the Fifth of *March*, 1705, and whereto this refers.

When the * haild forefaids Pannels * whole were brought to the Bar, and the said Libels read against them; the Procurator-Fiscal declared, That he insisted first upon the first Libel, viz. against the saids *Henry Keigle* Carpenter, *Samuel Urlane*, *George Haines*, *Daniel Stringman*, *Samuel Wilcocks*, *George Glen*, *Henry Barnes*, *Alexander Taylor*, and *John Ballantyne*; and after some Debate moved by the Pannels Procurators, that the Pannels having used the Method prescribed by the Act of Parliament, to bring themselves to a Trial within sixty Days, they ought now all of them to be insisted against; and it being answered, That all that the Act of Parliament required was, That a Day should be fix'd for the Trial within sixty Days after the Charge given for that Effect, the same was done, and also the whole Pannels so far insisted against, that their Libels were read, which fully satisfies that Part of the Act; and that as to further insisting, prosecuting and concluding, the Act of Parliament allowed forty Days further before the Commission of Justiciary, and thirty Days before any other inferior Judicature: So that the Procurator-Fiscal might very well proceed against these contained in the first Libel this Day, and continue these contained in the second Libel till the next Court-Day. The Lord High-Admiral repelled the foresaid Alledgeance made for all the Pannels, and allowed the Procurator-Fiscal to insist against these in the first Libel, the foresaid 5th of *March*, and continued the Dyet against these in the second Libel, till the 7th of the said Month.

It was then alledged for these in the first Libel, No Process, in regard the Crimes charged were libelled to have been done in the *East-Indies* in *Malabar*, far without the *Scotish* Seas, nor was there any Accuser either of the Owners of the Ship and Goods, or of the nearest of Kin of the Persons alledged, Murder'd; so that the Admiral was in competent to this Trial; For the *competentia fori* (*Competency of the Court*) * in Criminals, being founded either in the *locus delicti* (the Place where the Crime was committed) or in the *locus domicilii* (the Place of Habitation of the Pannels) or in the *locus originis* (Place of Birth) neither of these could be subsumed upon in this Case: The Pannels *Englishmen* and Strangers, and the Crimes libelled to have been committed in

* Criminal Cases.

in the *East-Indies*, as said is. And
 * *allowing.* * *esto*, that the Crime of Piracy may
 be tried any where, where the Pirates
 are found, yet that is only where the accused are no-
 toriously such. And farther, tho' the Pannels could

† *Court for
criminal Cases.*

could be only accused before the † Com-
 mission of Justiciary, and not before
 the High Admiral, whose Jurisdiction
 on extends no further than the Seas within the Com-
 pafs of her Majesty's Sovereignty.

To all which it is answer'd by the Pursuer. 1. That
 though the Competency of the Judge in Criminals
 be ordinarily said, to be found either *in loco delicti*
 (the Place where Crime was committed) or *in loco*
domicilii (Place of Habitation of the Delinquents)
 or *in loco originis* (the Place of their Birth) yet there
 is a superior Consideration, and that is the *locus de-*
prehenfionis (Place where they were taken) where
 the Criminal is found and apprehended, which doth

† *Justify or
make good.*

doth found the Judges Competency, *nisi ibi*
reus deprehendatur (except the Crimi-
 nal be apprehended there). And so it is that here
 the Pannels were and are apprehended, which hap-
 pening in the Cause of Piracy, a Crime against the
 Law of Nations, and which all Mankind have an
 Interest to pursue, wherever the Pirates can be found :
 The Procurator-Fiscal's Interest to pursue is thereby
 manifest, and the Pannels being here apprehended,
 cannot decline the Admiral's Jurisdiction as incom-
 petent. 2. As to what is alledged, that the Pannels
 are not libelled to be habitual and notorious Pirates,
 but on the contrary, had and do produce a Commis-
 sion, which frees them of that Suspicion.

It's answer'd, That Piracy being
 † *mentioned in
the Indictment.* † libelled, as to the Particular charged,
 even habitual Piracy is thence pre-
 sumed ; but a single Act of Piracy li-
 belled doth both give the Pursuer a sufficient Title and
 Interest, and likewise founds the Admiral's Jurisdic-
 tion, in respect the Pannels charged for Piracy are here
 found. And 3. The Lord High-Admiral is most
 proper for this Cognition and Trial, because by the

† *Lord Chief
Justice.*

Act of Parliament, 1681, he is declared
 to be † Justice-General upon the Seas,
 which albeit it be limited inwardly to-
 wards the Land, yet outwardly is not
 limited ; so that the Lord High-Admiral is there
 declared to have the sole Jurisdiction in all Mari-
 time and Sea-faring Causes, Foreign and Domestick,
 whether Civil or Criminal, within this Realm, and
 over all Persons, as they are concerned in the same,
 which as to the Seas and all Maritime Crimes what-
 soever, makes the High Admiral Justice-General, as
 said is, without Limitation ; and therefore it is in vain
 for the Pannels to pretend, that if their Cause be cog-
 noscible here, it must at least be tried before the Com-
 mission of Justiciary, since the Lord High-Admiral
 is in this Case fully vested with the Justice-General's
 Power ; and as for what may be the Custom of Eng-
 land, it doth not concern, nor can be any Rule for us.

* *considered.*

† *declining the
Jurisdiction of
the Court.*

And the Lord High-Admiral and
 Assessors having * advised the Debates,
 they repelled the Declinator †, and
 found the Court competent.

‡ *Summoned or
brought to the
Bar.*

Thereafter it was alledged for these in
 the first Libel, That they were conven-
 ed ‡, as having been of Captain Green's
 Crew, and his Complices in the Crimes

libelled ; so that he being their Commander and Cap-
 tain, they could not be put to answer, unless the
 Captain himself was insisted against ; seeing first, it
 was obvious, that he being their Commander and
 Captain, ought first to be answerable. And second,
 That they being under his Command, could not be
 charged for any thing alledged done by them as his
 Crew, unless he were first tried, seeing that he might
 have Defences both for himself and them, which pro-
 bably they could not make for themselves.

To which it was answered by the Pursuer, That
 the Captain and his Crew were not

† *brought be-
fore the Court.* † convened for any thing alledged
 acted by him as their Captain, and by

them as his Crew, but were all con-
 vened as Complices and *socii* (i. e. *Fellow-Crimi-*
nals) and Partakers of the foresaid wicked Crimes
 of Piracy, Robbery and Murder ; which Crimes
 as they could be warranted by no Commission or
 Character the Captain did or could pretend, so
 could they be as little warranted by their Condition
 of being subject to him as his Crew ; for here the
 Saying holds, That they were all *hic socii & facinus*
quos inquinat aequat, (i. e. *they were Fellows in this*
Case, and being defiled with the said Crime, were in
that Respect equal). As also the other

Maxim, That † Wrong has no War- † *Injustice.*

rant ; and therefore, seeing that nei-
 ther the Captain's Character, nor their Condition as
 his Crew, could be pretended as a Defence either to
 him or them ; and that the Libel of the foresaid
 Crimes did charge them all, as being *socii*, and to-
 gether involved therein ; and that without Question,
 in the Case of such an Accusation for such horrid
 Crimes, every one must answer for him-
 self ; the Alledgeance could not be † re- † *regarded.*

spected. Besides that it was evident,
 that if Captain Green, and these in the second Li-
 bel, were all confessing and pardon'd ; yet the first
 Libel against these of his Crew therein contained,
 would still lawfully proceed ; and Captain Green
 himself, and those joined with him in his Libel,
 might be made use of as Witnesses against these
 contained in the first Libel. By all which it was evi-
 dent, that the Trial ought to proceed against these
 in the first Libel, without respect to the foresaid
 dilatory Defence. This being the dilatory Defence
 objected against the first Libel, and
 answered above ; and the † perempto- † *positive.*
 ry Defences against both Libels being
 common and coincident, for the more clear Me-
 thod ; the dilatory Defence proponed also for these
 contained in the second Libel, with the Answers
 thereto, are hereunto subjoined.

The Dilatory then proposd for Captain Green,
 and others (in the second Libel) was, The fore-
 said John Reynolds was convened
 and † impannelled with him ; where- † *indicted.*

as it was acknowledged by the Pur-
 suer, that Reynolds was ashore the Time of the
 Piracy, and other Crimes libelled to have been
 committed by Captain Green, and the rest of his
 Complices ; whereby Reynolds appeared, even by
 the Pursuer's Acknowledgment, to be innocent.
 Like as Captain Green and the other
 Pannels, had raised an † Exculpation, † *a Form of
Law for vin-
dicating any
Person.* and therein had cited Reynolds for a
 Witness : So that according to the
 Method practised in Criminals, Cap-
 tain Green and the other Pannels had good Ground

to demand, that Reynolds might be first tried,
 and so purged from being *Socius Criminis* (a
 Fellow-

† *Condition.* *Fellow-Criminal*) and put in † Case to be a Witness, for the Captain and the other Pannels, to prove their Grounds of Exculpation. For there could be nothing more reasonable, as it was also ordinary, than that when a Pursuer did raise a Libel against several Persons (whereof some were innocent, and might be Witnesses for the other Criminals and Pannels) these other Pannels might justly crave, that such as they alledged to be innocent, might be first tried and purged, and so made capable to be Witnesses; since otherways any malicious Pursuer might include both the Defenders and all their Witnesses in one Libel: And thus by making the Witnesses *Socii Criminis* (*Fellow-Criminals*) in the Libel, prejudice the Defenders of all their Evidences and Defences.

To which it was answer'd for the Pursuer, That he acknowledged, that when such a Course was taken, to include both Actors and Witnesses in one Libel, with a Design to make the Witnesses (which the Actors were to use *Socii Criminis*, *Fellow-Criminals*) and so to deprive the Actors of their Defence,

and the Probation thereof; these Actors might, and were allowed to † condescend upon those whom they intended to use as Witnesses, and at the same Time to propose a Ground of Exculpation for them; and so crave that they might be first tried upon the foresaid Ground, to the effect that if thereupon acquit, they might be in Case to be Witnesses. But this could never be pretended to by any of the Pannels: For an antecedent Trial of such of their *Socii* as they alledged were innocent, and to be their Witnesses unless at the same Time the Pannels did condescend upon the Ground of their Innocence, or upon the Ground of their Exculpation, whereupon they desired them to be first tried: For otherways there could be nothing more groundless, and (in effect) manifestly tending to elude all Criminal Proceeding against Complices of the same Crime, than to allow any of them at Random to crave others to be first tried; and so the Trial to proceed of one single

Person after another, until all should be † affoizied. Whereas the true and plain Method was, and is, That the Pursuer insists against such as he pleases, either singly or jointly; and unless some ‖ Speciality be alledged, why the Trial of one should proceed before the Trial of another, it never was, nor could be left to the Arbitriment of the Pannels. And thus it was practised in all the Instances alledged by the Pannels, of trying such as were impannelled for *Socii Criminis* (*Fellow-Criminals*) to be first purged, in order to be Witnesses, *viz.* That the same was never allowed, unless some Ground of Exculpation was positively alledged for clearing of their Innocence. And therefore, unless Captain Green, and the other Pannels, will positively offer to prove, that Reynolds (whom they would have first tried) was *alibi* (*elsewhere*) and not present in the Action; their arbitrary Demand of having him tried in the first Place, without any Reason assigned, cannot be regarded. Which Debate being heard, the Lord High-Admiral and

Assessors † superseded to give Answer, until the Defenders should give in their other Defences, and all should be informed upon together.

These being the Preliminary Defences, separately proponed by the Persons convened in the first

and second Libels; the following Defences were proponed in common, by the Defenders in both Libels.

And 1. That the Libel was informal and insufficient, as being too general and indefinite. And 2. That it did not † condescend upon Day and Place. And 3. That the Qualifications whereupon the Relevancy appeared to be founded, were wholly ‖ irrelevant. And 4. That the additional Conclusion was groundless and unwarrantable.

† *name.*

‖ *insufficient, or not to be sustain'd.*

And as to the first of these Defences, it was alledged, That the Libel was informal and insufficient, as being too general and indefinite; not condescending upon the Name and Designation of the Ship † wrongously attacked, nor upon the Persons and Designations of these alledged to be murdered, nor upon the Quantity and Quality of the Goods alledged to be robbed and spoiled: All which ought to be done, seeing that Criminal Libels ought to be certain, and not general and indefinite; whereby also the Defenders might be prejudged of Defences, that might arise to them upon a particular Condescendance. As for Example; if the Name and Designation of the Ship were condescended on, they might prove the same Ship to be yet existing: And so of the Persons alledged murdered, they might prove them to be yet alive: As also, that the Goods alledged robb'd, were yet extant, and lawfully disposed on by their Owner.

† *wrongfully.*

To which it was answered by the Pursuer, That he opposed his Libel, which was libelled as definitely as the Thing would allow: For it being libelled, that the Pannels did, without any lawful Cause or Warrant, attack a Ship sailed by her own Crew, and having her own Cargo aboard, and that they over-master'd the said Ship in hostile Manner, and murder'd the Men, and robb'd their Goods. These were certainly Crimes manifest in themselves; and if the Pannels had acted them in such Manner, as to destroy the Ship and the Men, and embezled the Cargo, so as no farther Knowledge could be had thereof, it was only an Aggravation of their Villany and Wickedness, but could never hinder the Accusation to proceed; seeing that whatever the Ship, or Men, or Goods were, it was certainly Piracy, Robbery and Murder, to attack a Ship † hostilely, and to destroy the Men, and rob the Goods. And further, A Condescendance was not at all in this Case necessary, seeing that any such Condescendance could be no Ground of Exculpation. For whether the Ship was of such a Name and Designation, or of another; or whatever the Men and the Goods were, yet the Crime was still the same; *viz.* To attack and invade a free Ship, without any Cause or Warrant, and to kill her Men, and rob her Goods.

† *in hostile Manner.*

And further; It's very well known in our Criminal Practice, that Robberies and Depredations are sustained, albeit neither the Quality of the Goods nor their Owners be condescended on: And, in effect, the Pannels their Defence of Indefiniteness upon the Ground foresaid is such, that if even in the Road of *Leith*, before Hundreds of Spectators from both Coasts, one Ship should attack another, and hostilely invading her, should destroy her Men,

seize

seize her Goods, and sink the Vessel, without suffering either Vessel, Men, or Goods to be known; there could be no criminal Libel upon it; because forsooth, tho' Hundreds see the whole Action, yet it could not be more definitely libelled; save that the Commander and Crew of the one Ship attack'd the other hostilely, and destroyed her Men, and seized her Goods, and sunk her without further Condescendence; which were most absurd. And therefore, the Libel, as it's libelled, both as to Ship, Men, and Goods, attack'd, murder'd, and robb'd, without any just Cause or Provocation, is both sufficiently definit and most relevant.

And whereas the Defenders alledged, this Indefinit libelled should the rather be rejected, because that the Pannels were clothed with Commission; which tho' they did not plead to exculpat the particular Charge brought against them, yet was always a Ground of Presumption that they acted lawfully; unless the contrair were made appear, by a particular Condescendence.

It was answered, That nothing did charge the Pannels more home than the pleading of this Commission; in so far as first, They neither could, nor durst plead it, to exculpat the Piracy, Murder, and Robbery charged. 2. It did not so much as make any Presumption for the Pannels; because the very Tenor of the Commission obliged them to keep a particular Journal of whatsoever Vessel they should attack hostilely; and their Journals were produced by themselves, and no such Thing appeared in their Journals. And therefore it was manifest, that their Pretence of a Commission, is only the more wickedly to cover their Villany; since they can alledge nothing acted suitably to their Commission, but that their own Journals

† *Refutes.* † redargues them.

The second Defence alledged by the Pannels in both Libels, was, That the Libel was still defective and imperfect, wanting Day and Place; in so far as the Place was generally designed the Coast of *Malabar*, which is of a long and vast Tract; and the Day was one or other of the Days of *February, March, April, May*, which is indefinite, and as good as no Day. And Day and

Place were not only requir'd to be condescended on by our old Law † *Quon.* † *A Book so called.*

attach, but the Condescendence is also necessary for the Defender's Exculpation; seeing that if Day and Place were condescended on, he might then prove himself *alibi (elsewhere)* and so elude the Libel, which now he cannot do.

To which it was answered, That the Condescendence in the Libel, as to Day and Place, is sufficient; because the Facts objected are thereby declared.

2. Day and Place are never essential to a Libel, except where either the Nature of the Crime, or its particular Specification requires it; for then indeed it must be distinctly and positively libelled. As if a Man either charge another, or aggravate his Crime, by its being a Breach of the LORD's Day; then the LORD's Day must be condescended on. Or if a Man libel another for beating, or drawing his Sword within the King's Palace; where the Place is also essential. But as to other Crimes, which of their own Nature are Crimes at all Times; for what can the mention of Day or Place signify in such Crimes, as at all Times, and in every Place, are Crimes without Exception. And such are the Crimes libelled. But,

3. If it be said, that the condescending on Day and Place, is necessary to afford the Defender his just Exculpation of *alibi (being elsewhere)*: It's answer'd, That in that Case, the Defender may put the Pursuer to condescend on Day and Place, for proving his Exception of *alibi (being elsewhere)* as said is. But then, in common Sense and Law, it must be upon this Condition; That the Defender acknowledge the Crime charged to have been committed; and only endeavours to exculpat himself by offering to prove *alibi (being elsewhere)* and that more pregnantly than the Pursuer offers to prove his Indictment. For what Sense or Reason is there, that the Pursuer should be put to condescend positively on Day and Place, in Crimes that are Crimes at all Times, and every where; unless it be for this very Reason, that the Defender acknowledging the Crime, offers to purge himself by the Exception of *alibi (being elsewhere)*? And therefore, since Day and Place are libelled in such a just Latitude, as may declare the Facts and Crimes charged; and that the Defender, on the other hand, doth not acknowledge the Facts and Crimes themselves, and offer to clear themselves by the Exception of *alibi (being elsewhere)* there needs no further Condescendence. And this is the constant Opinion of Lawyers, and the perpetual Custom of our Practique.

The third Defence proponed for the Pannels, was, as to the Qualifications of the Libel, That they were no ways relevant, nor could be regarded to infer the Conclusion of the Libel, in as much as, 1. There was here no *corpus delicti*, visible Effect or Subject of the Crime, offered to be proven, which is always necessary, and principally where the Crime is offered to be proven *per presumptiones & indicia*, by Presumptions and Tokens: For there *cum constat de corpore delicti*, when the Subject of the Crime is visible, this sustains the Presumptions, and gives the *indicia*, Tokens or Signs, their just Weight.

To which it was answered, That the Pannels Procurators appear to be in a mistake, either as to what is the *corpus delicti*, the Subject of the Crime, or as to what is meant by it: And for clearing of this Point, it is to be considered, the Crimes are of two Natures, some *cum effectu permanente*, with permanent Effects, as the killing of a Man, or the burning of a House; in which Cases, the dead Body, and the Rubbish, are permanent Effects: But other Crimes have no such permanent Effects, as treasonable Plotings, Falshoods, Blasphemies, and the like, where indeed there is no such *corpus delicti*, Subject of the Crime, as in the former Crimes; but here all the Crime consists in *facto & animo*, in the Fact and Way of doing it; and the Fact, tho' transient, yet if *doloſe*, unjustly done, makes the Crime. And therefore, according to this Distinction, the *corpus delicti*, Subject of the Crime, is never requisite to be proven, but in the foresaid Crimes that leave permanent Effects; and neither then also, unless the Crimes be libelled with these Effects: For if it should be libelled, for Example, that a Murderer not only killed, but burned the Body to Ashes, or drowned it in the Sea, there would be no farther need to prove this *corpus delicti*, Subject of the Crime, but only to prove the Fact of killing, and killing *doloſe*, unjustly, in which indeed the Essence of the Crime consists. And thus in Confessions, as well as in Libels; if a Man confesses a Murder, and yet the Body murdered no where appears; then the Confession is not rashly to be laid hold upon, because it may proceed from Design, or Melancholy: But yet even in this Case, that

that the Confession should bear not only the Murder, but the destroying of the Body murdered, by Fire or Water, as said is, then all the Enquiry would be, whether the Fact of Murder be proven or not? Which Things, if applied to our present Case, where it is expressly libelled, not only that the Pannels invaded the Ship by Piracy, but that they threw the Men murder'd over-board into the Sea, and also sold the Ship; all the Enquiry that remains is, whether this Fact was so done or not? And the Libel is most relevant, tho' neither Ship or Men appear. And yet farther,

if the Pannels Procurators will still be
 † *dull or un-* so † grassier as to require a *corpus delicti*, Subject of the Crime, when it's
reasonable. expressly libelled, that the Effect of

the Delict was destroyed and put out of the Way, they may satisfy themselves, that the Goods robbed are still extant, and were found on board of Captain Green's Ship: And therefore 'tis plain, that in this Case, and to sustain the *Indicia*, Tokens and Qualifications libelled on, there needs no farther either Condescendence or Proof of the *corpus delicti*, Subject of the Crime, which was industriously destroyed.

But, secondly, It was objected, That all the Qualifications are insufficient and remote, and at best but probable: Whereas the known Rule is, that Crimes must be proven either *per Testes*, by Witnesses above Exception, or *per documenta clarissima*, very clear Proofs, or *per indicia indubitata*, undoubted Tokens: None of which hold in this Case; for as for the *Indicia*, Tokens, there is not one of them, but take the same singly, as the hearing of Shooting on the Shore, the seeing the Ship *Worcester*, having another lying at her Stern, the Boats coming ashore for Water, and the Crew saying, *they had been a Busking, & sic de ceteris*, and so of the rest; but take them singly, and they may all have a good and innocent Construction: Nor can it be said, that jointly they become stronger, and fortify one another, as single Arrows easily broken when apart, yet cannot be broken in a Sheaf, because that all the Qualifications and *Indicia*, Tokens in the Libel, with the foresaid Constructions, may be put upon them, the Constructions will still take off the Face; besides that, it's well known, that there are some *Indicia* only *probabilia*, some Tokens only probable, and that the Law requires *Indicia indubitata*, undoubted Signs; it being still the safer Side to spare doubtful Innocents, than to condemn only presumed and probable Guilt. To all which is to be added, That's the common Opinion of Doctors, that Presumptions can scarce ever conclude *ad penam ordinariam*, to ordinary Punishment, but at the most only *ad penam arbitriariam*, to Punishment at Pleasure of the Judge: And Mackenzie in

† *A Book so* his † *Criminals*, says, "Presumptions
called. "are only founded on *may be's*, which

"may not be; and to allow Crimes
 "to be proven by Presumptions, would leave
 "Judges to be Arbitrary." So that the common Opinion runs against Presumptions. But,

To all this it's answer'd, That yet it is clear Law, that Crimes may be proven *per indicia indubitata*, by undoubted Tokens, which in Law are no more than violent Presumptions, *quæ fidem extorquent*, that force a Belief: But the Truth is, That in this Case the Pursuer hath not only *indicia indubitata*, undoubted Tokens, but likewise positive Witnesses, and also Documents in Writing; which all being conjoined, do make a satisfying Evidence, and fix a clear Conviction; which is the utmost Design of Probation.

But secondly, it's most certain, both
 † *Practice.* in Law and † *Pratique*, that many

Crimes are only discover'd and proven *per presumptiones & indicia*, by Presumptions and Tokens; and that the Doctors in several Crimes, especially these more atrocious, as Treason, Piracy, Forgery, and the like, where Wickedness endeavours most industriously to hide itself, do allow and approve Probation *per Indicia*, by Tokens, as most necessary for the punishing of these Crimes. It were needless to multiply the Citations both from the Law and Doctors, that might be adduced in this Case, as l. 3. § 2. *D. de Testib.* where the Rescript bears, *Quæ argumenta ad quem modum probandæ, cuique rei sufficiant nullo certo modo satis definire potest*: "The Arguments
 "to be used, and the Manner of proving every
 "thing sufficiently, can't certainly be defined, and
 so forth: and so concludes, *Non utiq; ad unam probationis speciem cognitionem statim alligari debere, sed ex sententia animi tui, te æstimare oportere, quid aut credas aut parum probatum tibi opinaris.* Item. l. 22. cod. ad legem Corneliam de falsis, ubi falsi examen inciderit tunc acerrima fiat indagatio, argumentis testibus scripturarum collatione, aliisque vestigiis veritatis, &c.

"You are not to be tied in taking Cognizance of
 "a Matter to one Method of Probation, but you
 "must act according to your own Judgment, and
 "consider what you are to believe, and what you
 "think not fully proved. Item, &c. when the Fal-
 "shood of a thing is to be enquired into, then a
 "most strict Search is to be made, by Arguments,
 "Witnesses, comparing of Hands, and other Signs
 "of Truth, &c." By which Law it's plain, that
Indicia & Presumptiones, Tokens and Presumptions, have place, and may make full Faith; and how can it be otherwise, since first, it is certainly the Interest of Mankind that Crimes be punish'd. 2. It's no less certain, that Crimes endeavour to cover themselves. 3. That Proof or Probation is only to make an Evidence for Discovery. 4. That the End and Standard of this Discovery, and of all Probation, is the satisfying Conviction of the Judge that has Power to punish. Now if most Crimes be committed without Witnesses, and yet do otherways appear certainly to be committed; and if this Certainty arise from Presumptions, and be withal satisfying, it is just the same as if the Crime was proven by many Witnesses. And thus Matheus de Criminibus, Tit. de Probationib. cap. 6. *per totum*, and Gail. lib. 2. Obs. 149. Numb. 9. where he reasons most justly upon Probation by Presumptions, where there is a Difficulty by Reason of the Want of Witnesses; and still brings the Matter to this true Period, That whatever way Faith be fully made to the Judge, either *per Testes*, or *per Indicia*, or *per Presumptiones*, either by Witnesses, Tokens, or Presumptions, the End of Probation is attained, and so the Evidence sufficient.

The Procurators for the Pannels alledged, That this were to make Judges too arbitrary; but tho' it hath indeed been the Care of all Lawyers to prevent Arbitrariness, yet it's most certain, that where Evidence doth only rise as Providence offers, and Circumstances concur, the Arbitriment of the Judge must take Place, and the Safety of Mankind doth precisely lie here in the Integrity and Discretion of the Judge, helped indeed by some Rules of Law, but no ways bounded or fix'd to precise Rules, which the Matter will not bear. And therefore we see, that even in the most certain Manner of Probation, viz. by Witnesses, and the highest Law of it, *that in the Mouth of two or three Witnesses shall every Thing be established*. There is still an Arbitriment insinuate as to the Discretion of the Judge, or otherways the Law would not have said, two or three

three, but would have fixed the Number precisely; whence it is most certain, that in all Probation there is an Arbitriment of Discretion, and that tho' this Arbitriment may be bounded by some Rules, yet the ultimate and true Standard of all Probation, is the satisfying Conviction of the Judge, according to his best discerning.

These things then premised, viz. That a Proof may be sufficient, *per Indicia & presumptiones*, by Tokens and Presumptions, the Application to the present Case is plain; for where the Procurators for the Pannels would take off the Qualifications, as separately inconcludent, and at best probable, it is clearly captious; it being certain that many *Indicia*, Tokens, conjoined and connected, as in this Case, may make a sufficient Evidence, and that here *quæ non prosunt singula multa juvant*, i. e. "Those Things which taken singly, are of no Effect, yet many of 'em together are." And thus, if first the Probation that shall be offered, of the hostile invading the other Ship, by the Pannels be laid down and thereto added the Surgeon's Declaration of other Circumstances, with all the other Qualifications in the Libel, they will certainly force a Faith and full Persuasion upon all rational Men, tho' separately they cannot have that Weight; one Witness proves not, yet two prove, and in some Cases two are scarce sufficient, but three are beyond Exception. If then even in Witnesses there be a mutual and fortifying Concurrence, the same must also be admitted in Presumptions & *Indicia*. So that upon the whole, the Pursuer craves no more, than that every Man that hears this Libel, and shall hear its Proof, lay himself fairly open, without any Prejudice to the Light arising naturally from the Matter itself, and its Circumstances, and the Proofs and Confirmations thereof, as they are set down in the Libel; and if he do not wilfully resist, he will certainly be satisfied to a full Conviction.

There are indeed hidden Crimes, and such as are said to be of * difficult Probation, and the most atrocious, as Treason, Assassinations, Piracy, Forgery, are ordinarily most hid; and Doctors say with Reason, that their Presumptions ought to be examined, *acerrima indagine*, with the strictest Scrutiny; but all this should be far from impressing any with the Prejudice, as if a satisfying Evidence may not be found in these Cases. And therefore since all pleaded by the Pursuer, is, that first his complex Probation *per Testes & Indicia*, by Witnesses and Tokens, may be fairly received. 2. That concurring and coming together, they may be allowed their just Weight. And 3. That if that just Weight, and the Evidence that attends it, be satisfying, it may be held as concludent. It's clear as the Sun-Light, that no Stretch is intended, but Justice fairly prosecuted: And tho' in this Case of such an extraordinary Crime, and where so much Evidence appears, the Pursuer might even, according to the Claim of Right, press the Supplement of Torture, yet he contents himself to insinuate, that tho' this may be both just and necessary, yet he is hopeful, the Force of his Evidence may otherways prevail.

The fourth Particular is the additional Conclusion; but as to that Conclusion, it is so natural in itself, and so well fortified by the Authority of Doctors, and so certain, not only in the Case of Counterband, but even of other forbidden Good, that nothing needs be added; for since every Pirate is presumed to have the Ship and all in it at his Command, as his own; and since the Ship is certainly the Instrument, as well as the Goods are presumed to be the Effect of Piracy, it follows naturally, that the Con-

fiscation of both Ship and Goods should be a Part of the Pains concluded.

In respect whereof, &c.

Here follows the Laws, and some other Quotations used in the Debate, where they are also *English'd* in their proper Places.

L. 2. §. 2. *Ejusdem quoq; Principis extat rescriptum ad Valerium verum de excutienda fide testium, in hæc verba: Quæ argumenta ad quem modum probandæ cuique rei sufficiant, nullo certo modo satis definiri potest, sicut non semper, ita sæpe sine publicis monumentis cujusque rei veritas deprehenditur, alias numerus testium alias dignitas & auctoritas, alias veluti consentiens fama confirmat rei de qua quæritur fidem, hoc ergo solum tibi rescribi possum summatim, non utique ad unam probationis speciem cognitionem statim alligari debere, sed ex sententia animi tui, te æstimare oportere, quid aut credas aut parum probatum tibi opinaris.*—"The true Rescript of that Prince to Valerius, about enquiring into the Credibility of Witnesses, is also extant as follows. What Arguments are sufficient to prove any thing, cannot certainly be determined; for tho' not always, yet it many times happens, that the Truth of a Matter is found out without publick Monuments. Sometimes the Number, sometimes the Dignity and Authority of the Witnesses, and at other times common Fame confirms the Truth of the thing in Question. I can only therefore enjoin you, in short, that in your Enquiry, or Examination into a Matter, you are not to be tied to any one Sort of Proof; but you must judge according to your own Conscience, what you think to be proved, or not proved to you."

L. 22. C. ad Legem Cornelium de falsis. *Ubi falsi examen inciderit, tunc acerrima fiat indago argumentis, testibus, scripturarum collatione, aliisque vestigiis veritatis: Nec accusatori tantum questio incumbat, nec probationis ei tota necessitas indicatur; sed inter utramque personam sit Judex medius: Nec ulla interlocutione divulget quæ sentiat; sed tanquam ad imitationem relationis, quæ solum audiendi mandat officium, præbeat notionem: Postrema sententia, quid sibi liqueat proditurus:—"When you are to enquire into the Falshood of Evidence, you must make the strictest Inquisition that's possible, by Arguments, Witnesses, comparing of Hands, and other Signs of Truth. Neither must the Accuser only be question'd, or the whole Charge of the Proof be laid upon him: But the Judge must act an indifferent Part betwixt the Plaintiff and Defendant; and by no means divulge his Opinion, but give both Parties the Hearing, and at last pronounce according to his own Judgment."*

Matheus de Criminibus, Lib. 48. Dig. Tit. 15. de Probationibus, Pag. 675. Itaque si cum uno illo Teste nulla concurrant argumenta, nequaquam audiendus erit: sed cum Paulo dicendum in Lege duo 30 d. de Testam. tut. non Jus deficit, sed Probatio. At si argumenta alia concurrant, audiendus: Non enim necesse est unum Crimen, uno & eo Probationis, genere ostendi, veluti testibus tantum vel tabulis, vel argumentis. Possunt & diversa genera ita conjungi, ut quæ singula non nocerent, ea universa tanquam grando reum opprimant. L. 3. Sect. 3. *ejusdem d. de Testib. Hoc est, quod aliis verbis dicitur plures Probationes imperfectas posse conjungi.*—"Therefore if with that one Witness there

“there be no concurring Arguments, he is not at all to be regarded: But we must say with *Paulus*, in *Lege* duo 30 d. de *Testam. tut.* The Law is not defective, but the Proof. But if other Arguments concur, he is to be regarded: For it is not necessary that one Crime be made evident by one manner of Proof only; as by Witnesses, by Writing, or by Arguments only: For several Sorts of Proof may be so conjoined, that those which taken alone, would not affect the Criminal, yet being put all together, come upon him, and overwhelm him like a Storm of Hail.” L. 3. Sect. 3. of the same D. concerning *Witnesses*; “That is, as it is expressed in other Words, several imperfect Proofs may be join’d together.”

Gail Obs. 66. Num. 12. P. 416. *Et regulariter Testes singulares plenam Fidem faciunt, quando aliquid ingenere probandum est: puta Titium esse infamem aut furiosum, quo licet singulares sint respectu actuum, tamen si ratione finis convenient, integrè probant.*—“And regularly single Witnesses make full Proof, when any thing is to be proven in general; for instance, that *Titius* is an infamous Person, or a Madman: For tho’ the Witnesses be single in respect of the Acts, yet if they agree in the End, the Proof is full.

It may be easily granted, that *regulariter Indicia debent esse indubitata, ad condemnandum reum*: “That regularly Presumptions ought to be uncontrovertible, when a Criminal is to be condemn’d upon them.” But at that same time it must always be owned, that there are Crimes excepted from the Rule, by the general Opinion of the Doctors; such as *Crimen Læsæ Majestatis*, & *Crimen Assassinii*, Treason and Assassination; of which last Sort, the Crime of Piracy is the most atrocious. And therefore *Giurba*, in *Concil.* 22. Num. 5. saith, *Sed Assassinii qualitas homicidio adjecta, novam constituit Delicti Speciem*:—The Quality of Assignment added to Murder, forms a new Sort of Crime. Num. 17. *In Assassinio omnia procedant quæ in Criminibus exceptis*:—In Assassination, all things are to proceed as in excepted Crimes. And Num. 18. *Assassinii Crimen, ob illius Atrocitatem æquiparatur Crimini Læsæ Majestatis*:—The Crime of Assassination, because of its Atrociousness and Enormity, is made equal to Treason. And then Num. 22. he concludes, *That in Probatione Assassinii, probabilia sufficiunt Argumenta*:—In the Proof of Assassination, probable Arguments are sufficient. And *Mascard*, de *Probationibus*, *Conclus.* 1228. Num. 77. *In Crimine Assassinii probabilibus Argumentis probari potest*: Assassination may be proved by probable Arguments. And Num. 78, 79, 80, and 83. he names the other atrocious Crimes, where the like Probation is sufficient; and in that same Conclusion, Num. 51. *Quod ex multis Indiciis simul junctis, resultat plena Probatio etiam ad quem criminaliter condemnandum*:—Many Presumptions joined together, make full Proof to condemn any Man in a Criminal Case. And *Quest.* 8. Num. 8. *Probatio per Evidentiam omnibus est potentior, & inter omnes ejus generis major est illa, quæ sit per Testes de visu*:—Proof by Evidence is the strongest of all Proof, and especially by Eye-Witnesses. And *Conclus.* 831. Num. 4. *Probatio per Conjecturas & Indicia, in his quæ difficilia sunt probata, & clandestinè committuntur, habentur pro evidenti & clara Probatione*:—Probation by Conjectures and Presumptions, in Things hard to be proven, and clandestinely committed, are held to be good and evident Proof.

tion by Conjectures and Presumptions, in Things hard to be proven, and clandestinely committed, are held to be good and evident Proof.

Carpzovius, *Quest.* 223. Num. 57. *Secus tamen Res se habet, si plura Indicia concurrant & conjunctim reum aggravent, quorum unumquodque per testem singularem probetur; nam una Presumptio aliam jurat, plurimæque Indicia conjuncta fidem faciunt*:—But the Matter is otherwise, if many Presumptions concur, and load the Defendant; of which any one may be proved by a single Witness: For one Presumption strengthens another; and many of them joined together, make Proof.

And in the Trial of *John Swintown* for murdering of his Wife, there was no direct Proof by Witnesses; but the Libel being qualified, the Proof was by a young Girl of 14 or 15 Years, who left *John Swintown* and his Wife alone in the House, and went to the Smith’s Shop to enquire for Letters; but returning, found the Door shut, and therefore went away for a little Space; and then coming back and knocking, her Master opened, and she perceived some Red, like Blood, upon his Shoes. And when she came in, she found her Mistress dead in the † Spence; † *Battery*. which was all she could say. And then another Man declared, that he saw *John Swintown* go from his House to a † Stank, and there wash † *Ditch*. his Shoes. Which *Indicia*, Presumptions, being joined with the Proofs of their ill Agreement, and frequent Quarrellings before, did determine the † Assize. † *Jury*. And tho’ it was strictly objected, that in the Mouth of two or three Witnesses, every thing should be established; and that in the aforesaid Case there was no direct Witness at all, far less two or three; and that even the aforesaid Circumstances were only proven by single Witnesses; yet the Assize found that Evidence in the Presumptions and † *Indicia* laid together, † *Tokens*. that they brought in their Verdict proven; and *Swintown* thereafter confessed, and was executed.

And in effect, unless that *Indicia* and Presumptions be sustained, and even single Witnesses for proving these several Presumptions and *Indicia*; which is called a *Cumulative Probation*, when all the Witnesses and Testimonies concur in idem Crimen, & ad eundem Finem, in the same Crime, and to the same End, Crimes, and these the most atrocious, would escape unpunished.

And therefore, upon the whole, it is most certain, when Presumptions, Qualifications, and *Indicia* concur, and make a full persuasive Evidence; the Probation should be held for as fully sufficient, as the most direct Witnesses; since all that the Witnesses can do, is only to make full Faith in the Matter, which may be otherwise supplied, as said is.

As to the additional Conclusion, it may be † noticed, that *Molloy*, de † *observed*. *Jure Maritimo*, Lib. 1. Cap. 3. *Señ.* 19. Pag. 60. saith, That when a Merchant procures Letters of Mart or Reprize, and then delivers the Commission to Persons to endeavour a Satisfaction; if such Persons commit Piracy, the Vessel is forfeited without Controversy.

INFORMATION for Captain Thomas Green, Commander of the Worcester, Captain John Madder, his Chief Mate, and others; against Mr. Alexander Higgins, Advocate, Procurator-Fiscal of the High Court of Admiralty.

THE said Captain *Thomas Green*, Captain *John Madder*, and others belonging to the Ship called the *Worcester*, being pursued at the Instance of the said Mr. *Higgins*, Procurator-Fiscal, before the High Court of Admiralty, and the Lords Assessors appointed by the Privy Council; for the Crimes of Piracy, Robbery and Murder, conform to two Criminal Indictments, raised at the Instance of the Fiscal. The Case being fully pleaded before the Honourable Judges of Admiralty, and the Lords Assessors; both the Accuser and Accused were ordained severally to inform, as Use is in such Cases.

The Criminal Indictments being holden as repeated, which [†] coincide both as to the Conclusion, and *Media concludendi*, way of concluding; and denied it is needless to repeat some preliminary Defences that were proponed, seeing it seemed just to the Honourable Court to repel the same: And therefore the Pannels proceed to their Defences, whereupon they were ordained to inform. These are of two Sorts; First, [†] Dilator; and Secondly, ^{||} Peremptor.

And first, it was proponed for *Henry Keigle*, Carpenter, and others of the Pannels in the same Indictment with him, That they could not be put to answer, unless the Captain himself were first insisted against; because they being his Crew, and under his Command, they could not be charged with any thing done by them, unless he were first tried.

It was answer'd for the Pursuer, that they were not [†] convened for any thing alledged acted by their Captain, and by them as his Crew; but that they were convened as *Socii*, Fellow-Criminals, and Partakers of the Crimes libelled; which could be warranted by no Commission nor Character the Captain did, or could pretend to: And that they were all charged as being *Socii*, Fellows, and involved together in one Crime; and so every one must answer for himself.

It was replied for the said *Henry Keigle*, and the other Pannels with him, that the Pannels are libell'd against as the Crew of the *Worcester*, under the Command of Captain *Thomas Green*; and that under his Command they did attack a Ship, &c. So that they are here libelled only as Complices, and Accessaries to the Crime alledged; and therefore, according to the Principles of Law, the principal Delinquent ought to be first try'd; especially where the Captain was in Custody, and might be brought to his Trial; and that by the Commission produced under the Great Seal of England, superscribed by King *William*, the said *Thomas Green*, was clothed with a Power, authorizing him to attack and suppress Pirates, which is a Military Power, and consequently implies an Authority and Command over

the Crew of the Ship, to give ready Obedience in all these Matters: So that the poor Pannels, who are of the Crew, have all Reason in the World to contend, That the Captain, whose Actings in these Matters they could hardly well debate, should first pass the Trial upon the Crimes alledged; who might, by Virtue of his Commission, and otherways, [†] exculpate, and defend himself against the Crimes libelled; and consequently, all the Crew that were in Subjection under him.

This Defence the Pannel might perhaps plead, to a further Extent to absolve them entirely; but at present they conceive, it can hardly be denied, the Captain should first undergo the Trial. And there is a great Difference betwixt *Socii Criminis*, Fellow-Criminals, which are either independent upon one another, or if associate under one Head, as *Banditti* and Pirates usually are (which is illegal and unwarrantable Authority taken up) and Persons accused as *Socii Criminis*, Fellow-Criminals, who by Legal Authority are subjected to the Command of others: In which Case, if the Person trusted with the Authority, has transgressed or abused it; if it does not plead an absolute Exemption from the Punishment of the Transgression, at least it should have this Effect, That the Head and Chieftain should be obliged first to his Defence; which it is hoped the Honourable Judges will find just and reasonable.

The other dilatory Defence, proposed for the Captain and others in the second Libel, was, That whereas *John Reynolds*, second Mate, was convened and pannelled with him, as also some others, as *Socii Criminis*, Fellow-Criminals, whom the Captain and other Pannels had cited as Witnesses in their [†] Exculpation; it was both ordinary and absolutely necessary, that these Persons so cited for Exculpation, should be first tried; to the End, that being purged of the Imputation of any Crimes, they might be capable to be Witnesses, for proving the Defences of Exculpation, that the Captain and other Pannels did propose and insist upon, for the Vindication of their Innocency.

It was answer'd for the Fiscal, That he owned, when both [†] Actors and Witnesses were included in one ^{||} Libel, of Design to deprive the Actors of their Defences; the Actors might, and were allowed to condescend upon those whom they intended to use as Witnesses: But then at the same time, they were obliged to propose a Ground of Exculpation for them, and so crave that they might be first tried upon the fore-said Ground; otherways they could not, without such a special Condescendance, [†] intervert the Form of Trial. And there could be nothing more groundless, tending to elude all Criminal Proceedings against Complices of the same Crimes, than to allow any of them at random to crave others to be first tried; and so the Trial to proceed of one single Person after another: Whereas the true and plain Method were, that the Pursuer insist against such as he pleases, either singly or jointly. And unless some [†] Specialty be alledged, why the Trial of one should proceed before the Trial of another; it never was, nor could be left to the Arbitriment of the Pannels. And therefore unless the Captain will offer to prove, that *Reynolds*, and others whom they would have first tried, were *alibi*, elsewhere; their arbitrary Demand

of having them tried in the first Place, without any Reason, cannot be regarded.

It was answered for the Captain, and the other Pannels, That their Demand upon this Point was most consonant to Reason, Law and Form, in Criminal Procedures: That Exculpation, which tends to the Proof of Innocence, and Freedom from Guilt, was most favourable; because it is still presumed, till the Crime be proved. And therefore it is, that Witnesses who are not regularly admitted for proving of a Crime, because of some Exception, will be allowed to prove the Defender's Innocence. And upon this Account it is, that several things in Form are remitted in Exculpation: And there is nothing more material for Defence of Persons accused, against the Prosecutor (who ordinarily is prejudged and prepossessed) to guard them against all the indirect Methods that may be taken by the Pursuer; to preclude the Accused from the usual Means of proving of their Defences, than what is now demanded. And since none can be more proper Witnesses for proving a Pannel's Defence (as for Instance, *Moderamen inculpatæ Tutelæ*, i. e. the Rule of blameless Self-Defence, as Persons said to be present) therefore a violent Pursuer might, in such a Case of Design to preclude the Pannel from his Defence, cite those present as accessary. Upon which Account it is, that both Reason and Law provides, that if the Pannel does offer to prove a relevant Defence, by the *Socii Criminis*, Partakers of the Crime accused with him; the Pursuer must necessarily first proceed to the Trial of these *Socii*, Partakers, who otherways

† *Legal or good.*

would have been led as † habile Witnesses; to the End that being purged, they may be yet habile. This is so plain in Reason, and has been look'd upon as the constant Practice in all Criminal Procedures in the Justiciary Courts of *Scotland*, that it is admired the Fiscal should make any Opposition to it.

He so far owns in his Pleading, that it is Form and just upon the Matter; but would shift it in this particular Case, unless the Pannels would alledge and † found upon a particular Ground of Exculpation, and offer to prove and instruct the same, as that their *Socii*, Companions, cited as Witnesses, were *alibi*, elsewhere; but this is altogether without Foundation. For in all criminal Prosecutions, the Accused are not put to prove their Defences, because the denying of the Libel is a Defence sufficient of itself; and if the Libel be not proved, the Pannel goes free by the Rule *Actore non probante absolvitur reus*, the Plaintiff failing in his Proof, the Defendant is absolved, so that when there are Persons accused as *Socii Criminis*, Fellow-Criminals, who might be very habile Witnesses for exculpating the rest, if they did not lie under the Imputation, when their Trial is first required, that they may be purged of the Imputation, there is no Necessity to propound

† *Making void the Indictment.*

for them any special Defence, † eliding the Libel; seeing the very Denial of the Libel is enough, and their Innocence is presumed, except Guilt be proved. And if the Fiscal will have the Captain, and the other Pannels, to condescend upon what Ground their other *Socii*, Companions cited as Witnesses, should be acquit; they need say no more, but that they ought to be acquit, because the Libel is not true. And is there not the same Reason to acquit Pannels, because the Libel is not proved; and consequently, to render them habile Witnesses for other Persons accused, as if the said Persons were acquit upon a Defence

proponed, eliding the Libel; whereby it plainly appears the Answer given is strained, and does mightily increase the Suspicion against the Fiscal, that he has indicted the Witnesses cited by the Captain, and the other Persons in their Exculpation, of purpose to preclude them from their Means of Defence; and the rather, that the Pannels appeal to the Honourable Judges, if it was not owned by the Pursuer in the Debate, that Mr. *Reynolds* was ashore at the time of the pretended Attack; besides that, the Libel bears the Chyrurgeon, and others of the Crew, were ashore the time of the pretended Action, which frees the Pannels of all Calumny. There can be innumerable Instances given before the High Court of Justiciary in criminal Matters, that where there are several Complices indicted, if any of them have Grounds of Exculpation, which they can prove by others of the Pannels, their Trial proceeds first. This is plainly asserted as uncontested by Sir *George Mackenzie*, in his Book of the Laws and Customs of *Scotland*, in Matters Criminal, *Tit. Excul. Par. 9.* nor does he make any Distinction, or requires that any special Defence should be condescended upon for purging *Socii Criminis*, the Fellow Criminals, to render them habile Witnesses. The Rule is

plain in the Prosecution of † Delicts, † Crimes. before Civil Courts, in order to repair Damages, that if more Persons be cited, as *Co-rei ejusdem delicti*, guilty of the same Crime, and that some of them are necessary Witnesses for proving the Defences proponed for others; the Proof must first proceed against these. And so it was found by the Lords of Session the 24th of February, 1662. *Mackartney* against *Irving*, much more ought it to be in criminal Cases, as lately in the Case of *Refs*, of *Auchnacloch*, against Captain *Monre*, before the Lords Justiciary. Nor is there any Inconvenience from what is alledged, that this should tend to elude all criminal Proceeding against Complices, and occasion the lengthning out of the Trial, to proceed to one single Person after another; for as no time is to be grudged in the Enquiry of such Matters, which concerns the Life of Man, so the Pannels do not propound this preliminary Defence to protect or delay the Trial, and therefore are satisfied, that not only *Reynolds*, but their other *Socii*, Companions, indicted, who are likewise cited in their Exculpation, go to the Trial at one and the same Time. The Captain, and other Pannels with him, do plainly argue thus; Either *Reynolds*, and the other Persons cited in the Exculpation, are guilty or not; if they be guilty, it ought to be found so, for till that be, they are presumed innocent; if not guilty, what Law or Reason is there to preclude them from being Witnesses for the Captain, and the other Pannels Defence; or what Law is there that can oblige them to condescend upon, and propound a particular Defence eliding the Libel, when the Libel is not owned to be true, and that the Pannels have all denied the same? So it is hoped the honourable Judges, and the Lords Assessors, will not preclude them from the ordinary Privilege, which, hitherto, has not been denied to any Pannel.

For if this was allowed, a violent Pursuer might prevent Probation, and render it impracticable. For, suppose one Man kill another in Self-Defence, two Gentlemen walking can testify this; but to prevent the Probation of *inculpata tutela*, unblameable Self-Defence, they are cited as Parties; and they can prove by other two Persons, at a greater Distance, their *alibi*, being elsewhere, which when the Pursuer gets notice of, they are made Parties also; and so

so in infinitum. So that the said violent Pursuer might prevent all Probation, if the Defender were obliged to alledge *alibi*, being elsewhere, for the Witnesses of his Exculpation.

*The * peremptory Defences proposed for the whole Pannels in both Libels, as totally excluding the same as †† Irrelevant, are as follows.*

* Positive.

†† Not good or sufficient in Law.

1. **T**HAT the Libel was irrelevant, as being general and indefinite, not condescending upon the Name, Designation, or any other Sign or Evidence, by which the Ship alledged to be seized might be particularly distinguish'd, nor yet the Persons Names alledged to be murdered, or to whom the Ship and Goods robbed did belong; which seemed to be absolutely necessary in all such criminal Indictments, not only as a Requisite in Form, but in Equity and Reason; without which, Persons accused should be in great Hazard from general and indefinite Libels, and precluded from their Means of Defence, which otherways are obvious, when the Accusation is certain, special, and pointed.

It was answered by the Pursuer, That he had libelled as definitely and closely, as the thing would allow; for it being libelled, that the Pannels did, without any lawful Cause of Warrant, attack a Ship, sailed by her own Crew, and having her own Cargo aboard, and that they over-master'd the Ship, in a hostile Manner, and robb'd the Goods: These were certain Crimes manifest in themselves, and if the Pannels acted them in such a Manner, as to destroy the Ship and the Men, and imbezled the Cargo, so as no further Knowledge could be had thereof, it was only an Aggravation of the Crime, and could not hinder the Accusation to proceed; nor was any † Condescendance here necessary for Exculpation; for of whatever Designation the Ship was, and whatever the Men and Goods were, yet the Crime was still the same; and that it was known in our Practice, Robberies and Depredations are sustained, albeit neither the Quality of the Goods nor Owners be condescended upon; and in effect, the Pannels Defence of Indefiniteness is such, that if in the Road of *Leith*, before hundreds of Spectators, one Ship should invade another, destroy her Men, seize her Goods, and sink the Vessel, whereby none of all these could be condescended upon, there could be no criminal Libel upon it, because of the Defence of Indefiniteness, which were most absurd.

It was replied for the Pannels, That what was said, did not take off the Objection of the Indefiniteness of the Libel, which by our Form and Law can be the Ground of no criminal Accusation; for in all such Procedures, *debet constare de corpora delicti*, the visible Effect or Matter of the Crime ought to appear: that is, that such a Ship is taken by Piracy, such Men murdered, and the like. It is inconsistent with the Nature of a criminal Accusation, that Men should be alledged to be murdered, Ships seized, and these not condescended upon, and by our constant Practice it is so required: Nor can it

be instanced, that ever any such indefinite Libel was sustained. There are no Questions whatsoever that are more nice than these concerning the Life of Man, and therefore the *Englisman Coke*, 7 Rep. *Calvin's Case*, observes, that an Indictment should be most curiously and certainly penn'd; and the *Old Books of the Majesty*, requires several Things to be specially expressed, as the Name of the Parties, Day, Year, Place, Cause of Complaint, and Damage; and as it is necessary in Form, so this Form has been founded upon just Reason, for otherways these Inconveniences should plainly follow from general and indefinite Libels.

First, A Person indefinitely accused of a Crime, as for Example of Murder, without expressing the Person alledged to be murdered, can never be safe from an Abolution or Acquittal in Courts; for how can he oppose his

|| *A Law Book so called.*

† *His being acquitted by the Court.*

† Sentence Abfolvitute to a special Accusation that afterwards may be raised, seeing he cannot make the one meet the other. And if Captain *Green*, and the other Pannels, shall be now * Affoizied, this should not be a good Defence to them, neither in *Scotland* nor *England*, if they should be afterwards criminally pursued, for attacking a Ship, and murdering of Men, specially condescended upon, because it is not clear, that the present Indictment, as drawn, did concern these special Accusations; and therefore Accusations of that Nature should be so special, as that afterwards the Accused be not brought to any further Disturbance. 2. The Reason why such Accusations should be special and definit, is, That the Pannels be not precluded from the obvious Defences, that tend to elide the Libel; as here in this Case, if the Libel were special and circumstantiate, and some Designation given of the Ship and Crew, it might be in their Power to prove the obvious Defence, that such a Ship was at the Time libelled, in such another Part of the World; that such a Ship was either cast away by Storm, or taken by Pirates in such a Place; or that the Ship is yet extant, and the Crew alive: From all which, the Pannels are precluded by a general and indefinite Libel; and therefore Law has fixed the Forms in these Cases, that such Accusations be not vagrant and loose.

* *Abfolved.*

It will not be denied, but that the Time and Place must be expressed: The same Parity of Reason obliges to a special Condescendance of the Party injured, Damage sustained, as relating to such particular Persons. And the above-cited Sir *George Mackenzie*, in his Title of Libels, and the Forms thereof, does set down, That if the Defender crave the Pursuer to express the Day, because he offers to prove *alibi*, being elsewhere; then the Judge should force the Pursuer to express the Day, or else the Defender would be precluded from proving his Innocence. The same Reason is, that the Pursuer here should be particular, as to the Ship alledged to be seiz'd, &c. because the Pannel might offer to prove that that Ship was *alibi*, elsewhere, at the time: And many more Defences arise from the condescending upon the *Corpus delicti*, the visible Effect of the Crime, than from the Circumstance of either Time or Place. And this is not laid down conditionally, that these are not the Requisites of a Criminal Indictment; except first the accused propone their Defence, *verbi gratia*, *alibi*, for Instance, elsewhere: But it is laid down as a Rule, That these are the Requisites of all Criminal Libels; and the

Reason given is, That the Pannels be not precluded from their Defences: So that it is not more † noticed, whether in this or that particular Case this Defect is pre-

† observed.

judicial, because Necessity has first induced the Form; and then this Form turns to be a Law in all such Cases. And the forecited Sir George Mackenzie, in the same Paragraph, thinks it so far a Re-

† instanced, or argued from.

quisite of a Criminal Libel that the Crime should be particular † subsumed, that he brings it as an Argument why it should be so, that it is declared by the 148th Act Parl. 12 K. James VI. That a Libel bearing common Repeating, or Foretelling, in the general, shall be relevant, without condescending on the Time or Way of committing the same; and therefore concludes, that seeing this was an Act dispensing with the regular way; *Exceptio firmat Regulam in non exceptis*, an Exception confirms the Rule in Things not excepted. And hence it is not a good Argument, that the Pursuer has libelled as definitely and closely as he could in the present Matter: For better an Inconvenience should be suffered in a particular Case, than that a dangerous Preparative be laid down, of admitting indefinite and general Criminal Libels, whereby poor Pannels may be precluded from their Means of Defence. And this will serve to obviate the Argument drawn from a very infeasible Chance, supposed to fall out in the Road of *Leith*; which as proposed, will likewise be otherwise circumstantiate as to a positive Probation, and not founded upon Conjectures and Presumptions, as this Case is.

Nor can the Fiscal altogether excuse his indefinite Libel, seeing the Means was not wanting of his coming to the Knowledge of the Ship, if it be true what is libelled; seeing the Ship was not sunk, but sold to a particular Person; and by some Evidence of the Ship, the Crew might likewise have been known.

3. As Law and Form require such Libels to be definite and special, so more especially in this Case; because Captain Green was clothed with a Commission under the Broad Seal of England, which empower'd him to act in Hostility against all Pirates: And therefore a general and indefinite Libel, upon attacking and seizing a Ship in his Case, would seem very improper: For the Presumption must run in his Favours, That if any Acts of Hostility were done by him, they must be presumed in Prosecution of his Commission. This is not pleaded as a separate Defence to elide the Libel; nor is it pleaded to have given him full Liberty to have ranged *impune*, with Impunity, but as a Specialty in this Case; that as it is a Defect in all Criminal Libels to be general and indefinite, so much more in this Libel, he being

† attack.

clothed with a Commission, and having Power to † assail. And therefore the Presumption runs in his Favours; except the particular Ship were condescended upon, known to be a Merchant and Trading Ship, and consequently he out of his Duty in attacking the same. And therefore it is frivolous to object, that the Commission obliged him to keep a particular Journal of whatsoever Vessel he should attack hostilely; seeing the attacking of any Vessel whatsoever is denied and the Argument from the Commission only pressed to this End, That no indefinite Libel of attacking Ships, is relevant against a Person clothed with a Power to attack in certain Cases; and which the Accuser was so far convinced of, that for

supplying that Defect in his Libel, he in his Pleading and Information, is pleased to condescend upon this special Qualification, and Mark of the Ship attacked, that she was a free Ship; which therefore he is obliged to prove.

The Pursuer was at the Pains to defend his Libels from an Objection, as if they had wanted time and Place. The Pannels did indeed conjoin this with the other; That as the determining the Time and Place seem to be absolutely requisite; so likewise the Condescendance upon the particular Names, and Designations of the Ship and Person, both being equally and necessarily required, that Pannels be not precluded from their just Defences. And the time libelled comprehending the Space of four Months, being too indefinite; it is likewise reasonable in such a Case, that the Accuser should be more special; which the Pannels humbly remit to the Honourable Admirals, and Lords Assessors.

The Second Peremptory Defence proposed for the Pannels, was, That this being a Libel founded upon several Qualifications and Presumptions, the same was no way relevant, to infer the Conclusion of the Libel. A Proof of Crimes from Presumptions, is very hazardous: And hence it is, that some foreign Nations do not condemn to Death upon *Indicia*, Tokens, but make them only Ground to † put to the Question. † Torture.

And many Lawyers are of Opinion, that the ordinary Pain of Death is not to be inflicted upon a Proof arising from *Indicia*, Tokens, tho' never so pregnant. Of this Opinion is *Pharinasius*, a great Criminalist, and many others; and so is *Brunemanus*, ad L. ult. Cod. de Prob.

But in the next place, whatever the Diversities of Opinions and Practices of Nations may be in this Point, yet it is certain, where *Indicia*, Tokens, are taken as a Proof, in order to Punishment by Death, they must be such as amount to a full Proof, and leave no Room for any Scruple or Doubt. This cannot be better express'd, than in the Words of that Excellent Constitution of *Theodosius* the Emperor, L. ult. Cod. de Prob. *Sciant cuncti accusatores eam se rem deferre in publicam notitiam debere, quæ munita sibi idoneis testibus, vel instructa apertissimis documentis, vel Indiciis ad Probationem indubitatis, & luce clarioribus expedita*:—Let all Pursuers take notice, that when they bring a Matter into Publick Judgment, it ought to be supported by proper Witnesses, or plain Proofs, or undoubted Signs and Tokens, as clear as the Sun at Noon. And it will plainly appear from the Libel, that the Qualifications therein narrated, are not such *Indicia*, Tokens, as that excellent Constitution requires; *indubitata*, undoubted, *apertissima luce clariora*, most evident, clearer than Sunshine. There must always Difference be made: Some have a probable Shew, and incline the Mind of the Judge; and yet cannot go the Length of a full Proof. L. 5. in Principio Pand. de Pænis—*Sed nec de Suspicionibus debere aliquem damnare; satius enim est impunitum relinqui facinus nocentis, quam innocentem damnare*: Nor ought any Man to be condemned upon Suspicion; for it is better that a guilty Man pass unpunish'd, than that an innocent Man should be condemned. *Indicia* & *Præsumptiones*, Tokens and Presumptions, have much easier Place, where *constat de Corpore delicti*, where the Subject of the Crime is visible; because this helps to sustain the Presumption, and gives indeed the *Indicia*, Tokens, their just Weight. But these, in such a Case as this, *ubi non constat de Corpore delicti*, where

where the Subject of the Crime is not certain, are hardly receivable, seeing they want to be applied to a particular Crime.

This so necessary a Qualification of a Criminal Libel, *ut constet de Corpore delicti*, that the Subject of the Crime should be visible, the Pursuer endeavoured to evade, by distinguishing betwixt Crimes that are *cum effectu permanente*, have permanent Effects, and such as have no permanent Effects. In the first, the *Corpus delicti*, visible Effect of the Crime, was necessary, not in the latter; and therefore † subsumes that in the Cases libelled, there could be no permanent Effects; because all are libelled to be destroyed, and put out of Reach: But plainly this Distinction is against the Pursuer; because certainly Piracy, Robbery and Murder, are such Crimes, as have permanent Effects.

By the *Corpus delicti*, Subject of the Crime, is not meant, that the Subject of the Crime must be so extent, as to fall under the Senses; but that the Loss sustained is felt and known. As for Example: In the Crime of Murder, though the Body cannot be reached, yet the particular Loss is known: It is notorious the Queen wants a Subject; Friends want a Relation, whom they can point out: In Piracy and Robbery, Merchants want their Ships and Goods: So that the Loss is felt and known, tho' (*de facto*) the Subject cannot be pointed out. Whereas in this Case, no such particular Evidences can be given: None can complain of any particular Loss, either Queen or Subject. And this is the true Meaning of what is *Corpus delicti*, a Subject of the Crime. And whatever be the Import of the Objection against the Libel, yet it is certain, to alledge Qualifications as the Proof of a Crime, *ubi non constat de Corpore delicti*, where the Subject of the Crime does not appear, is most incongruous. Add granting, as the Pursuer does further contend, that he has libelled a *Corpus delicti*, a Subject of the Crime; in so far as he has libelled a Criminal Fact, and Deed of Piracy, Robbery and Murder; which still being general, is not that *Corpus delicti*, Subject of the Crime, that Law requires. Yet it was never heard, nor can there be any Lawyer whatsoever adduced, that owns the *Corpus delicti*, Subject of the Crime, can be made out of Presumptions and Qualifications. When once it is known that a Crime is committed, it may be owned that *Indicia indubitata*, undoubted Tokens, such as Law requires, may be a Ground to fix the Guilt upon particular Persons; because there the Certainty of a Crime committed, does negatively inforce and give Weight to the Presumptions adduced: But when it is not known that a Crime is committed, and that this is first to be made out; it is positively contended, this cannot

be but by a positive Probation of concurring † habile Witnesses: For Presumptions may be apt to fix a Guilt, *quando constat de Corpore delicti*, when the Subject of the Crime appears, or that the Fact was done, but not before.

In the third Place, the Presumptions libelled are very far from being of that nature, as to be concluding to a Conviction; and of that Certainty and Clearness as Law requires. All Probations in Criminal Cases should be infallible and certain; and if there be any Meaning put upon Presumptions founded upon for proving a Crime, other than to infer a Crime; that is to be laid hold upon, according to the manifest Principles of Law and Humanity.

Now the Qualifications libelled, are either such

as not only can bear an obvious Sense, different from what is imposed, but even a probable one; or are such as are vagrant Expressions and Hear-says, importing little or nothing, and cannot be applied to the Crimes libelled.

1. The Chyrurgeon his having heard Shooting at a Distance, while in the mean time he saw no Engagement; can easily be applied either to Shooting from other Ships, or Shooting upon Salutation, &c.

2. That he did see the *Worcester* riding in her Birth, and another Ship (as it were) towed to her Stern. 1. It is only Conjecture, being at such a Distance. 2. It is improbable, because it is not the ordinary way; and hazards the Ship falling foul of one another, in such common Roads; which might be a Ground to the Chyrurgeon's Mistake at such a Distance.

3. That he did see the Goods lying lumber'd upon the Deck when he came aboard. 1. It is usual in Coast-Trading, that the Goods are brought by Sloops, and so laid upon the Deck till they be stowed. 2. This might be occasioned by the Ship's drawing Water. And to what concerns the Word Busking, and bringing Water from the Shore, it is taken notice of in the Exculpation.

4. That when the Doctor enquired what was the Occasion of the Goods lying in Confusion, Captain *Madder* should have answered, *Damn you*, &c. might proceed from the said Captain *Madder's* being in a Passion, and concerned for the Goods being damaged, and a Tarpauling-Temper, very usual among Seamen.

5. That the Chyrurgeon did dress two wounded Men; first, one is dead, another is not named in the Libel; and the *Black* as the two other also, might have got their Wounds by fighting among themselves, which is not unusual; and the rather, that they appeared unwilling to tell the Chyrurgeon, of purpose to conceal their Quarrel from the Captain.

6. As to what is alledged to have occurred betwixt the Doctor and the Linguister, *First*, It is only Hear-say; in the *second* Place, there might be a Ship sold to *Coge Commodo*, but not taken by Captain *Green*, and it is improbable he would have bought any Ship taken by Piracy upon that Coast.

7. What is libelled about *Reynolds* and his Sister, their missive Letters, is far from being any Qualification: For, *First*, *Reynolds's* Letter is only a † Double. It is strained to † Copy. put such a Gloss upon the Expression (*basely confess*) to imply a Guilt, and a Guilt confessed; seeing the Words may easily bear the Meaning of a false Accusation, and is explained by a subsequent Expression, That he would rather die innocent, than accuse any Man falsely; and in the Beginning of the Letter, declares, he knew nothing of the Matter.

8. What relates to *Haines* his Intercourse with *Anna Seaton*, and others, are nothing but general and ambiguous Expressions, from which nothing can be gathered of the Crimes libelled, and infers no more, than that he was using some Stratagems to gain his Mistress.

And as to the Expression of the Wickedness committed aboard their Ship, it may easily relate to other Crimes, which are but too frequent in such Voyages; as also, as to what was done aboard after the Ship was in the Harbour; and as to the libelled Expression used by *Haines* against Captain *Madder*,

der, as the same is general and indefinite, relating to no particular Crime, so this might arise from some particular Pique and Prejudice against Captain Madder: As to what follows

* about.
* anent the Condition of the Cargo, when the Committee of the Council unloaded the Ship, it is sufficiently taken off in the Exculpation.

Lastly, As to what is libelled anent the African Company's Seal: First, It will not be pretended, that the Company were in use to give their Seal to any Ship whatsoever trading by their Commission. 2. If any had casually gotten the Seal, there are an hundred Ways whereby the same might have come to the Worcester's Crew without Piracy. And 3. The Seal found aboard, and which is lying in the Clerk's Hands, which has a Ship for its Crest, might have given Occasion to this Mistake.

It being plain, that the Qualifications libelled, are not of that Import to give a full Conviction; the Pursuer's Argument adduced from the End of Probation, which is to find out the Guilt, and convince of the Truth, may be plainly taken off; that there is no such convincing Proof, as can fully and certainly determine any Judge, but, at most, resolves in a conjectural Proof, never to be admitted to take away the Life of Man.

The Pursuer allows, that if every one of the Circumstances should be taken separately, they would not be sufficient; but being taken jointly, and according to the Series of the Thing, they amount to a full Proof and Conviction; and this is the Nature of all cumulative Probations; which is not to be disjointed, *Quæ non profunt singula multa juvant*: The Pursuer does likewise adduce Arguments and Authorities for a cumulative Probation to be of this nature, that there needs not two concurring Witnesses for every Circumstance. In answer to which, the Pannels do still plead, there is a great Difference to be made betwixt Cases where previously, *constat de corpore delicti*, the Subject of the Crime appears, and that Presumptions are only fixed upon to find out the Guilty; and these Cases, where in general a Crime is libelled, altho' Presumptions may be admitted in the first, yet never in the other, as is already observed. 2. In all Cases, Presumptions must be such as leave no room to doubt, and must not only have a Probability with them, but a concluding Certainty, which does not give Ground to Suspicion, but plainly and firmly convinces; which certainly cannot be inferred from the Qualifications libelled; all which either can bear a different Construction, or are such vagrant Hear-says, and indefinite Expressions, as amount to no certain and special Crime. 3. Such Presumptions cannot be conjoined, which particularly taken, are either of small Weight, or amount to very little, or that they can probably bear another Sense and Meaning, as has been demonstrated. And, 4. As to the Conjunction of a cumulative Probation, there is a Difference to be made betwixt Crimes that are continued, and where the Proof may be had from the Reiteration of the Acts, and those other Crimes which consist only in Fact or Deed.

In the first, a cumulative Probation may be admitted; as in a Libel of Bribery, one Witness may be admitted for one Fact, another for another, and so a third, which may conjoin, altho' there be not two concurring for every particular Fact, if there be other concurring Evidences and Arguments: But where there is one positive Fact libelled, this does not so easily admit of a cumulative Probation, especially which is always to be taken along, where the

Crime is not specified and determined, as in this Case, and that the *ipsum corpus delicti*, the Subject of the Crime itself, is still to be made out: So that the Texts of the Law, and Authorities made use of by the Pursuer, may be easily cleared, that either they relate to Civil Cases, as *l. 3. par. 2. digest. de testibus*, where there must be a Preference of a Civil Right of the one to the other: Or if the Texts and Authorities relate to Crimes, the *Indicia*, Tokens, allowed by them, must be *indubitata & luce clariora*, undoubted, and clearer than Sun-shine; and presupposes a Crime committed, & *corpus delicti*, the Subject of the Crime, and tends only to fix the Guilt. And it is positively denied, that there is any Law, or Lawyers, allowing any cumulative Probation to prove a Crime in general, *ubi non constat de corpore delicti*, where the Subject of the Crime does not appear; and this is a Speciality in the Case of the present Pannels; and the Honourable Judges and Lords-Assessors, are earnestly intreated to consider it; which does really distinguish them from the other Case mentioned by Lawyers; all which relates to * Delicts actually committed, and that the Presumptions de-

* Crimes.
duced, tend only to fix the Guilt: But when a Crime is alledged in general to be committed, and no special Condescendance upon what Subject, upon whom, and against whom, Presumptions there are not sufficient, without concurring habile Testimonies; even supposing such a general indefinite Libel could be relevant, against which there are abundance of Arguments already given; for unless a Fact be proved, even Confession is not sufficient to fix a Guilt, as must be acknowledged by all; much less Presumptions, except the Fact be once known.

The Grounds of Exculpation.

As the Pannels are confident, the Lords Judges will not find the Libels so general and so qualified, relevant to infer the Pains of Death: So for further clearing their Innocence, they offer the Grounds of Exculpation following, which are either instantly instructed, or offered to be proved.

And this may be laid down, which cannot be denied, that *Presumptio non delicti excludit presumptiones delicti*, the Presumption of a Crime not committed excludes the Presumption of a Crime; to which Purpose, *Carpz. Part. 3. §. 123. Num. 69.* and in the same Place, in *dubio semper in mitiorem partem est presumendum*. In a doubtful Case we must always take the more charitable Side; where he cites Multitudes of Lawyers.

1. There is no Reason to suspect the Pannels of the Crimes libelled, being Persons of entire Fame, without any Imputation as to their antecedent Life.

2. That they were under a Charter-Party, commissioned to a Trading Voyage, and Insurance made upon Ship and Cargo, which does remove all Suspicion of Piracy, seeing such do ordinarily associate, and out-rig themselves for that End.

3. A strong Argument of the Pannels Innocence as to Piracy, is, That they were upon their Voyage homeward, to make Account to their Fraughters and Owners of their outward Cargo and Returns; of all which they have exact Journals and Accompts, and upon their coming to *Frazenburgh* gave Advice to their Owners of their Arrival, which was insert in the Publick Prints from *London*, as is usual, and likewise sent a Packet over Land from *Frazenburgh* to the *African Company* in *Scotland*, from *Mr. Innes*, their

their Correspondent in the *East-Indies*, which is not to be supposed a Pirate would be intrusted with: Whereas, when such turn Pirates, it is usually for their own Profit, and so not only rob others, but begin first with their Owners, and are not found to return to make any such Accounts, which is a stronger Proof of the Pannels Innocence, than any Circumstance libelled to the contrary.

4. *Menochæus de presumptionibus, lib. 5. Præf. 59.* treating of the Presumptions of Innocence, lays down two very pregnant. First, That if the guilty Person could flee and did not, that very Presumption washes away the Guilt; and gives Account of a Case out of *Lucian de amicitia*, that *Antiphibus* and *Demetrius* being accused of Sacrilege, were dismissed by the *Prætor*, because when they could have fled, they did not. A second, when the accused Party offers himself to the Judge, it is a strong Presumption of his Innocence, since the Innocent fear nothing, and the Guilty have always the Punishment before their Eyes: Both these favour the present Pannels; for the Rumour was spread, and came to their Ears some Weeks before they were imprisoned, and yet none of them offered to flee; and one *Ballantine* being at full Liberty amongst his Friends the Time of

† Imprisonment.

the † Incarceration of the rest, did of his own accord offer himself to Prison.

5. That the alledged Confession made by the Chyrurgeon, must certainly labour under some Mistake, because, altho' he mentions the Attack to have been at *Callicut*, and that he heard the Ship was sold at *Keilon*, which are at least fifty Leagues distant: And altho' he was aboard all the Time, yet he makes no mention how the Ship was brought along, or any thing relating to it.

6. It is offered to be proven, that the *Black* who is alledged to be wounded in the Action, was not aboard forty-eight Hours before the *Worcester* failed from the Coast of *Malabar*. And further, that the *Black* declared when he came aboard, that he got the Wound in his Arm by the Bite of a Snake. And further, it can be instructed by Chyrurgeons, that the Wound, as it well appears, is more probable to have been got that way than by Gun-shot.

7. Whereas it is libelled, That the Ship was attacked by the *Worcester's* Sloop upon the one Side, and her coming up upon the other:

It is impossible a Piracy of that nature could have been committed upon the Coast of *Malabar*; and not certainly known in *England* long before the Arrival of the Ship, such is the exact Correspondence, especially as to such Matters; nor could the Captain either have traded upon the Coast, or been received by the Factories and Governors there, if he had committed any such Piracy; whereas it is offered to be proven, that after the Time libelled he was ashore kindly entertained, exchanging Letters with the Governor of *Anjango*, and had Instructions and Recommendation from thence to the Governor of *Fort-William* upon the Coast of *Bengal*, whether he was obliged to go for refitting his Ship, and stopping the Leak, which he could not conveniently do at *Malabar*, because of the want of Timber, Cordage and Money to be taken up upon Bottomry.

8. It was asserted by the Fiscal in the Time of the Trial, that the Action lasted two Days and a half, which is a most improbable Story; for either the Night would have separated them, or the Ship attacked might rather have run a-shore, than fall into the Hands of the Pirates.

9. That the Word *Busking*, libelled as a Term signifying a Ship preparing to fight, has a quite

different Construction in the ordinary Acceptation among Seamen, and signifies, bearing close upon the Wind by a press Sail.

10. It is offered to be proven, that their Water was itaved on the Coast of *Malabar* in a Storm, and not by *Busking*, as it is libelled.

11. And to † redargue the Circumstance libelled, that the Goods were † *Refute.* not right stowed; it's acknowledg'd the Ship was six Months in a Harbour at *Bengal*, after the libelled Engagement, and there loaded and unloaded: So that they had all Opportunity to stow the Goods as they thought fit, and certainly they were stowed as such Goods usually are, which cannot be press'd without Damage.

12. That the whole inward Loading does not amount to a Value beyond what might be reasonably expected from the outward Cargo, in a Trading-Voyage to these Places.

And lastly, That in *January* preceding, the Time of the alledged Action, there was a Protest taken by the Pannels against the Governor of *Cochin*, for not allowing the Ship *Worcester* to be refitted there, which she extremely needed before she could return to *Europe*; and so was in no Capacity, either to fight or take a Ship, as is libelled, in the Months of *February, March, April, or May* thereafter; and was a Ship sheathed with Lead, and therefore altogether unfit for such Action; as also a slow Sailer, and has not the least Mark of any Gun-shot upon her.

So that upon the whole Matter, The Qualifications libelled being so weak and conjectural, and the Presumptions of Innocency so strong upon the other Hand; it is confidently expected, that the Honourable Judges and Lords Assessors will reject the Libel, and let the Pannels go free; which they expect from the Justice of the Nation, and the † Humanity with which they are in † *Courtesy.* use to treat all Strangers.

An ANSWER to the Fiscal's Citations. With the Counter-Citations for the Pannels.

THO' the Doctors differ about the Force of Presumptions, and the Effect of Probation, *ab Indiciis & Argumentis*, from Presumptions and Arguments; yet they all agree, that Parallels drawn from Civil Causes to Criminal ones, are not universally to be admitted. Now the Fiscal cites *L. 3. §. 2. de Testibus*, for evincing that Presumptions, *Indicia & Argumenta*, Tokens and Arguments, are to be received.

This Law is taken out of the Fourth Book *de Cognitionibus*, written by *Callistratus*; the which Book only treats of Civil Cases, as is manifest from the Title of that Book, dispers'd in the ff. and † congested by *Labittus*, to † *collected.* which I refer. Wherefore this being a Rescript of the Emperor *Hadrian*, in a Civil Cause, can never be applied in a Criminal one.

The next Citation is, *L. 22. C. ad l. Cor. de falsis*, which is a Rescript of the Emperor *Constantine* to the Governor of *Rome*, about a forged Writ. Now as the Law says, such Forgeries can only be discover'd by † Collation † *Comparing of Hands.* of Writs, Arguments infer'd from thence, and Witnesses. And it is well

known,

known, that in our Law we have two
 † *Disproving.* Ways of † Improbation; the Direct,
 and the Indirect. Now to apply that
 to the Crime of Robbery or Murder, which must
 be proven * *liquidissime*, and not by
 † Writs, seems very ‖ anomalous.
 * *most clear.*
 † *Writing.*
 ‖ *irregular.*
 Besides, Crimes, according to their
 different Nature, must be diversly
 proven; some by Ear-witnesses, as
 Blasphemy, Heresy, Cursing of Parents, &c. O-
 thers by Eye-witnesses; as Robbery, Murder, &c.
 And the Witnesses competent for proving the one
 Crime, are not so in the other.

The third Citation is out of *Antonius Matheus*
de Criminibus, ad Lib. ff. 48. Tit. 15. C. 3. N. 4.
 The Fiscal cites the latter End of this Section; but
 omits to set down what the Author refers to in the
 C. 6. of that Title; the doing whereof will serve for
 an Answer. The Position is, *Unus Testis non est*
audiendus; at si Argumenta alia concurrant, audi-
endus est: One Witness is not to be regarded; but
 if other Arguments concur, he is to be regarded.
 Now these *Argumenta* must be taken out of the
 C. 6. of that Title. *Argumentum nihil est aliud, quam*
Ratio quæ rei dubiæ facit fidem; & est vel necessarium,
vel contingens. Necessarium, cujus Consequentia ne-
cessaria est; veluti coivisse eam quæ peperit, furtum
fecisse, qui rem furtivam efferens deprehensus est. Con-
tingens, cujus Consequentia probabilis est; veluti,
cædem fecisse, qui cruentatus est: “An Argument is
 “ only a Reason which proves a doubtful Thing;
 “ and is either necessary, or contingent. That is a
 “ necessary Argument, whose Consequence is ne-
 “ cessary: As for Instance, That she who has brought
 “ forth a Child, has certainly known a Man; or that
 “ he who is taken in the Fact carrying off stoln
 “ Goods, has certainly committed Theft. A con-
 “ tingent Argument, is that whose Consequence is
 “ only probable: As for Instance, That the Man
 “ who is bloody, has committed Slaughter.” The
 necessary Argument obtains in Criminal as well as in
 Civil Cases; but the contingent one, which the
 Lawyers call a Presumption, is not of such Force.
 However, our Author is of Opinion, that *Contin-*
gentia Argumenta quanquam singula fidem non faciant,
plura tamen conjuncta crimen manifestare possunt. Rem
uno atque altero exemplo declarabimus. Occisus est
Calendis Mævius: Titius perempti inimicus fuit, eidem
sæpius non solum interminatus, sed & insidiatus est:
Cum deprehenderetur iisdem Calendis in loca cædis,
cruentatus, cum gladio cruento, ad mensuram vulneris
facto, toto vultu expalluit; interrogatus, nihil respon-
dit, trepide fugit. Hic singula quidem Argumenta in-
firma sunt, universa tamen cædis autorem Titium
evidenter designant. Simile est illud, Clodius cum
Pompeia: Nudus cum nuda reperti sunt in eodem Cu-
bili; preterit id momentum quo turpitudine perfici po-
tuit. Jam olim ille mulierem deperibat, ad stuprum
per literas sollicitaverat. Quis dubitet utrumque A-
dulterii damnare? “Tho’ contingent Arguments
 “ singly by themselves make no Proof; yet several
 “ of them join’d together, may make the Crime evi-
 “ dent. We shall make it plain by an Instance or
 “ two. *Mævius* was kill’d on the first Day of the
 “ Month: *Titius* was an Enemy to the Person kill’d,
 “ and not only frequently threaten’d him, but way-
 “ laid him. And when he was found on that same
 “ Day of the Month in the Place of Slaughter,
 “ bloody, with a bloody Sword, answerable to the
 “ Dimensions of the Wound; he look’d as pale as
 “ Death: Being examin’d, gave no Answer, but
 “ run away in a Fright. In this Case, indeed, the

“ Arguments singly considered don’t say much;
 “ but taken all together, they plainly prove *Titius*
 “ to have been the Author of the Murder. What
 “ follows is such another Instance. *Clodius* and
 “ *Pompeia* were found naked in the same Bed, but
 “ not in the Act; the Time for that was past: But
 “ he had long courted the Woman, and solicited
 “ her to Lewdness by Letters: Then who can
 “ make any Doubt to charge them both with Adul-
 “ tery?” Now there being in the present Case no
 such Presumptions as these are; the Rules laid down
 by this Lawyer *Matheus*, shew the
 Circumstances libelled are not † re- † *sufficient.*
 levant.

The fourth Citation is from *Gail. L. 2. Obs. 66.*
N. 12. The setting down of the Title of the Ob-
 servation, which is *Jus venandi an Servitus sit realis*
vel personalis, Whether Hunting be a real or per-
 sonal Service; and also the Apostle of the Section,
 which is, *In Materia Decimarum, testes singulares*
probant; In Matter of Tythes, single Witnesses are
 good; does shew, that the Matter there treated is
 Civil, and not Criminal. And many Things are
 allowed in Civil Cases, which are not in Criminal.
A. Matheus ad Lib. ff. 48. Tit. 15. de Probationi-
bus, Cap. 2. Num. 1. Quicunque Testes in Causis
civilibus esse non possunt, iis nec in Criminalibus Testi-
monii dictio est. At non contra; quicunque in Causis
civilibus audiuntur, ii etiam in criminalibus audiendi
sunt. Graviora enim criminalia Judicia civilibus
sunt, ideoque & Testium major delectus adhibendus est.
 “Whosoever cannot be Witnesses in Civil Causes,
 “ are not to be admitted in Criminal Causes. But
 “ the contrary does not hold, *viz.* That whoever
 “ may be Witnesses in Civil Causes, may also be ad-
 “ mitted in Criminal Causes: For Criminal Causes
 “ are of more Weight than Civil Causes; and there-
 “ fore in Criminal Causes we ought to be more nice
 “ in the Choice of Witnesses.” And the Author il-
 lustrates this Doctrine, by Examples set down in
 that Chapter.

What has been said, will serve to answer what is
 cited out of *Giurba* and *Mascardus*.

The Citation from *Carpzovius’s* Criminal Prac-
 ticks, *Q. 123. N. 57.* is imperfectly excerpted: For
 I shall give no other Answer, than what is in the
 same Place, from *N. 55, to N. 59. Probantur etiam*
Indicia ad Torturam per unicum Testem, in casu quo
plura Indicia simul concurrunt, super quibus Testes exa-
minati diversimode deponunt; ac unus de uno, alter de
alio, tertius etiam de alio testificatur: Tum enim om-
nium Testificatio simul juncta, verisimiliter facit de Reo,
qui propterea sub Tormentis interrogari potest. Eisi
enim hac de re non omni ex parte Interpp. conveniant,
nec desint qui Assertionem hanc simpliciter rejiciant:
Testesque bosce, ut singulares conjungendos non esse au-
tument, eo quod singuli Testes baudquaquam fidem fa-
ciant. Verissimam tamen est, plures imperfectas Pro-
bationes in Causis capitalibus conjungendas esse ad ple-
nam Probationem faciendam, quoad effectum torquen-
di: Quod communiter Dd. placuisse, licet namque
unicum indicium ab uno Teste probatum, semiplenam
Probationem & Fidem, ad Quæstionem de reo habendam
non faciat: Secus tamen res se habet, si plura Indicia
concurrant, & conjunctim reum aggravent, quorum
unumquodque per Testem singularem probetur. Nam
una Præsumptio aliam adjuvat; plurimæque Indicia
conjuncta Fidem faciunt. Quod ipsum tamen non
aliter accipi velim, quam bisce tribus concurrenti-
bus. Primo, Ut Testes sint omni exceptione majores
& idonei, ac Vitæ probatæ. Secundo, Ut deponant
super Indiciis proximis delicto, non etiam super valde
remotis

remotis Indiciis. Tertio, Indicia super quibus Testes isti singulares deponunt sunt plura, & talia quæ reddunt animum Judicis quasi certum quod Reus deliquerit: Quorum alterutrum si deficiat, nullum in Jure habeant Effectum. "Presumptions make Torture lawful, when there is but one Witness, in a Case where several Presumptions concur, upon which Witnesses being examined, swear in a different Manner, and one witnesses as to one Presumption, another as to another, and a third concerning a third. Then all their Evidence being joined together, makes the Charge against the Person probable, who therefore may be examin'd by Torture. For tho' Interpreters don't all agree in this Point, and that some of them do absolutely reject this Opinion, and think these Testimonies are not to be joined, because single Witnesses don't make Proof; yet it is a certain Truth, that in Capital Cases several imperfect Proofs are to be joined together, in order to make a full Proof as to the Effect of Torture. This is the common Opinion of the Doctors; for tho' one Presumption prov'd by one Witness, does not make half Proof in order to examine the Prisoner by Torture; yet the Matter is otherwise, if several Presumptions concur jointly to charge the Prisoner, of which any one may be proved by a single Witness; for one Presumption strengthens another, and many of them joined together make up a Proof. But I would not have this to be understood to be so, except when those three Things concur: 1. That the Witnesses be above all Exception, proper in the Case, and of a good Life. 2. That they swear as to Circumstances immediately relating to the Crime and not as to those which are very remote. 3. That the Presumptions upon which those single Witnesses swear, be several and such as in a Manner may satisfy the Judge, that the Prisoner is guilty of the Crime. But if any of those Things be wanting, they can have no Effect in Law."

The Presumptions in *Swintown's* Case were not in the Indictment, but in the Probation, and seem to have been very pregnant and near, whereas these libelled against Captain *Green* are most remote.

But to put this Matter in its true Light, the Honourable Judge and Assessors are desired to remember, That Presumptions never respect the Delict, or the *Corpus delicti*, but the Delinquent, and the Person of the Accused: For as *Menoch. de Presumpt. L. 1. §. 8. N. 2.* very well says, *Præsumptio versatur circa id quod gestum est, sed ignoratur qualiter gestum*; a Presumption relates to the Thing done, but not to the Manner of doing it. Now, in the Opinion of all Lawyers, *Delictum debet esse manifestum*, a Crime ought to be manifest. *Julius Clarus, Sententiarum Lib. 5. §. 4.* *Sciendum est autem quod in omnem Casum nunquam debet Judex procedere ad aliquem actum, nisi prius illi constet Delictum ipsum fuisse commissum.* "But you must know, that a Judge in no Case ought to proceed to any Act of Court, except it appear to him before-hand that the Crime was committed." And in that Place, illustrates this Doctrine by Examples, and the Authority of other Lawyers, to which I refer. His Sentiment in the End of that Question being, *Et ubi constet Scelus non intervenisse, silebit Processus*: And where it appears that no Crime has been committed, Proceedings must stop.

So that *ubi constat de delicto*, where the Crime is certain, the Doubt and Controversy arises about the Delinquent, so as it is uncertain who is the Per-

son guilty, or the Committer of this Crime, whether it be Robbery, Piracy or Murder. Those who admit of Probation, *per Indicia & Argumenta*, by Presumptions and Arguments, distinguish these into *Proxima & Remota*, near and remote; and to each of them give a different Effect in Law. *Capr. §. 120. N. 6.* *Indicium definitur argumentum delicti perpetrati demonstrativum, seu Indicativum. Idem, §. 121. N. 1.* *Indicia propinqua ac certa, quorum unumquodque per se sufficit ad Torturam. Hujus generis Indicia non verisimilia ac probabilia sed certa, non levia aut perfunctoria sed urgentia; non dubia aut æquivoca, quæ multipliciter interpretari queunt, sed concludentia, & ad Delictum inferentia sunt, & Crimini quasi inæarent, ita ut iis apparentibus, nihil nisi Rei Confessio deesse videatur.* And *N. 14. & seqq.* *ut Indicium semiplenæ Probationis per se solum sufficiens & Idoneum sit ad Torturam, tria requiruntur, 1. Ut Testis ille unicus sit omni exceptione major. 2. Ut hic Testis deponat de actu immediato, quod fieri intelligitur, si Testis suæ assertionis rationem per sensum corporeum rei convenientem reddat, quod nempe ipsemet Delictum ab accusato perpetrari viderit vel presens interfuerit. Quare, Si Testis non de ipso crimine deponat, sed de aliquo actu ad delictum proxime accedente, Indicium sufficiens non facit. Sicuti nec illius Testimonium idoneum ac sufficiens est, qui deponit de Delicto quod in oculos cadit, & rationem reddit de alio sensu. 3. Ut Testis verbis dilucidis & indubitatis de Crimine testificetur.* "A Presumption is defined to be a demonstrative or declarative Argument of a Crime committed. *§. 121. N. 1.* "Near and certain Presumptions, of which every one is sufficient of itself to justify Torture. Presumptions of this kind, ought not to be likely or probable, but certain; not slight or trifling, but urgent; not doubtful or equivocal, that may admit of many Interpretations, but concluding, really inferring the Crime, and so inseparable from it, that those Presumptions appearing, there seems to be nothing wanting but the Confession of the Criminal, *& N. 14.* and following. "To make the Presumption of half full Proof sufficient to justify Torture, there are three Things required. 1. That that one Witness be beyond all Exception. 2. That the Witness swear as to the immediate Act, which must be understood, that the Witness give for the Reason of his Assertion, some bodily Sense proper to the Thing; as for Instance, that he saw the Crime committed by the Prisoner, or was present at the Time: Therefore if the Witness don't swear concerning the Crime itself, but concerning some Act that comes next the Crime, it is not a sufficient Presumption. So neither is his Evidence proper and sufficient, who swears concerning a Crime that is the Object of Sight, and gives an Account of it from some other Sense. 3. That the Evidence concerning the Crime be in clear, and not doubtful Expressions." After which our Author gives Examples; and it is to be observed, That these *Indicia*, Presumptions, are requir'd in order to torture; for they are not, in this Author's Opinion, sufficient to condemn, unless they be *Certissima, Indubitatissima, & Luce Meridiana Clariora*, most certain, undoubted, and as clear as the Sun at Noon, in which Case they have the Effect of a complete Probation.

The *Indicia remota*, remote Presumptions, which are also term'd, *Dubitata, Semiplana, quæ rem veram esse arguunt, non semper sed plerumque tantum, unde etiam non dicuntur simpliciter certa in-*

dicia, sed verisimilia & probabilia, seu veluti certa Indicia: “Doubtful, half full, which don’t always argue the Matter to be true, but almost always; whence it comes, that they are not simply called “certain Presumptions, but likely, probable, or “almost certain Presumptions.” And these cumulatively and in great Number concurring, may bring a Person to Torture, but never to Condemnation.

Now, by applying this general Doctrine to the Indictment, it is *Juris Incontraversi*, uncontravertible Law, that the *Delictum*, Crime itself, cannot be proven *per Indicia & Presumptiones*, by Tokens and Presumptions. And as to the Pannels, tho’ a Delict Crime were proven *per Teste omni exceptione majores*, by unexceptionable Witnesses, yet it will appear, That the Circumstances libelled, do not deserve the

Name of *Indicia*, Presumptions; and tho’ they should be allowed that *Compellation, yet they are *Remotissima*, very remote, and by consequence can have no Effect as to Condemnation.

As to the additional Conclusion, that the Ship and Cargo should be *escheated, the Fiscal cites a wrong Place, and supposes the Case to be what it is not: But seeing he values Mr. *Molley’s* Authority so much, his Opinion in this Matter, as express’d in the same Treatise, C. 4. §. 21, 22. is thus: By the Law *Marine*, if Goods are taken by a Pirate, and afterwards the Pirate attacks another Ship, but in the Attempt is conquered, the Prize becomes absolutely the Captors, saving the Account to be render’d to the Admiral; and it is accounted in Law a just Caption of whatsoever may be got or taken from such Beasts of Prey, be the same in their own or in their Successor’s Possession. But then an Account ought to be render’d to the Admiral, who may (if they happen to be the Goods of the Fellow Subject of the Captors, or of Nations in Amity with his own Sovereign) make Restitution to the Owner; the Costs and Charges, and what other Things in Equity shall be decreed to the Captor, first considered and deducted.

§. 22. By the Statute 27 *Edward III. cap. 13.* If a Merchant lose his Goods at Sea, by Piracy or Tempest (not being wreck’d) and they afterwards come to Land, if he can make Proof they are his Goods, they shall be restored to him in Places guildable by the King’s Officers, and six Men of the Country.

This Law hath a very near Relation with that of the *Romans*, called *de Usucapione*, or the *Atinian Law*; for *Atinius* enacted, That the Plea of Prescription or long Possession, should not avail in Things that had been stolen, but the Interest that the right Owner had, should remain perpetual: The Words of the Law are these, *Quod surreptum est, ejus rei Aeterna auctoritas esset*. Where by *Auctoritas*, Authority, is meant *Jus Domini*, the Right of the Proprietor remains perpetual, tho’ a Thing be stole.

CURIA JUSTICIARIA, *Supremæ Curiae Admiralitatis tenta in Prætorio, vel nova Domo Sessionis Burgi de Edinburgo, decimo tertio Die Mensis Martii, 1705, per Judicem dictæ Curiae, & per Honoratissimos Viros, Joannem Comitum de Loudoun, Joannem Dominum de Belhaven, Dominos Robertum Dundas de Arnestoun, Joannem Home de Blackadder, & Joannem Cockburn de Ormiston Assessores.*

Curia Legitimè Affirmata.

Intran.

Captain *Thomas Green*, Commander of the Ship called the *Worcester*, now in *Bruntisland Harbour*.

Captain *John Madder*, Chief Mate of the said Ship.

John Reynolds, second Mate of the said Ship.

Thomas Linstead, Assistant to the deceased *Super-cargo* of the said Ship.

James Burn, Boatswain of the said Ship.

James Sympson, Gunner.

Andrew Robertson, Gunner’s-Mate.

John Brucklie, Seaman.

George Kitchen, Seaman.

Henry Keigle, Carpenter of the said Ship.

George Haines, Steward of the said Ship.

Samuel Wilcocks, Chyrurgeon’s Mate.

George Glen, Seaman.

Alexander Taylor, Seaman.

And *John Bannantyne*, Seaman in the said Ship.

All of them indicted and accused at the Instance of Mr. *Alexander Higgins*, Procurator-Fiscal to the High Court of Admiralty, for the Crimes of *Piracy, Robbery and Murder*, in Manner mentioned in the two several Indictments raised against them thereanent, before insert in the Court holden the Fifth of *March* Instant.

P U R S U E R S.

Mr. *Alexander Higgins*, Procurator-Fiscal.

Sir *James Stuart*, her Majesty’s Advocate.

Sir *David Dalrymple*, and Mr. *William Carmichael*, her Majesty’s Solicitors.

Sir *Patrick Home*.

Sir *Gilbert Eliot*.

Mr. *Alexander Mackleod*.

Mr. *Francis Grant*.

Advocats.

Procurators in D E F E N C E.

Sir *David Thoirs*.

Sir *Walter Pringle*.

Mr. *David Forbes*.

Mr. *George Alexander*.

Mr. *John Elphinston*.

Mr. *John Spotswood*.

Advocats.

The Libels and Informations for both Parties being read over in Presence of the said Judge and Assessors, and in Presence of the Pannels and Assessors.

The Judge and Assessors having advised both the Indictments pursued by Mr. *Alexander Higgins*, Procurator-Fiscal of the High-Court of Admiralty, against Captain *Thomas Green*, and the hail Pannels in both Indictments, with the foregoing Debate thereupon; they find, That *Keigle*, and the other Pannels in the first Indictment, cannot be delay’d in their Trial, on Pretence that Captain *Green*, as their Commander, ought to be first discuss’d; and therefore repel the first dilatory Defence: And find that *Reynolds* being libelled against as *Socius Criminis*, a Fellow-Criminal; and there being no Speciality, or particular Ground of Exculpation proponed, why he should be pre-viously tried; therefore *repel the second dilatory Defence proponed for Captain *Green*, and these in the Indictment with him; and repel the Objection against the *Generality of the Indictments, in regard of the Nature

* *rejeçd.*

* *General Terms.*

of

of the Crimes; and find the Crimes of Piracy, or Robbery, or Murder, as libelled, being proven by clear and plain Evidence, † relevant to infer the Pains of Death, and † sufficient. Confiscation of Moveable: Referring the Consideration of the additional Conclusion of the Libels, until the Verdict of the Assize be returned; and repel the other Defences proponed for the Pannels; and remit the whole to the Knowledge of an Assize.

ROB. FORBES, I. P. A.

The Judge of the High-Court of Admiralty and Assessors, continue the Dyet at the said Mr. Alexander Higgins's Instance, against the foresaid † hail Pannels, till To-morrow, being the 14th Instant, at Eight a-Clock in the Morning; and ordains the Assizers and Witnesses to attend then, ‖ ilk Person under the Pain of 200 Merks; and the Pannels to be carried back to Prison.

CURIA JUSTICIARIA *Supremæ Curie Admiralitatis tenta in Prætorio, vel nova Domo Sessionis Burgi de Edinburgo, decimo quarto Die Mensis Martii, 1705. per Judicem dictæ Curie, & per Honoratissimos Viros, Joannem Comitem de Loudoun, Joannem Dominum de Belhaven, Dominos Robertum Dundas de Arnistoun, Joannem Home de Blackadder, & Joannem Cockburn de Ormiston Assessores.*

Curia Legitimè Affirmata.

Intran.

Captain Thomas Green, Commander of the Ship called the *Worcester*, now in Bruntisland Harbour.
 Captain John Madder, Chief-Mate of the said Ship.
 John Reynolds, Second-Mate of the said Ship.
 Thomas Linseed, Assistant to the decess'd Super-Cargo of the said Ship.
 James Burn, Boatswain of the said Ship.
 James Simpson, Gunner.
 Andrew Robertson, Gunner's-Mate.
 John Bruckley, Seaman.
 George Kitchen, Seaman.
 Henry Keigle, Carpenter of the said Ship.
 George Haines, Steward of the said Ship.
 Samuel Wilcocks, Chyrurgeon's Mate.
 George Glen, Seaman.
 Alexander Taylor, Seaman.
 And John Bannantyne, Seaman of the said Ship.

P U R S U E R S.

Mr. Alexander Higgins, Procurator Fiscal.
 Sir James Stuart, her Majesty's Advocat.
 Sir David Dalrymple, and Mr. William Carmichael, her Majesty's Solicitors.
 Sir Patrick Home.
 Sir Gilbert Eliot.
 Mr. Alexander Macleod.
 Mr. Francis Grant.
 Advocats.

Procurators in D E F E N C E.

Sir David Thoirs.
 Sir Walter Pringle.

Mr. David Forbes.
 Mr. George Alexander.
 Mr. John Elphinston.
 Mr. John Spotswood.
 Advocats.

* Assize.

Archibald Drummond,
 * Skipper in *Leith*.
 John Findlayson, Skipper
 in *Borrostonness*.
 Mark Stark, Skipper
 there.
 James Jenison, Skipper
 in *Queensferry*.
 John Matbie, Skipper in
Prestounpans.
 Robert Innes,
 Robert Walwood,
 William Blockwood,
 George Clark, and
 William Neilson, Merchants in *Edinburgh*.

* Jury.
 James Majoribanks, Merchant in *Edinburgh*.
 Edward Majoribanks of
 † Halyards.
 Sir James Fleeming of
Rathobyres.
 James Gordon, Senior,
 and
 Robert Forrest, Merchants in *Edinburgh*.

The Assize lawfully sworn, and no Objection of the Law in the contrary.

Mr. Alexander Higgins the Pursuer, for Probation, adduced the Witnesses after deponing, viz.

* C O m p e a r e d Antonio Ferdinando, Cook's Mate of the Ship the * Appeared.
Worcester, which was commanded by Captain Thomas Green, aged twenty-four Years, or thereby, unmarried; with Captain George Yeaman, Merchant in *Dundee*, sworn Interpreter: And the said Antonio Ferdinando being solemnly sworn, ‖ purged of partial Counsel, examined and interrogate upon the Libels, or Indictments. And being interrogate if he believed in GOD, and if he was a Christian: Depones, That he believes in GOD, and that he was born of Christian Parents, and is a Christian himself. And being interrogate upon the Indictment, depones, That at *Callicoiloan*, upon the Coast of *Malabar*, the Deponent did come aboard the Sloop belonging to Captain Green's Ship called the *Worcester*; at which Time the Deponent did enter to the Service of Mr. Loveday, Purser of the said Ship; and the Deponent cannot be positive of the Time of his coming aboard, but believes it was about two Years and a half since; and went in the said Sloop from *Callicoiloan* to *Keilon*, from thence to *Cocbeene*, and from *Cocbeene* to *Calecut*, and from that to *Tillicberry*: And depones, That upon the Coast of *Malabar* thereafter, he did see an Engagement betwixt the said Sloop, the Ship the *Worcester*, and another Ship sailed by *White-Men*, speaking *English*, and the said Ship did bear *English* Colours. And being interrogate by the * Pannels, what were the Colours the * Prisoners.
 said Ship did bear: Depones, That they were of White, Red and Black, like to these that the said Captain Green's Ship did bear; and that first the said Captain Green, the Merchant, and Mr. Loveday, went aboard the said Strangers Ship,

* Master of a Ship. † Of, before a Place, in the Scots Dialect, denotes the Place to be the Estate of the Person nam'd.
 ‖ i. e. Solemnly sworn, that he would tell the Truth, and nothing but the Truth; that he had no Prejudice or ill Will against any of the Prisoners at the Bar; that he got no good Deed, or Promise of good Deed, for giving Evidence against them; nor was suborned, advised, or directed how to swear, or what he shall say in this Trial.

and stayed for about the Space of a Glass, and then returned aboard the *Worcester*, and then did man the Sloop of the said Ship the *Worcester*, with about 20 Men, whereof were Captain *Green* himself, Mr. *Loveday*, and the Supercargo, the Carpenter and Gunner, and that the Gunner's Name was *James Simpson*, whom the Deponent knows, and points to at the Bar; and that there were four Guns and two Pattereroes aboard the said Sloop; and thereafter Captain *Madder* came aboard of the Sloop, and that they did engage the said other Ship for the first and second Days, and upon the third Day the said Ship was boarded by those in the Sloop, who when they came aboard, did take up those of the Crew of the said Ship from under Deck, killed them with Hatchets, and threw them over-board, and that Captain *Green*, Captain *Madder*, and *James Simpson* the Gunner, were three of these who went aboard and killed the Men: And depones, That the Ship the *Worcester* came up during the said Engagement, and did fire at the said Ship, but these in the *Worcester* did not board her: And the Deponent believes, that the Men who were killed and thrown over-board, as said is, were about ten in Number; and depones, That there were but few Goods aboard the said taken Ship, which were carried aboard the *Worcester*, and amongst the rest he

† remembers.

† minds of some China Root: And depones, That the said Ship which was taken, was sailed by some of the

Crew of the *Worcester*, and carried to *Callicoloan*, and there sold, and that the said Ship was not tied with a Tow to the Ship *Worcester*: And the Deponent knows not what Men were killed aboard the Sloop or *Worcester*, or if any were killed, but the Deponent himself was wounded in the Arm, and which Wound he now shews to the View of all. Depones, That Captain *Madder* told the Deponent, that if ever he did tell any Person, either white or black, of the said Engagement, that he the said Captain would kill the Deponent, and heave him overboard. Depones, That

† now.

the Upper-Coat which the Deponent

† presently wears, was found aboard

of the said taken Ship, and which the Deponent has kept since that Time. Depones, That during the said Engagements, *Haines*, *Bannantine*, *Bruckley*, *Wilcocks*, *Burn*, *Robertson*, *Glen* and *Taylor*, eight of the Pannels, were aboard the Ship the *Worcester*; and that *Keigle*, *Kitchen* and *Linstead* were aboard the Sloop with Captain *Green*, *Madder* and *Simpson*; and believes that *Reynolds* was then ashore at *Callicoloan*: And depones, That the said Ship was sold to a King in *Malabar*, and that the Man who bought the said Ship bears a *Malabar* Name, whose Servant is called *Coge Commodo*: And depones, That the said Engagement happened between *Tillicherry* and *Calecut*, upon the Coast of *Malabar*: And depones, That he cannot positively tell how many Guns the taken Ship did bear, but thinks they were about twenty, small and great: And the Deponent believes, That the Engagement happen'd about a Month after the Deponent went aboard of Captain *Green's* Sloop; and cannot be positive when the Ship the *Worcester*, did engage the said taken Ship, whether first, second, or third Day. Depones, That the Engagement was by way of a running Fight. Depones, That he knows not who did sail in the said taken Ship to *Callicoloan*. *Causa Scientiæ*, the way how he came to know this, the Deponent was aboard the said Sloop during the Time of the said Engagement, and saw and heard, as he

has deponed; and this is the Truth, as he shall answer to GOD. Depones, He can write after the *Malabar* Character; and this Deposition is also signed by the said Captain *George Yeaman*, the sworn Interpreter.

Antonio Ferdinando.

Geo. Yeaman.

ROB. FORBES.

Compeared *Charles May*, Chyrurgeon of the Ship the *Worcester*, commanded by Captain *Green*, aged twenty-six Years, or thereby, unmarried; who being solemnly sworn, purged of partial Counsel, examined and interrogate upon the Libel: Depones, That he was aboard of Captain *Green's* Ship the *Worcester*, and went from *England* with her; that when the said Ship went to the Coast of *Malabar*, the Deponent was set ashore at the *Ibeck*, which is the Landing-Place, and from thence went up some Miles to *Callicoloan*; and some Time thereafter, about a Fortnight, the Deponent did hear the Firing of Guns as at Sea, and did meet with *Coge Commodo*, who was Merchant to the said Ship, and bought some Things from them, with *Francisco de Olivera* the Linguist of the said Ship, who had come that Day from the *Ibeck*, and that the Deponent asked him what mean'd the Shooting; and that the said *Coge Commodo*, and *Francisco de Olivera*, answered the Deponent, That the *Worcester* had gone out, and was fighting at Sea with another Ship: And depones, That the next Morning the Deponent came to the Shore, where he did see the Ship the *Worcester* riding in her Birth, that is, much about the same Place where she had lyen before, and that the said Place was about four Miles from the Shore. Depones, That there was then another Vessel riding with the *Worcester* at her Stern. Depones, That about some Time thereafter, in the same Morning, the Deponent did see the Long Boat of the *Worcester* coming to the Shore in a great Haste; and that when the Boat landed, the Deponent asked the Men what was the Matter that brought them ashore, it not being ordinary for Boats to come over the Bar, by reason of a great Sea: And the Men answered, That Captain *Madder* had sent them ashore for a *Pinguetla* (which is the Name of a certain kind of Boat) with Water, because they had split and staved all their Water aboard, and that there had been Busking all Night, which the Deponent understood meant, that they had been at fore Labour and Fatigue, as if their Ship had been driven from her Anchor, and bearing up again. Depones, That he did not speak at that Time with the Men in relation to any Fight, but that the said Men told him, they had brought a Ship in with them; and that the Deponent made no stay at the Shore, but returned immediately to *Callicoloan*, where his Patients were. Depones, That five or six Days thereafter, the Deponent went aboard the *Worcester* for some Medicines which he wanted for the Use of his Patients; and that when he came aboard, the Deponent saw the Deck of the *Worcester* lumber'd with Goods, and five or six Chests also, and some Bales of Goods; and that the Deponent did then say to Mr. *Madder* Senior, What have you got there? You are full of Business. And that Mr. *Madder* did then curse him, and bid him go mind his Plaister-Box. And depones, That the Deponent was afterwards informed, that the Ship which was riding at Stern of the *Worcester*, was sold to *Coge Commodo*, the Ship's Merchant at *Keilon* River;

River; and the said Ship was brought there by a Part of the *Worcester's* Crew who immediately left her so soon as they had brought her to an Anchor, or otherways fixed her.

* *Interpreter.* Depones, That the * *Linguister* likewise told the Deponent, That *Coge Commodo* complained, he had bought the Ship too dear; and that he said, he had bought one the Year before cheaper, tho' four times the Value. Depones, That some time thereafter, the Sloop came down the Coast; and that *Antonio Ferdinando* was sent ashore to the Deponent at the *Ibeck*; and that the said *Antonio Ferdinando*, the *Black*, was wounded in the Arm: And that the Deponent

* *Plaiſter.* did take off the * *Dreſſing* of the said Wound, and found it to be a Fracture; and that it look'd as if the Wound had been occasioned by a Gun-shot. And that the Deponent asked the said *Antonio Ferdinando*, the *Black*, who had dressed the Wound, or set his Arm? And that the said *Black* did tell the Deponent, That he was set ashore at *Cochin*, and there dressed by a *Dutch Chyrurgeon*. And depones, That some Time thereafter he went aboard the *Worceſter*, and called for the said *Black*, and any other Persons that were ill; and there came to him to his Chest, *Duncan Mackay*, and another (which the Deponent thinks was *Edward Cuming*, but cannot be positive) and that these Persons were also wounded; and that the said *Black* was likewise there. And Depones, That he did ask his said Patients how they came by their Wounds? And that Mr. *Madder* hearing the Deponent ask Questions, he came to the Deponent, and bid him ask no Questions; and likewise charged the Patients to answer the Deponent any Questions upon their Peril. And the Deponent then said to Mr. *Madder*, that he had no Command over him; and that Mr. *Madder* answered, That he would go to one who had Command over the Deponent: And that the said *Madder* went up accordingly; and thereafter returned, and ordered the Deponent immediately ashore; and the Deponent was accordingly carried ashore in the *Pinguetta*, that was lying by the Ship's Side. Depones, That all this which the Deponent has before deposed upon, did fall out about the Months of *January* or *February*, 1703 Years. Depones, That while the Ship the *Worceſter* was going up the Coast of *Malabar*, Mr. *Linsseed*, one of the Crew was left at *Keilon*, which was near seven Leagues, or about twenty one Miles from *Callicoiloan*; and that the said *Linsseed* was left there with one *Hammond*, to take care of some Part of the Cargo which was to be put aboard of the Ship. Depones, That he did not see the said Mr. *Linsseed* at *Keilon*; but only heard that he was left there, and remained there, as the Deponent heard, till the Ship came back. And Depones, That the Shooting which the Deponent heard, was before the Ship came back, as he has already deposed. And Depones, That thereafter, during the Voyage, he never heard the Crew, or any of them, talk of their taking a Ship. Depones, That whilst the Deponent heard the said Shooting, Mr. *Loveday* and Mr. *Otlay* were ashore at *Callicoiloan*: And depones, That when the *Worceſter* sailed from *England*, the Crew was about 35 or 36 in Number. Depones, That while the Deponent was aboard, the Ship went no further up than *Callicut*: And depones, That the Reason how he knows Mr. *Hammond* and Mr. *Linsseed* were ashore at *Keilon*, was, that he heard the *Supercargo*

desire the said Persons to go ashore, and take care of some Part of the Cargo. And depones, That he was but two or three Hours aboard after he heard the *Supercargo* give the said Order; and saw not the said two Persons (*Hammond* and *Linsseed*) go ashore. And depones, That it was in the Ship the *Worceſter's* going up the Coast of *Malabar*, that the Deponent heard the Shooting. Depones, That upon that Coast the Ship sprung a Leak, and did from thence sail to *Bengal*, in order to have the same helped: And depones, That he knows not how many Leagues there was, betwixt the Place where the Leak sprung, and *Bengal*; but that it was about five Weeks Sailing. Depones, That he knows not the Reason, why the Ship was not brought into some Place on the Coast of *Malabar*, for being refitted. Depones, That when the Deponent came aboard at *Callicoiloan*, that the Ship weighed Anchor, and sailed to *Cochin*, and from that to *Callicut*, and thereafter came back the same Way. Depones, That there were some Goods put aboard the Ship from *Callicut*, but none at *Cochin*, as the Deponent remembers. And further depones, That when the Deponent returned, he found Mr. *Hammond* and Mr. *Linsseed* ashore at *Keilon*. *Causa Scientie patet.* The Way how he comes to know this is evident. And this is the Truth, as he shall answer to GOD.

Charles May.

ROBERT FORBES.

Compeared *Antonio Francisco*, Servant to Captain *Thomas Green*, Commander of the Ship the *Worceſter*, aged 22 Years, or thereby, unmarried; with Captain *George Yeaman*, Merchant, in *Dundee*, his Interpreter: And the said *Antonio Francisco* being solemnly sworn, purged of partial Counsel, examined and interrogat upon the Libel pursued by the Procurator-Fiscal, against the said Captain *Green*, and the other Pannels; depones, That the Deponent believes there is a GOD; and his Mistress at *Pegu* caused baptize him a Christian; and he owns the Christian Religion: And he came to the Service of Captain *Green*, at *Delagoa*. Depones, That upon the Coast of *Malabar*, while the Deponent was aboard of the *Worceſter*, he heard some Shooting of Guns from aboard the *Worceſter*, to the Number of Six, or thereby: And that the Deponent, in the mean time, was chained and nailed to the Floor of the Fore-Castle in the said Ship; and he heard no other Shooting from any other Ship. Depones, That two Days after the Deponent heard the said Shooting, he saw some Goods brought aboard the said Ship the *Worceſter*; and which *Antonio Ferdinando*, the other *Black*, told the Deponent, were brought from another Ship which they had taken: And likewise the said *Black* told the Deponent, that at the same Time Captain *Madder* had given some Rack, *id est*, Brandy to the Men. And at the same time, the other *Black* told the Deponent likewise, That there were ten Men of the Crew of the taken Ship kill'd, when she was taken. And that the said *Black* did let the Deponent see a Plaister on his Arm, upon which he said he had got a Wound by a Shot, while in the Sloop taking the other Ship: And that he told the Deponent, that the said Ship was taken by the Sloop belonging to the *Worceſter*: And that the Deponent neither heard of, nor did see any other wounded Men. Depones, That he does not know where they were sailing, after he heard

heard the Shooting; but he was told by the other *Black*, that they were failing to *Callicoiloan*: And the said other *Black* did forbid the Deponent to tell any Person whatsoever of the said Engagement. And the Deponent does not remember how long it is since he heard the said Shooting of Guns. And depones, That *Antonio Ferdinando*, the other *Black*, told the Deponent all these Matters upon the Coast of *Malabar*: And that the said *Antonio* came aboard the Ship the *Worcester*, when they were going to *Bengal*. And depones, That while he was chained to the Fore-Castle, he knows not who were aboard, or who were ashore: And that he was so chained for the Space of two Months; and that he was so chained to the Fore-Castle about ten Days before he heard the said Shooting: *Causa Scientiæ patet*. Depones, He cannot write.

This Oath signed by the said Captain *George Yeaman*, the Deponent's Interpreter.

George Yeaman.
ROBERT FORBES.

Compeared *James Wilkie*, Taylor, Burgefs of *Edinburgh*, aged twenty five Years, or thereby, married; who being solemnly sworn, purged of partial Counsel, examined and interrogat upon the Libel pursued by the Procurator-Fiscal, against Captain *Green*, and the other Pannels; depones, That in *October* last, after Captain *Green's* Ship was brought into *Bruntisland*, the Deponent went over to *Bruntisland* with his Mother, with a Design to learn some News, or to get some Notice of a Brother of his, *Andrew Wilkie*, who had gone along with Captain *Drummond* to the *East-Indies*: Depones, That after the Deponent and his Mother came to *Bruntisland*, they went to Mrs. *Seaton's* House; where the Deponent fell in Company with *George Haines*, whom the Deponent presently * points in the Panel; and after some Discourse, the Deponent asked the said *George Haines*, Whether or not, in his Voyage, he had seen Captain *Drummond*? At which the said *Haines* fell in a Passion, and said, *D—n me, what have I to do with Captain Drummond*? Depones, That the Deponent seeing *Haines* in such a bad Humour, forbore for some time to speak about his Brother or Captain *Drummond*: But after that they had taken some Cups about, and that the Deponent thought *Haines* in a better Mood, the Deponent asked the said *Haines*, If he had not heard of, or seen any Scots Ship coming to or from the *East-Indies*? Depones, That *Haines* then said, *That while their Ship was upon the Coast of Malabar (where they had taken in a Black, whom Haines pointed to, and bad by him at the Time) a Dutch Ship informed them, That one Captain Drummond, commanding a Scots Ship, was turned Pirate; and that thereupon they manned their Sloop, and made themselves ready, in case they should have been attacked. But Haines added, That they did not see the said Captain Drummond.* Depones, That the said *Haines* did likewise say, *That he had in his Custody, at the Time the Ship the Worcester was seized in the Road of Leith, that which he would not have fallen in the Seizers Hands for twice the Value of the Ship.* And depones, That the said *Haines* likewise added, *That he threw it overboard after the Ship was seized; saying, Let them seek it now in the Bottom of the Sea.* Depones,

* now shows at the Bar.

That while the Deponent was discoursing with the said *Haines* about the Worth of the Ship; the said *Haines* said to the Deponent, That it would not be found to be so rich as it was expected: But that there was still in the Ship that which would never be found by the Seizers, unless they pulled her Board from Board: And that the said *Haines* said, He knew very well where that thing lay. Depones, That his Mother having gone to the other Room to Mrs. *Seaton*, the Mistress of the House; she desired the said Mrs. *Seaton* to enquire of *Haines* concerning her Son, the Deponent's Brother; and that Mrs. *Seaton* said, That *Haines* was a † Suiter of *Anne Seaton*, her * courted. Daughter, who would be more proper to enquire that of *Haines*: And that the next Morning *Anne Seaton* declared, in Presence of *Kenneth Mackenzie*, that *Haines* had said to her, *He found they had a Design to pump him; but that they should not be the wiser of him: Tho' what he had said, he had said; but would say no more at that Time.* *Causa Scientiæ patet*. And this is the Truth, as he shall answer to GOD.

James Wilkie.
ROBERT FORBES.

Compeared *Kenneth Mackenzie*, † Indweller in *Cannongate*, aged † Inhabitant. twenty seven Years, or thereby; married: Who being solemnly sworn, purged of partial Counsel, examined and interrogat, *ut supra*: Depones, That in the Month of *October* last, when the Ship the *Worcester* was lying in *Bruntisland Harbour*, the Deponent was in Widow *Seaton's* House with *George Haines* (whom he now points to in the Panel) and *James Wilkie*, and heard the said *James Wilkie* ask the said *Haines* about Captain *Thomas Drummond's* Ship; at which the said *Haines* fell in a Passion; but the Deponent going out of the Room, heard no more what passed. And depones, That the same Night the Deponent heard Mrs. *Wilkie* intreat the said Widow *Seaton*, to endeavour to get an Account from any of Captain *Green's* Crew, of her Son, who had gone Doctor aboard of the said Captain *Drummond's* Ship: And having returned next Morning, the Deponent heard *Anne Seaton*, Daughter to the said Widow *Seaton*, tell, That *Haines* had said to her, that they had a Design to pump him; but what he had said, he had said. And that he the said *Haines* told the said *Anne Seaton*, when asked by her, why he fell in a Passion at the mentioning of Captain *Drummond*? That he answered, That he knew more of the said Captain *Drummond*, than he would tell. *Causa Scientiæ patet*. And this is the Truth, as he shall answer to GOD.

Kenneth Mackenzie.

ROBERT FORBES.

Compeared *William Wood*, one of the Gunners of her Majesty's Artillery, aged fifty three Years, or thereby; married: Who being solemnly sworn, purged of partial Counsel, examined and interrogat, *ut supra*; depones, That the Deponent was in Company with *George Haines*, at *Bruntisland*; and that one *John Henderson*, † Writer, in *Edinburgh*, † Clerk for Law-Business. was likewise present. Depones, That the said *George Haines*, and the rest in Company with the Deponent, hav-

ing drunk pretty warmly, the said George Haines fell in a melancholy Fit; and John Henderson having ask'd the Reason, the said Haines expressed himself thus: *It is a Wonder that since we did not sink at Sea, that God does not make the Ground open and swallow us up when we are come ashore, for the Wickedness that has been committed during this last Voyage, on board of that old Bitch Befs; pointing to Captain Green's Ship.* And depones, That there-

† Sands.

after he went a walking with the said George Haines in the † Links of Bruntisland; and the Deponent happening to tell the said Haines, that Captain Madder's Uncle was burnt in Oil, for attempting to burn the Dutch Ships at Amsterdam; the said George Haines did thereupon tell the Deponent, *That if what Captain Madder had done, during his last Voyage, were as well known, he deserved as much as his Uncle had met with.* *Causa Scientiæ patet.* And this is the Truth, as he shall answer to GOD.

William Wood.

ROBERT FORBES.

Compeared John Henderson, Writer in Edinburgh, aged twenty Years, or thereby; unmarried: Who being solemnly sworn, purged of partial Coun-

† as William Wood in every Thing.

fel, examined and interrogat *ut supra* Depones, † *conformis precedenti* (viz. William Wood) in omnibus; except as to what happen'd betwixt the said William Wood and George Haines in the Links of Bruntisland, in relation to Captain Madder and his Uncle. *Causa Scientiæ patet.* And this is the Truth, as he shall answer to GOD.

John Henderson.

ROBERT FORBES.

Compeared Anne Seaton, Indweller in Bruntisland, aged nineteen Years, or thereby, unmarried: Who being solemnly sworn, purged of partial Counsel, examined and interrogat *ut supra*, depones, That she was present with Georges Haines, one of Captain Green's Crew (whom she points at the Bar) in Bruntisland, at the Time when Mrs. Wilkie and her Son were there: That Mrs. Wilkie desired the Deponent to endeavour to learn if George Haines knew any thing of Captain Drummond, because the said Mrs. Wilkie had a Son that went along with him. Depones, That she the Deponent did accordingly enquire at Haines's, but he denied that ever he saw the said Ship, or knew any thing of her. Depones, That she was likewise present with George Haines, when William Wood, one of her Majesty's Artillery, and John Henderson, were in Company with him, and that at that time, George Haines, in a melancholy Fit, expressed himself thus: *It's a wonder, that since we did not sink at Sea, that we are not swallowed up with the Ground ashore, for the Sins committed on board of Captain Green's Ship.* And depones, That he likewise added, *during the last Voyage.* And depones, That Haines said to the Deponent, *That he knew more of Captain Drummond than what he would express at that time:* Depones, That the said George Haines told the Deponent, *That when the Ship was seized in Leith Road, he had aboard with him that which he would not have had to fall in the Seizers Hands for twice the Value of the Ship, but that*

he threw the same over-board. Depones, That she never talked with Haines about an old Sweet-heart that she had aboard of Captain Drummond's Ship, nor did the said Haines say to the Deponent, *That she would never see him again.* And depones, That she never heard Haines say, *That there was yet aboard of the said Ship what would not be found unless she were pulled Board from Board.* And depones, That when the Deponent was enquiring of Haines about Mrs. Wilkie's Son, that he said, *That she designed to pump him as Mr. Mackenzie had done before.* *Causa scientiæ patet.* And this is the Truth as she shall answer to GOD

Anne Seaton.

ROBERT FORBES.

Compeared Captain John Brown, Skipper, in Leith, aged 40 Years, or thereby, married, who being solemnly sworn, purged of partial Counsel, examined and interrogat *ut supra:* Depones, That he went aboard the Ship the Worcester when the Goods were unloaded, by Order of the Lords of the Committee of Privy-Council, and saw the Hatches, which were fast and sealed, opened: Depones, That on the Larboard side of the Ship, the Goods were much damaged, and that few or none of the pack'd Goods were numbered or marked, which is customary; and the Deponent himself never received any Goods but what were marked, that he might know to whom they belonged. Depones, That the Goods aboard the said Ship, were regularly enough stowed: And being interrogat * for the Prisoners, whether or not it be customary that Goods be marked or numbered where there is a Supercargo aboard: Depones, That it is always customary, whether they belong to ten, or one Man: And being interrogat for the Pannels, whether or not the Reason why the Goods wanted Mark or Number, might be, because that the Goods were much damaged, and the Pepper spoiled and heated. Depones, That where the Goods or Pepper were spoiled, the Bales were all rotten to Pieces, but where the Pepper and other Goods were intire, there were Bales and Packs which wanted both Numbers and Marks: And being likewise interrogat by the Pannels, whether or not there were some Packs and Bales that had a common Ship-mark, and some who had only the Vestage † thereof, being † Sign. near worn out. Depones, That there were a great many who had a common Mark, and that it was plain and obvious, and that there were others who had no Mark at all, and that the most Part wanted Marks altogether, and that there were two or three Bales which had the Vestige of a Mark. *Causa scientiæ.* The Deponent † witnessed the unloading of the said Ship, at the Desire of the Lords of the Committee of Privy-Council, and saw, and knows as he has deponed, And this is the Truth, as he shall answer to GOD.

* On behalf of the Prisoners.

† was Witness to.

John Brown.

ROBERT FORBES.

Compeared Archibald Hodge, Skipper, in Leith, aged 40 Years, or thereby, married; who being solemnly sworn, purged of partial Counsel, examined and interrogat, *ut supra.* Depones, That he was aboard the Ship the Worcester in Bruntisland

island Harbour, when the Committee of Privy Council came to rummage her, and saw Goods unloaded from aboard. Depones, That the most Part of the Goods wanted both Number and Marks, which is no wise common or regular in any Ship that ever the Deponent has seen: But the Deponent did never see any *East-India* Ship unloaded before. *Causa scientiæ patet.* And this is the Truth, as he shall answer to GOD.

Archibald Hodge.

ROBERT FORBES.

COMpeared *John Glen*, Goldsmith, Indweller in *Leith*, aged 43 Years, or thereby, married; who being solemnly sworn, purged of partial Counsel, examined and interrogate, *ut supra.* Depones, That the second Day after the Ship the *Worcester* came to *Leith* Road in Summer last, the Deponent went aboard the said Ship, and about twelve a Clock of the Day, the Deponent was in the Cabin with Captain *Madder* and one *Hammond*, now in *England*, as the Deponent is informed; at which Time the said Captain *John Madder* took a Seal out of his Pocket, and asked the Deponent, what he thought of the *Scots African* and *Indian* Companies Arms, and at the same time gave the Deponent the said Seal in his Hand, to which the Deponent did look, and found thereon the *St. Andrew's Cross*, a *Dromedary*, a *Camel*, with a *Cattle* on the Back of it, and a *Ship* with a *Rising-Sun* above the *Helmet*, and two wild Men as *Supporters*, and that the said Seal, to the best of the Deponent's Memory, was near the Bigness of an *English Half-Crown*, and had an *Handle of Lignum vite.* And being interrogate if aboard the said Ship he did see the Impression of the said Seal upon any Paper: Depones negative. And further depones, That the Seal now exhibited in Court, was not the same which Captain *Madder* did shew to the Deponent; and whereupon he has deposed as above, *Causa scientiæ patet.* And this is the Truth, as he shall answer to GOD.

John Glen.

ROBERT FORBES.

† *Jury order'd to withdraw.*

† *Sentence or Opinion.*

|| *Sufficient to bear a Trial.*

The Probation being ended as above, and the † Affize ordained to enclose, some of the Affizers moved, that that Part of the Judges and Assessors ‡ Interloquitor, whereby they find the Crimes of Piracy, or Robbery, or Murder, as libelled, being proven by clear and plain Evidence, || relevant, &c. to be explained as to these Words, *being proven clear and plain by Evidence*, if the same did require, that the said

Crimes of Piracy, or Robbery, or Murder, should be proven by two or three Witnesses, directly proving the foresaid Crimes: Or, if it were only required, that the Crimes of Piracy, or Robbery, or Murder, as libelled, being proven by a clear and plain Evidence, as to the cumulative and concurring Presumptions, whereby the same were alledged to be inferred, altho' two concurring Witnesses should not be found as to every several Presumption, were sufficient: The said Judge and Assessors declared their Meaning to be in the Terms of Law, *viz.* That tho' there were not a direct Probation of the Crimes libelled, *per idoneos Testes, vel instructa apertissimis documentis*, by proper Witnesses, or made good by plain Proofs; yet if the Crimes did appear by the Qualifications and Circumstances, as they were li-

belled, to be made out *per indicia ad probationem indubitata & luce clariora*, by undoubted Presumptions as clear as Sun-shine, albeit every Circumstance and Qualification were not proven by two direct Witnesses, the same should be held for a clear and plain Evidence.

Thereafter, according to the Custom observed in Criminal Courts and Processess, That the Advocates for the Pursuer, and for the Pannels, are allowed † *hinc inde* to speech the Affize, and resume and lay before the Affizers, the Libel, with the Interloquitor past thereon, and apply the Probation led for proving thereof on the one Part, and on the other to resume the Defences for the Pannels, and to take off as much as possible, the Weight of the Probation for their Defence and Exculpation; Sir *David Dalrymple*, her Majesty's Solicitor, one of the Assistants to the Procurator-Fiscal in this Criminal Pursuit, spoke to the † Affize in † *Jury* manner following.

† *On both sides, in their Turns to speak to the Jury.*

Gentlemen of the INQUEST.

YOU have before you Indictments against the Pannels upon very atrocious Crimes, and these Indictments have been sustained relevant, as libelled by the honourable Judge-Admiral, to be proven by clear and plain Evidence. But for your further Satisfaction, at the Desire of some of your own Number, made openly in Court, the Judges have declared, That by these Words, *Plain and clear Evidence*, they do not confine the Affize to two concurring Witnesses, but have left to you what Evidence is necessary to make Faith according to the Nature of the Crime, to your Conviction.

Your Business then, *Gentlemen*, is to apply or compare the Probation with the Indictment, and to return your Verdict distinct, concerning what you think proven or not.

It is a Happiness that this Trust is in the Hands of Persons so discerning and faithful, and therefore the less needs be said, either for clearing the Nature of the Crime, the Manner of the Discovery, or for summing up the Evidences: But to comply with the Custom of such Trials in this Kingdom, and for preventing the Mistakes into which the Lawyers on the other Part seem to lead you: Forgive me if after a * Sederunt of twelve Hours spent in † leading of the Probation, I detain you a little longer in Recapitulating what has past, with some few Observations, I hope not improper, before || enclose.

* *Hearing.*

† *Giving in the Evidence.*

|| *withdraw.*

As to the Crimes contained in the Indictment, it is obvious how heinous they are, and how hateful they render the Persons who are truly guilty in the Eye of the Law: A Pirate is in a perpetual War with every Individual, and every State, Christian or Infidel. Pirates properly have no Country, but by the Nature of their Guilt, separate themselves, and renounce on the Matter, the Benefit of all lawful Societies: They are worse than ravenous Beasts, in as far as their fatal Reason gives them a greater Faculty and Skill to do Evil: And whereas such Creatures follow the Bent of their Natures, and that promiscuously Pirates extinguish Humanity in themselves, and prey upon Men only, especially upon Traders, who are the most innocent. The Crime of Piracy is complex, and

and is made up of Oppression, Robbery, and Murder, committed in Places far remote and solitary. And indeed if GOD had not, in a most wonderful way, brought the Crimes whereof the Pannels stand accused, to Light, they might have escaped unpunished in this World, to their own eternal Destruction, and to the great Loss of such who may be amended, or prevented by the Example of their Punishment. But altho' the Abuses now complained of, happened in the vast Ocean, and at no less Distance than the *East-Indies*, and that the Actors were tied by

† Arbitrary
Command of
their Captain.

obvious Reason to Secrecy on their own Account, and were bound by a † regulous Command, not to reveal or answer Questions: And besides all these, it is most probable there was a most impious Oath interposed, as uses to be in such Cases, and which has more Force to restrain Men of such desperate Principles and Practices, than all the Ties of Religion or Nature: Yet GOD, in his Providence, has let in Light upon these dark and cruel Crimes, as it were by meer Accident: For I presume, you are not ignorant, that the first Notices of this Matter proceeded from Words which were dropt in Passion, or expressed by the Weight of Guilt, concerning the Wickednesses which have been done aboard the *Worcester* during the last Voyage. These, and some other Grounds of Suspicion which appeared upon better Enquiry, were the Occasion of the Information given to the Government, and how cautious the Lords of Her Majesty's most Honourable Privy-Council, have been in examining the Matter before any Prosecution was appointed, I persuade myself that you and the whole Nation know, and are satisfied. And now that the Probation has been solemnly led in Presence of the Court, and of the great Number of all Qualities who have been present; I doubt not it will appear to you and all Men, who will suffer their Reason to act freely, that these Informations have been too well founded.

The Indictment, as it concerns the Facts libelled, consists chiefly of two Parts. The first concerns a Murder and Piracy happening upon the Coast of *Malabar*. The second concerns Circumstances which help to give Light to that Piracy, and which Circumstances have happened since the Arriving of the *Worcester* into this Country.

As to the first, Gentlemen, You have a Testimony of the first Witness *Antonio Ferdinando*, who deposes, *He came aboard of the Worcester upon the Coast of Malabar, and that about a Month after, he saw an Engagement betwixt a Sloop belonging to the Worcester, and another Ship sailed by White Men, speaking English, and bearing such Colours as Captain Green's Ship did bear; and that the Captain and some others of the Worcester's Crew, went aboard the Stranger's Ship, and stayed about the Space of a Glass; that upon their Return to the Worcester, the Sloop was mann'd out with twenty Men, of which Number were the Captain himself, with Madder, Simpson, Keigle, Kitchen, and others; that the Sloop was mounted with 4 Guns and 2 Patteraroes; that the Sloop engaged the Stranger's Ship, and that there was a running Fight for 3 Days, during which Time the Worcester came up and fired at the said Ship, and that upon the third Day, the said unfortunate Ship was taken (and what is fearful even to repeat) the Crew being about Ten, were murdered and thrown over-board; that the Goods were brought aboard of the Worcester, and the taken Ship was sailed with a Part of the Worcester's Crew to Callicoiloan, and there sold to Coge Commodo; that the Deponent himself was wounded, the Scar of*

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which Wound was shewn to you, Gentlemen, and the Court; and that he was commanded to keep Secrecy under the biggest Peril, and that the very Upper-Coat which he wears (and in my Judgment, appears to be Scots † Rugg) was a † Coarse Cloth. Part of the Spoil.

As to this Testimony, Gentlemen, there are several Things very observable, such as the † Stayedness, Simplicity and Constancy of this Witness, who, in many Examinations before the Council, and Committee of Council, has uniformly given the same Account which he has now deposed before this Honourable Court; not in the same Form of conceived Words, but materially the same, tho' the † Interrogators have been changed: † Questions. And I think, it adds to the Weight of his Testimony, that ye are Witnesses how it was † emitted, while he was † Given. under heavy Sicknefs, and forced to lie down at the End of the Table.

2. It is observable, that this Witness *Antonio Ferdinando* had no Accession to the discovering of this Matter, nor was at all an Informer: But the Matter being enquired into, he did plainly and honestly acknowledge from the Beginning, as he has now deposed: Neither was the Story first told at *Leith*, nor since the Pannels arriving in our Harbours: But it appears by the Testimony of *Antonio Francisco* the other *Black* (who shews a great Inclination to favour Captain *Green* and the Pannels) that *Ferdinando* gave him the same Account in Substance upon the Coast of *Malabar*: And this is further confirmed by *Stringman* the Cook, who told in several Examinations before the Council, that shortly after the said *Stringman* came aboard on the Coast of *Bengal*, *Ferdinando* who was his Mate, gave him the like Account of the Story: So that it is morally evident, that this Account of the Crime was not invented with any View of a Trial against the Captain and his Crew.

3. It is worthy your Notice, that Captain *Green* had been aboard of the unfortunate Ship taken, as a Friend, and had Opportunity to spy, that the Crew being but about ten, were too weak to man or defend a Ship of 20 Guns, which, no doubt, emboldned him to undertake the Wickedness complained of.

It is observable, That the several Parts of *Ferdinando's* Testimony are fortified by concurring Proofs. As first, by the Books found aboard, it appears, that the Sloop was furnished with Arms in the Month of *February* libelled, and that the Arms were such as the Testimony mentions. 2. He shews you the Scar of his Wound upon his Arm; and as he deposes, that he got it in the Engagement, so the Chyrurgeon deposes, *That he not only saw it, but that shortly after the bearing of the Shooting, he had taken the † Dressing from † Plaster. off the Wound, and found it a Fracture, and that it look'd like a Gun-shot, and that the Black came to his Chest a few Days thereafter to have it dress'd aboard.* 3. The Testimony of *Ferdinando* is also confirmed by the Depositions of *Francisco* and Mr. *May*, as to two very notable Articles, viz. *The bringing of the Goods aboard about that Time: And by the Testimony of the said Mr. May, as to the Ship taken, riding at the Stern of the Worcester.* 4. Captain *Madder's* severe Commands for observing of Secrecy, is not only deposed upon by *Ferdinando* the first Witness, but also by *May* the Chyrurgeon, very circumstantially: When Mr. *May* asked an in-

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nocent Question, as one should think, upon seeing the Deck lumbered with Goods, Mr. *Madder* answers, cursing him, and bids him mind his Plaster-Box. When *May* goes to his Chest, there came three Men to be dressed of their Wounds, of which the *Black* was one. *May* asks them how they came to be wounded, but *Madder* had followed, and commands Silence on their Peril; but Mr. *May* persisting in his Enquiry, *Madder* goes to the Commander, and brings a positive Order to answer no Questions: Thus *Ferdinando* and *May* concur as to the Command of Silence. Now, I put it to your Consciences, *Gentlemen*, if ye think this Mystery was used to cover a common Accident; or if, rather you are not satisfied, that, joining the Testimony of *Ferdinando* with the Wounds, and the Silence so rigorously imposed, the Goods brought aboard, the riding of the taken Ship at the Stern of the *Worcester*, they do not evince the Certainty of the Piracy and Murder libelled, as far as the Nature of the thing can admit.

To these, *Gentlemen*, ye would be pleased to join in your Observation, That it is owned and demonstrated, from the Books taken aboard of the *Worcester*, that there sprung a Leak in the said Ship on the Coast of *Malabar*; and that it had been most natural for the Pannels to have carried their Ship to *Goa*, or to *Surat*, which was within Ten Degrees Sailing, or thereabouts; yet the Pannels did chuse, rather than continue on that Coast, to run along in a leaky Vessel, a dangerous Course, round the *Peninsula*, and the Island *Keilon*, to the Bottom of the Bay of *Bengal*, a Course of about Seven or Eight hundred Leagues. But that Fatigue and Risque was small, when compared with the Danger of repairing their Ship on a Coast, where their Crimes might be more easily discovered. 2. It is remarkable, that the Books found aboard, and now lying before you, contain the full Instructions given to Captain *Green* and his Company, from their alledged Owners, which have something mysterious from the very Beginning. I have had little

† *Opportunity.*

|| *Observe.*

† Occasion to peruse them, having seen them this Morning for the first Time. But one Thing I could not but || notice, That in the Instructions, one Article contains a Cypher, in which the Captain or Supercargo was to correspond with their Owners. And altho' the Cypher seems to be nice, and well enough devised at first to cover the Correspondence from any ordinary Curiosity; yet so great Anxiety has been shewn concerning this Cypher, that the Freighters send a Letter after the Ship; adding an Instruction, That besides the Character to be used, there should be this further Disguise added, that the last Letter of the preceding Word should be always repeated before the first Letter of the next Word; of which, for Illustration, the Letter contains an Example, giving Direction how Letters should be addressed to the Writer himself. But neither was this Caution sufficient: For next Day another Letter is written, relating still to the Cypher; and wherein the Writer expressly advises, that the Letters from the Ship should not be directed to himself, but to a Scrivener living in — *Street, London*; and that they should not be subscribed. Why all this Mystery? The Correspondence must be in Cypher; and this Cypher exquisite and refin'd: And yet the Letters to be addressed to a Third Person, obscure, for what I know. They were not to contain any Address or Subscription, which should either discover the Writer, or the Person to whom

he writes. Fair Trading requires no such Affection.

But further, you will be pleased to take notice, That the outward Cargo for a Ship of 200 Tons, and 20 Guns mounted, sailed with 36 Men, was in Value but 999*l.* 17*s.* 2*d.* Sterling; which appears by the † Document † *Voucher*, produced by themselves, for instructing their Entry at the *Custom-House*; and that too, for the most Part, Arms. I have not so much Experience in Matters of Trade; but to me it seems very strange, that a Voyage so exceedingly hazardous and expensive, should have been undertaken with so small || Means. And || *Stock*, these Things, in the very undertaking of the Voyage being joined with the shrewd Evidences of the Crimes, whereof these Pannels stand accused, seem to be of very great Weight: And where such † Fineness † *Cunning*, occurs in the Entry, and the Effects are so tragical, in such an Enquiry; I hope I shall be forgiven by every body, having laid them before you with as much Tenderness to the Freighters (with whom I have nothing to do) as possible.

As to the Second Part of the Libel, I mean these Circumstances which concur to give Light to the Crimes chiefly libelled; there is also sufficient Evidence. The first of these Circumstances is what concerns Mr. *Reynolds*, one of the Pannels. The Indictment bears, That there was a Letter found, writ to him by his Wife's Sister, in Return to one of his writ to his Wife; wherein his said Sister advises him to confess; adding, That in his own Letter, which she had seen, he says, *That some of their Men had basely confess'd*; which implied, that they were guilty. And *Reynolds* being questioned upon this Letter, produced the Copy of his Letter to his Wife, which occasioned his Sister's writing to him, agreeing with this Letter. These you have before you.

I am not ignorant, that *Ferdinando* (the first Witness) says, *He believes Reynolds was ashore*: But the Testimony as to that is not positive; neither is it, in my Judgment, sufficient to take off the Accession of the Crime, or † Art and Part libelled; since the said *Reynolds* † *Contriving and Acting* was of the same Crew, and did not separate himself from them; and it is most presumable, had his own Share of the Booty. Besides, it's plain from the Letters, he was conscious to the Truth, which (he says) *was basely confess'd*: And it is of little Weight, what has been offer'd as a Glofs; viz. *basely confess'd*, is as much as if he had said, *falsely told Stories*. For in the ordinary way of speaking, to *confess*, is to *tell true*; and the Adverb *basely* implies no more than if he had said, that they had ungenerously confessed; tho' it be indeed rather a Duty, whatever Mr. *Reynolds* thinks.

The next observable Circumstance is what concerns *George Haines*: As to whom, by laying together the Testimonies of *James Wilkie*, *Kenneth Mackenzie*, *William Wood*, *John Henderson*, and *Anne Seaton*, you will find it proven, That upon asking a Question about *Drummond's Ship*, *Haines* fell in Passion; by the Depositions of *Wilkie* and *Kenneth Mackenzie*. 2. That *Haines* said, *That when the Ship the Worcester was seized in the Road of Leith, he had that in his Custody, which he would not have fallen in the Seizer's Hands for twice the Value of the Ship; and that he threw it over-board*; is proven by the Testimonies of *James Wilkie* and *Anne*

Anne Seaton. 3. That *James Wilkie's* Mother employ'd *Anne Seaton* to enquire of *Haines* concerning her Son, who had gone Doctor to *Drummond's* Ship; is proven by the Testimonies of *Wilkie* and *Seaton*. And *Kenneth Mackenzie* depones, That he was present when the said *Anne Seaton* gave an Account of what had pass'd betwixt her and *Haines*; and that she told, that *Haines* said, *They had a Design to pump him*: And that being ask'd why he fell in a Passion at the mentioning of Captain *Drummond*? He answered, *That he knew more of Captain Drummond than he would tell.* And *Anne Seaton* concurs with *Mackenzie* as to these Particulars. 4.

|| *broke out.* That *Haines*, in a melancholy Fit || burst forth in these, or like Words, *It's a wonder that, since we did not sink at Sea, God does not open the Earth, to swallow us up at Shore, for the Wickedness committed during the last Voyage, in that old Bitch Befs* (pointing to Captain *Green's* Ship) is proven by the concurring Testimonies of *William Wood*, *John Henderson*, and *Anne Seaton*. And, 5. That *Haines* said, *If what Captain Madder did during the last Voyage, were as well known as what his Uncle undertook at Amsterdam, he deserved as much as his Uncle met with; which was, to be boiled in Oil*; is only attested by *William Wood*. Nor does every minute Circumstance need a concurring Probation.

Having thus laid before you the Indictment and Probation, conjoining these Proofs, which, I am confident, to all impartial Men, will appear clear and plain Evidence of the Crimes of which these Pannels are accused; I shall take Liberty, in the next Place, to precaution you against certain Insinuations, which the Pannels Lawyers have discover'd when the || Probation was a leading.

I need be at little Pains to convince you, that the first Witness, tho' a *Black*, is a legal Witness; seeing that, upon full Debate, has been already determined by the Honourable Judges. And indeed, besides that, he is not only a Man, but a Christian, and adduced for proving a Crime covered, committed at Sea, which is more solitary than any Defart at Land. His Testimony had such a distinguishable Air of Truth and Sincerity, as made him not only a legal Witness, but a very material and probative one. But the Pannels Lawyers would fain have observed some Inconsistency in his Testimony, and betwixt it and that of Mr. *May's*: For, say they, *Ferdinando depones, That he came aboard two Years and a half ago; and that the Action happen'd about a Month after he came aboard*; so that it must have been in the Month of November, 1702, and not in the Months of February, March, &c. 1703. But ye were Witnesses, that the *Black* did not depone positively as to the Time of his coming aboard, but said it was about two Years and a half ago; and that the Engagement was about a Month after. Both these Designations of the Time admit a Latitude: And he was so cautious, that he stopt again before he signed his Oath; until it was told him, that it could not be otherways understood.

But then they urge, that he depones, That the Engagement happen'd betwixt *Tillicberry* and *Callecut*, upon the Coast of *Malabar*; yet Mr. *May* depones, That he heard the Shooting at *Callicoiloan*; which, say they, being at such a vast Distance from *Tillicberry*, was impossible.

But these Gentlemen do not observe, That the Engagement continued for three Days; and that it is expressly deponed, There was a running Fight during that Time: So that tho' the Beginning of

the Attack might have been betwixt *Tillicberry* and *Callecut*, yet it might have continued along the Coast.

Neither is it of more Moment what these Gentlemen observe, That the Strangers Ship attacked might have in three Days got off: Because it appears, she was attacked and pursued by the Sloop, which was a light Vessel; and the Ship itself attack'd was weakly mann'd, having but about ten Men aboard, and a Ship of 20 Guns.

But it may possibly be further urged, That the *Black* deponed, That Mr. *Loveday* and Mr. *Linstead* were aboard the Sloop; whereas Mr. *May* depones, That Mr. *Linstead* was left at *Keilon*; and that he heard him order'd to go ashore before, and saw him taken into the Ship some Time afterwards.

But neither is there any Inconsistency in this Particular, betwixt these two Oaths: For Mr. *May* depones, That when the Ship came upon the Coast of *Malabar*, he himself was put ashore: And altho' before he was put a-shore he heard *Linstead* and *Hammond* ordered a-shore, yet he did not see them go; so that *Linstead* might have continued in the Ship notwithstanding. Or, in the next Place, let us suppose that *Linstead* had once gone a-shore; does it from thence necessarily follow, that he did not come aboard again, till the Doctor saw him taken up? Certainly it does not; for Mr. *May* continued a very long Time a-shore. But now granting what these Gentlemen so earnestly desire, that *Ferdinando* had been mistaken as to some such Circumstance; can that overturn his Testimony? The Thing happening upwards of two Years ago: The Subject was an Engagement at Sea; perhaps the first Fighting ever he was Witness to: And the Confusion which, for the most part, is incident to the firmest Spirits in their first Adventures, might excuse this Witness, if in a † minute † *small*. Circumstance he had mistaken; seeing his Oath, as to what is material and essential, is most pregnantly || *supported*. as has been already said.

It may be likewise observed, That it was very much urged for the Pannels, that *Ferdinando* came aboard the Ship at *Anjango*, only two Days before the Ship parted from the Coast of *Malabar*: But tho' that were true, it would be little to the Purpose: For it is evident by his own Deposition, that at first he enter'd to the Service of Mr. *Loveday*, the Purser; and that he came aboard of the Sloop at *Callicoiloan* with *Loveday*; and the Sloop was the chief Instrument made use of in the Piracy libelled.

It is not unlikely, that the Lawyers on the other side will amuse you with Observes upon Mr. *May's* Testimony; as that he is but a Witness † *de auditu*, not having been † *By Hear-say*. present at the Action: But in this they are again mistaken; for, as I take it, a Witness *de auditu* is such an one, who repeats at second-hand: As if Mr. *May* had deponed, That another Person had told him he had heard Shooting. But since our Hearing is as much to be depended on as our Seeing, in what concerns the proper Object of the Ear, Mr. *May's* Testimony, which chiefly consists of what he heard and saw himself, is not in the Sense of Law *de auditu*. Mr. *May* depones he heard the Shooting; and the next Day that he came down, he saw the *Worcester* riding, with another Ship at her Stern; and that he saw some of the Crew come a-shore in a Boat; and that they told him that they had brought in a Ship; and that *Coge Commodo*, or the *Lingister*, told him he had bought the Ship. He saw and handled the *Black's* H h h h 2 Wounds:

Wounds: he was Eye and Earwitness to *Madder's* Threatning, and imposing a rigorous Silence. In all this there is nothing properly *de auditu*; for that the Seamen told him they had brought in a Ship, did not depend barely upon their telling, but upon these Circumstances, that they were the Persons brought it in; and that the Ship was riding under his Eye at the Stern of the *Worcester*. And just so what he heard from *Coge Commado*, and the *Linguist*, being upon the Place, and seeing the Ship under his Eye, is not to depone only *de auditu*, but has as much Evidence, as is necessary to create a full Certainty in the Mind of any reasonable and indifferent Person.

As for the other Circumstances, I beg Liberty to forewarn you, *Gentlemen*, That every Thing material is proven; and that even as to the least Circumstance, there is some Evidence. That the Goods were not regularly marked, as is ordinary in fair Trade, is proven by the Oaths of * *Masters of Ships* of * *Skippers*: That the Seal of the *African Company* was seen in the Hand of Captain *Madder*; is deponed by *Glen*, a Seal-Cutter, who could not well be mistaken in a Matter of that kind. And in like Manner, that there was something aboard of the *Worcester*, which would not be found, tho' they should tear her Board from Board; is deponed by *James Wilkie*. None of these Circumstances are absolutely without Evidence: And the rest of the Libel, both what is essential, and even as to lesser Circumstances, is distinctly and plainly proven.

To conclude, *Gentlemen*, As, on the one Hand, you are to be very tender of admitting that for a Proof, in a Case of Life and Death, which ought not to be admitted; so you must be careful not to reject such Evidence, as must convince the whole World, that these unhappy Criminals are guilty of the cruel and atrocious Crimes libelled. Take the Matter in its whole *Series*: The affected Darkeness in the Entry to the Undertaking, a Correspondence in Cypher, wherein the Parties were neither to be mentioned on the Cover, nor in the Letters, nor were they to subscribe. That the Cargo was inconsiderable, and chiefly composed of Arms, not to the Value of a Thousand Pounds Sterling. And it seems almost ridiculous, that a Ship of 200 Tuns, with 20 Guns mounted, sailed by 36 Men, should be sent to the *East-Indies* upon an ordinary Adventure, with so invaluable a Cargo: And join with that the Evidence of the Murder and Robberies, mentioned in the Indictment. Consider how much Light the Providence of GOD has discover'd in so dark a Crime committed in a Place so distant and solitary; and I am confident, you will conclude with me, That the Murder and Piracy is proven.

* *Speak to the Jury.* The Advocates for the Pannels did also on their Part * *speech* the Assize, by resuming the Defences for the Pannels, and for taking off the Weight of the Probation led against them, and by alledging what could be further said for their Exculpation and Defence.

* *Off-hand by word of mouth.* But these Speeches having been made * *extempore*, & *viva voce*, albeit the Advocates for the Pannels were desired at the printing of this † *Process*, to give in to be printed a full Copy of what they had said in Defence to the Assize; yet they declined to do the same.

The Judge of the High Court of Admiralty and

Assessors ordain the * *Assize* presently to inclose, and to return their Verdict upon Friday next, being the Sixteenth of March Instant, at ten a Clock in the Forenoon; and the † *hail Fifteen* Assessors to be present, each under the Pain of Three Hundred Merks, and continue the Dyet till that Time: and ordain the Pannels to be carried back to the respective Prisons.

ROBERT FORBES, I. P. A.

CURIA JUSTICIARIA *supremæ Curie Admiralitatis tenta in Prætorio, vel novæ Domo Sessionis Burgi de Edinburgo, decimo sexto die Mensis Martii, 1705. per Judicem dictæ Curie, & per Honoratissimos Viros, Joannem Comitem de Loudoun, Joannem Dominum de Belhaven, Dominos Robertum Dundas de Arnistoun, Joannem Home de Black-adder, & Joannem Cockburn de Ormiston, Assessores.*
Curia legitime affirmata.

The said Day, the Persons who pass'd upon the Assize of Captain *Thomas Green*, Commander of the Ship the *Worcester*; Captain *John Madder*, Chief Mate of the said Ship; *John Reynolds*, Second Mate; *Thomas Linseed*, Assistant Supercargo; *James Burn*, Boatwain; *James Simpson*, Gunner; *Andrew Robertson*, Gunner's Mate; *John Bruckley*, Seaman; *George Kitchen*, Seaman; *Henry Keigle*, Carpenter; *George Haines*, Steward; *Samuel Wilcocks*, Chyrurgeon's Mate; *George Glen* and *Alexander Taylor*, Seamen; *John Bannantine*, Seaman; returned their Verdict in Presence of the said Judge and Assessors; whereof the Tenor follows.

Edinburgh, the 14th of March, 1705, The * *Assize* having inclosed, did chuse Sir *James Fleming*, of *Ratbobyres*, to be their † *Chancellor*; and *William Neilson*, Merchant in *Edinburgh*, to be their Clerk: and having consider'd the Two Indictments pursued at the Instance of Mr. *Alexander Higgins*, Procurator-Fiscal of the High-Court of Admiralty, against Captain *Thomas Green*, Commander of the Ship the *Worcester*; Captain *John Madder*, Chief Mate of the said Ship; *John Reynolds*, Second Mate; *Thomas Linseed*, Assistant Supercargo; *James Burn*, Boatwain there; *James Simpson*, Gunner; *Andrew Robertson*, Gunner's Mate; *John Bruckley* Seaman; *George Kitchen* Seaman; *Henry Keigle*, Carpenter; *George Haines*, Steward; *Samuel Wilcocks*, Chyrurgeon's Mate; *George Glen*, and *Alexander Taylor*, Seamen; *John Bannantine*, Seaman; with the Debate upon the said Indictments; and the Judge of Admiralty and Assessors, their Interloquitor, and Explanation thereupon, with the Deposition of Witnesses adduced by the Pursuer * *thereintil*:
They by Plurality of Votes, find, that there is one clear Witness as to the Piracy, Robbery, and Murder libelled; and that there are accumulative and concurring Presumptions proven, for the Piracy and Robbery so libelled: But find, that *John Reynolds*, Second Mate of the said Ship, was ashore at the Time of the Action libelled:

Sic subscribitur,

* *Foreman.*

Ja. Fleming, * *Chancellor.*
Will. Neilson, Clerk.

Thereafter

Thereafter Mr. David Forbes, Advocate, produced a † Procuratory from the Company of Scotland trading to Africa and the Indies, to him the said Mr. David Forbes. In the Terms whereof the said Mr. David Forbes Protested, and took Instruments. The Tenor of both Procuratory and Protest is as follows viz. The COURT of DIRECTORS of the Company of Scotland, trading to Africa and the Indies, Considering, That the Ship the Worcester and her Cargo is by Sentence of the High Court of Admiralty, found liable by way of Reprizal to the said Company, for Reparation of the Damages sustained by them, thro' the wrongous Seizure of the Ship the Annandale, and the Delay and Denial of Justice in England concerning the same, Conform to the said Companies * Process of Declarator of Reprizal, bearing a Conclusion of † Roup and Sale of the said Ship the Worcester and her Cargo for Reparation of the Company's said Damages, as the Judge Admiral's said Sentence, dated the third of March instant bears. And considering likewise, that the additional Conclusion of the Criminal Indictment, raised at the Instance of Mr. Alexander Higgins Procurator-Fiscal of the said High Court of Admiralty, against Captain Thomas Green, late Commander of the said Ship the Worcester, and his Crew, for Piracy, Robbery and Murder, bears over and above the Confiscation of their Escheat, Moveables in general, That the said Ship and Cargo in Special should be likewise confiscated to her Majesty's Use: The said Court of Directors do therefore, by these Presents, give full Power, Warrant and Authority to Mr. David Forbes Advocate, to appear for them, and in their Name and Behalf, and in Behalf likewise of Mr. Roderick Mackenzie, their Factor in the said Process of Reprizal, to the * Behoof of the said Company, to protest against the said additional Conclusion of the said Criminal Indictment, with all that has followed, or may follow thereupon, that the same may not in the least prejudice the said Company of the Benefit of their Right and Interest in the said Ship the Worcester, and her Cargo, as should accord. In Testimony whereof, these Presents are by Warrant of the said Court of Directors, signed by their President for the Time, and Counter-signed by the said Company's Secretary at Edinburgh, the twelfth Day of March, 1705 Years.

Sic subscribitur,

FRANCIS SCOT. P. C. D.

By Order of the said Court ROD. MACKENZIE
Secretary to the said Company.

Follows the PROTEST.

EDINBURGH, 16 March, 1705.

I The above Mr. David Forbes, Do hereby Protest in the Terms of the above Mandate, and thereupon I take Judicial Instruments in the Hands of Mr. Daniel Hamilton, Clerk of Court, and require the Members of Court as Witnesses.

Sic subscribitur,

DAVID FORBES.

Her Majesty's Advocate Protested * in the contrair. * On the contrary.

Which Protections, the Judge of the High Court of Admiralty, &c. admitted and allowed them to be recorded.

The Judge of the High Court of Admiralty and Assessors, continues † Time of Trial. the † Dyet till Wednesday the twenty first of March Instant at Ten a-Clock in the Forenoon: And ordains the Pannels to be carried back to their respective Prisons.

CURIA JUSTICIARIA, Supremæ Curie Admiralitatis tenta in Prætorio, vel nova Domo Sessionis Burgi de Edinburgo, vigesimo primo die Mensis Martii, 1705, per Judicem dicta Curie, & per Honoratissimos Viros, Joannem Comitem de Loudoun, Joannem Dominum de Belhaven, Dominos Robertum Dundas de Arnestoun, Joannem Home de Blackadder, & Joannem Cockburn de Ormiston Assessores.

Curia Legitime Affirmata.

Intran.

Captain Thomas Green, Commander of the Ship called the Worcester.

Captain John Madder, Chief-Mate of the said Ship. John Reynolds, second Mate of the said Ship.

Thomas Linseed, Assistant to the deceased Supercargo of the said Ship.

James Burn, Boat-swain of the said Ship.

James Simpson, Gunner.

Andrew Robertson, Gunner's Mate.

John Bruckley, Seaman.

George Kitchen, Seaman.

Henry Keigle, Carpenter of the said Ship.

George Haines, Steward of the said Ship.

Samuel Wilcocks, Chyrurgeon's Mate.

George Glen, Seaman.

Alexander Taylor, Seaman: And

John Bannantyne, Seaman in the said Ship.

The Judge of the High Court of Admiralty and Assessors, having considered the Verdict of * Assize returned against Captain Thomas Green Commander of the Ship called the Worcester, now in Bruntisland Harbour; Captain John Madder, chief Mate of the said Ship; John Reynolds, second Mate of the said Ship; Thomas Linseed, Assistant to the deceased Supercargo of the said Ship; James Burn, Boatswain of the said Ship; James Simpson, Gunner; Andrew Robertson, Gunner's Mate; John Bruckley, Seaman; George Kitchen, Seaman; Henry Keigle, Carpenter of the said Ship; George Haines, Steward of the said Ship; Samuel Wilcocks, Chyrurgeon's Mate; George Glen, Seaman; Alexander Taylor, Seaman; and John Bannantyne, Seaman in the said Ship; upon the sixteenth Day of March instant; whereby it is found proven, that there is one clear Witness as to the Piracy, Robbery and Murder libelled; and that there are accumulative and concurring Presumptions proven from the Piracy and Robbery so libelled: And that John Reynolds second Mate of the said Ship was ashore at the Time of the Action libelled; they, in respect thereof, by the Mouth of John Park † Demister, * Decern and Adjudge the said Captain Thomas Green, John Madder, James Simpson,

† One that pronounces Doom. * Decree.

Henry

Henry Keigle, and George Haines to be taken to the Sands of *Leith*, within the Flood-mark, upon the first *Wednesday* in *April* next, being the fourth Day of the said Month, betwixt the Hours of Eleven a-Clock in the Forenoon and Four a-Clock in the

* *In like Manner.*

Afternoon, and there to be hanged upon a Gibbet till they be dead. And * sicklike, *Decern* and *Adjudge* the said George Glen, Alexander Taylor, Andrew Robertson, and George Kitchin, to be taken to the Sands of *Leith*, within the Flood-mark upon the second *Wednesday* of *April* next, being the Eleventh Day of the said Month, betwixt the Hours of Seven and Twelve a-Clock in the Forenoon, and there to be hanged upon a Gibbet till they be dead. And also, *Decern* and *Adjudge* the said James Burn, John Bruckley, Samuel Wilcocks, John Bannantine, and Thomas Linseed, to be taken to the Sands of *Leith*, within the Flood-mark, upon the third *Wednesday* of *April* next, being the Eighteenth Day of the said Month, betwixt the Hours of Eleven a-Clock in the Forenoon, and Four a-Clock in the Afternoon, and there to be hanged upon a

* *Estate.*

† *Forfeited.*

Gibbet till they be dead: And ordain all their Moveables, Goods and * Geer, and particularly the Ship *Worcester* and Cargo to be † Escheat, and in-brought to Her Majesty's Use; reserving to all Persons pretending Right to the said Cargo, or any Part thereof, their respective Claims and Pretensions to be insisted in and discuss'd before the High Court of Admiralty as accords, which is pronounced for † Doom; and * Affolzie the said John Reynolds.

† *Sentence.*
* *Abfolue.*

JAMES GRAHAM. *J. P. A.*

The Judge of the High Court of Admiralty and Assessors, recommend to the Lords of Her Majesty's Privy Council, to give a Reprieve to *Thomas Linseed* Assistant Supercargo of the Ship *Worcester*; and desire that their Lordships would recommend him to her Majesty for Her Gracious Pardon.

JAMES GRAHAM *In presentia Assessorum.* In Presence of the Assessors.

Captain Green was afterwards executed, according to his Sentence.

Here follows some Confessions and Declarations emitted by some of Captain Green's Crew, which are here set down according to their Dates, and as they were freely made in the Presence of the Persons therein mentioned, and are only here subjoined not

* *Trial.*

as any Part of the * Process, but for the further Satisfaction of all that shall be pleased to read the Premises.

Edinburgh 16th March. 1705.

DECLARATION by Thomas Linseed, emitted in Presence of Sir James Stewart Her Majesty's Advocate, hereto subscribing with the said Linseed.

T Thomas Linseed declares, That being in the Ship the *Worcester* as Assistant to the Supercargo, when the Vessel came to *Callicoiloan*, upon the Coast of *Malabar*, which was about the Beginning of the Year 1703, Mr. Hammond and he were sent a-shore to look after the Goods they had sold, and

the Returns they expected at *Callicoiloan* and *Keilon*; That the Ship the *Worcester* left *Callicoiloan* with her Sloop in *January* 1703, for to go to *Calicut*, and other Places up that Coast; but within five or six Days after the Ships parting, there came in Fisher-Boats to *Callicoiloan*, who told them that their Ship the *Worcester* had had an Engagement at Sea, and that it was the Sloop that first attack'd the Vessel, and that they fought until they were out of sight of the Fishermen, who could give no further Account of it. But thereupon the Declarant and Mr. Hammond wrote and sent a Messenger either to *Cochin* or *Calicut*, to know what was become of the *Worcester*; and that they got a Return after some Days, that they should mind their Business, and not concern themselves with any Thing that Callant the Supercargo did aboard. That some Days thereafter, the Declarant met with *Coge Commodo* in the *Ibeck* of *Keilon*, who told him, that he had bought a Ship, and he took the Declarant aboard; that the Vessel was about 100 Tons, and did bear about twelve or thirteen Guns, and that she appeared to be of the Country Build. And *Coge Commodo* said, he had bought her from the Pirates of *Cota* or *Burgara*, which are two little Pirating Towns on either side of a River on the Coast of *Malabar*; but when the Declarant came to *Keilon*, the *Dutch* and *Portuguese* there told him, that that Vessel which *Coge Commodo* had bought was brought in in the Night Season by some of the Crew of the *Worcester*, and that her Top-mast was taken down, and her Sails taken off, and the Yards lower'd; and that the *Dutch* and *Portuguese* made no more reckoning of it, because 'tis what is ordinary on that Coast. That the Declarant and Mr. Hammond stayed, for two or three Months after their parting from the Ship, at *Callicoiloan* and thereabouts, until the Ship the *Worcester* came back to the Road of *Callicoiloan*, and that there he went aboard: That when he went aboard, he told them what he had heard, but they gave him no Account of the Action; nor could he learn more of it. That the Doctor was a-shore at *Ibeck* while the Ship was at Anchor at *Callicoiloan*, and that at that Time the Declarant was gone up to *Callicoiloan*, and knows no more of the Doctor's being a-shore, That the Sloop with Mr. *Loveday* and others aboard did first come back to *Callicoiloan*, and advertised the Declarant and Mr. Hammond to be in readiness, for the Ship was coming back; and that when she came back they went aboard, and the Declarant went aboard at *Anjango*, from whence they failed to *Bengal*. And this the Declarant declares to be a Truth. *Causa scientia patet.*

T. Linseed.

J. A. STEWART.

Edinburgh, 27 March, 1705.

IN Presence of Mr James Graham Judge of the High Court of Admiralty, George Haines one of the Crew of the *Worcester*, being desirous to make a Confession of what he knew in relation to the Crimes for which he and the rest of the Crew are pursued; Declared, That when the Ship the *Worcester* was in the Downs, the Declarant received a Letter from a Friend in *London*, telling him, that it was surmised in *London* that their Ship was going out upon some ill Design; and that he had likewise another Letter from his Father to the same Purpose, and heard the Gunner James Symphon say, he had also another of the same Nature. The Declarant declares, that thereafter he used all his

his Endeavours to get ashore, and accordingly he having got leave to see some Friends aboard the *Fleet-Frigat* that was then riding in the *Downs*, he got into her Long Boat that was then going ashore, but some of the Frigate's Crew having got notice where the Declarant was, after he went ashore, they came to him, and having drunk with him to some Pitch, persuaded him to go aboard of his own Ship again; and the Declarant was accordingly carried aboard, in one of the Boats belonging to the Town of *Deal*. And some Time thereafter, the Declarant designed likewise to have got into a Man of War, riding hard by their Ship; but Mr. *Callant*, the Supercargo, came after him, and brought him back: And the Declarant believes the Name of the Man of War was the *Salisbury*. That the Ship *Worcester* sailed from the *Downs* the 8th of *March*, 1702, in the Morning. That in the Month of *June*, or *July* thereafter, the Ship arrived at *Delagoa*, where their Sloop was built of Timber, and other Materials which they had brought from *England* aboard the Ship. That having sailed from *Delagoa*, some few Days before they came upon the Coast of *Malabar*, he heard some of the Crew, and particularly *John Bruckley* the Cooper talk of turning Pirates, and persuading others of the Crew to go in with them. That when they came upon the Coast of *Malabar*, and had been there about a Month, they endeavoured to take a large Country Boat; and for that end, the Sloop endeavour'd to get betwixt the said Boat and the Shore, that so the Ship might come up with the said Boat; but there being several Hands aboard, and the Boat having Fifty Oars, out-failed both Ship and Sloop, and got off. Declares, That *Coge Commodo* was aboard the Ship the Time of the aforesaid Chase; and that he drew his *Sabre*, and encouraged the Crew of the *Worcester*. Declares, That hereafter the Ship and Sloop sailed for *Cochin*, with a Design to have cleaned both at that Place; (the Sloop being much spoil'd with Worms) but the Governor would not allow them to be cleaned there; and therefore they went up to *Callecut*, where the Sloop was cleaned and refitted, and mann'd with about Eight Men, and Two Guns, Two Patteraroes, and other Small Arms and Ammunition put aboard; and then the Sloop alone sailed up towards *Tillicberry*, and stayed away from the Ship about Eight Days. Declares, That the Sloop took no Goods along with her when she went out; but when she returned, she had aboard Eight Hog-heads of *Rack*, and knows not how she came by them. But *John Roberts*, one of the Crew who had been with the Sloop at that Time, was very melancholy after his Return; and the Declarant having a *Cocunut*, full of *Rack* in his Hand, desired *Roberts* to take a Part; but he would not, and went down to his Hammock mightily concern'd: And afterwards told the Declarant, that the Reason of his Concern and Melancholy, was, That he was accessary to the cutting off of some Mens Heads at *Sacrifice Rock*, betwixt *Tillicberry* and *Callecut*. Declares, That the Sloop did sail by her self from *Callecut* thereafter; and the Ship followed down to *Callicoiloan*, and did there meet with the Sloop: and having discover'd a Ship coming as from the Southward, the Sloop was under Sail, and made to get in betwixt the said Ship and the Offing, that so she might not get to Sea: And the Ship coming nearer to the *Worcester*, in which the Declarant was at the Time; the *Worcester* slipped her Anchors, and made towards the foresaid Ship, and at length came up with her, and fired a sharp Shot, to cause her to come to;

which she did accordingly, by breaking her Head-sails back to the Masts; and that thereafter she was boarded. Declares, That the Ship was about Seventy Tuns Burden, and square-sterned, and painted in the Quarters with Red and Yellow; and that she had a Main Deck, and Quarter Deck, and a little Fore-Castle, and was of the *Indian* Build: And that there was in the Ship, when boarded, about Twelve or Fourteen Men, all white, and sickly, as the Declarant clearly perceived before the Ship was boarded. But when the Declarant was endeavouring to know of what Country the Men were, *Edward Carry*, one of the *Worcester's* Crew, knock'd him down with a Hand-spike into the Midship Hatch: But he afterwards heard amongst the Crew, that the Men of the taken Ship were *Britons*. Declares, That he knew not what became of the Men which were aboard of the taken ship, not having been able to come above Deck, with the Stroke which he received from *Edward Carry*, and whereof he yet bears the Mark: But declares that the Sloop went off before he came above Deck, and stayed away for Three or Four Days; and that the Declarant thereafter heard the Men were put into the Sloop. And what was done with the said Men of the taken Ship he cannot tell; but doubts not they were murdered and made away, because they could not be put ashore at any Place at hand on that Coast; there being *English* and *Dutch* Factories all along the Coast, very near each other. Declares, That these of the Crew who went with the Sloop from the Ship at that time, were Mr. *Loveday*, *Thomas Calcute*, *Andrew Robertson* Gunner of the Sloop, *John Roberts*, *Edward Carry*, *Duncan Mackay*, *Alexander Taylor*, and *Antonio Ferdinando* the *Black*; but cannot be positive who besides were there. Declares, That the next Evening after the Action, the Ship which was taken the Day before, was carried in by some of the Crew to *Callicoiloan* and sold to *Coge Commodo* for 1500 *Rupies*: and that the Goods of the said taken Ship were some Bales and Matts of *China* Roots, and Four Chests of Copper; which Chests were sold afterwards at *Bengal*, to a *Bannion* Merchant named *Tagodas*. Declares, That some Days after the Action, the Declarant was sent ashore with a Letter to the Supercargo; and that he then heard that *Coge Commodo* to whom the Ship was sold, was a great Assister of all Pirates, and was very serviceable to *Kidd* and *Avery* when upon that Coast, and bought off their Goods, as the Declarant was credibly informed of the People on that Coast. And declares, That the Time the Declarant was on Shore, the Supercargo, Mr. *Linstead*, *Reynolds*, *Hammond*, and the Doctor were a-shore. And the Declarant did likewise see *Antonio Ferdinando*, the *Black*, at the *Ibeck* of *Callicoiloan*, who complained of a Wound in his Arm. Declares, That after the Action, and before the Declarant went ashore, the Doctor *Charles May*, came aboard from the *Ibeck* of *Callicoiloan*; and seeing the Chests which had come out of the taken Ship upon the Deck, he asked Captain *Madder*, What did all that Lumber upon the Deck? And that *Madder* answer'd him with a Curse, and told him to mind his *Plaster-Box*, and ask no Questions. Declares, That while the Ship was upon the Coast of *Malabar*, she sprung a Leak in the Strake next the Keel, which made the Crew to pump constantly: However they went not into any Place upon the Coast of *Malabar*, to refit her, but failed to *Bengal*, which was about Five Weeks Sailing; and there the Ship was refitted, not only of the Leak, but of an Hurt which the Ship got in the Action, in the Plank,

Plank, betwixt the Midship's Crupper and the Chestree, and a new Plank put in, in the Larboard side, where the Hurt was. *Declares*, That the Declarant did keep a Note, by way of Journal, during the Voyage, which contained the Substance of what he now declares in relation to the above Particulars; and that when the Ship was seized in the Road of *Leith*, he heaved the same over-Board, lest it should have fallen in the Seizers Hands. *Declares*, That he would have emitted this Declaration and Confession sooner, but that he was always made believe by Captain *Green's* Agents, that the Defences made for the Crew, would certainly bring them off: *And if they did all agree in one Mind, and keep close Moutbs, there would be no Fear; for nothing could be otherways proven that could do them Harm.* And declares, That *Wilcocks*, the Chyrurgeon's Mate, told the Declarant, that he saw a Letter from the Owners of the *Worcester*, in *London*, to Captain *Green*; which bore, *That altho' the Crew were condemned in Scotland, they had Pardons ready to send down for them.* And this the Declarant was likewise informed of from the Carpenter's Wife.

George Haines.
J. A. GRAHAM.

Edinburgh, 28 March, 1705.

** appeared.* IN Prefence of Sir Robert Forbes, Judge of the High Court of Admiralty, ** compeared* Gorges Haines, one of the Crew of the Ship the *Worcester*, and declared that he now adds to his former Declaration; That after the Ship therein mentioned was seized, he saw the Men which were therein killed and murdered with Pole-Axes and Cutlases, and saw their dead Bodies put into the Sloop, and thereafter thrown over-board: And, to the best of the Declarant's Knowledge, the said Men so killed were *Scotsmen*; the Declarant having heard them speak the *Scots* Language. And further declares, That the said Ship then seized, was understood by the Crew of the *Worcester* to have been Captain *Drummond* his Ship; and particularly he heard Captain *Madder*, *John Bruckley*, and the deceas'd *Edward Carry*, say so. And further adds, that he would have emitted what is above before this Time, but was afraid lest his mentioning the Ship so seized to belong to Captain *Drummond*, and the Men aboard of the same to have been murder'd, might have rendered the Government offended, and obliged them to deal hardly with the Declarant. And this he declares to be Truth, as he shall answer to GOD.

George Haines.
ROB. FORBES.

Edinburgh, 31 March, 1705.

IN Prefence of Mr. James Grabam, Judge Admiral, *John Bruckley*, Cooper of the Ship *Worcester*, being desirous to make a Confession of the Crimes, whereupon he and the rest of the Crew were pursu'd; declares, That some Time after the Ship the *Worcester* came upon the Coast of *Malabar*, that she and the Sloop gave Chase to a Country Boat, which escaped by reason of her Oars. That afterwards the Ship and Sloop sailed in Company to *Cochin*, where they were denied Access to clean; and there-

fore they thereafter sailed to *Calicut*, where the Sloop (which had been spoiled by the Worms) was hal'd upon the Shore, and clean'd, and thereafter was mann'd with about 10 Men, and 2 Guns, 2 Patteraroes, with other small Arms put aboard. From *Calicut*, the Sloop was order'd to sail towards *Tillicberry*, but there was no Goods sent along; and in about six or eight Days thereafter, the Sloop came back in Chase of another Ship. *Declares*, That when the Ship the *Worcester* saw the Sloop in Chase of the other Ship, she slipt her Anchors, and made out to Sea to meet them. *Declares*, That he saw the Sloop board the said Ship towards Night; and that the Long-Boat was after order'd to be mann'd, and Captain *Madder* went along in the Long-Boat. *Declares*, He does not know what became of the Men who were on Board the taken Ship; but that the Declarant did see they were white Men. And the Reason why he knows not what became of the Men, is, that the Declarant was never on Board the taken Ship; and that the Sloop which had boarded the Ship, was ordered away next Morning; and he doubts not but the Men were alongst which were taken out of the Prize Ship. *Declares*, That the Ship which was taken, was mann'd with some of the *Worcester's* Crew, and sailed alongst with the *Worcester* till they came to *Callicoilan*, where they found the Sloop. *Declares*, That whilst the *Worcester*, with the other Ship, came in sight of the Sloop, the Sloop weighed Anchor, and stood to the Offing; so that the taken Ship came into *Callicoilan* betwixt the Sloop and the *Worcester*; and all three came to an Anchor together. *Declares*, That after they came to an Anchor, the taken Ship rode under the Stern of the *Worcester*, and was thereafter sent into *Callicoilan* River, and sold to *Coge Commodo*, as the Declarant supposes, *Declares*, That thereafter the Declarant was sent ashore for Water to the *Ibeck* of *Callicoilan*, where he met with Doctor *May*; and that he sent on Board a *Pinguetta*, with Water, according to his Orders. *Declares*, That some Time after they came to an Anchor before *Callicoilan*; and before the Declarant was sent ashore for Water as above, they saw a Ship at Sea coming from the *Southward*; that the Sloop was under Sail at that Time, being a cruising about: That she sailed towards the Sea, and bore down the Ship towards the *Worcester*. That the *Worcester*, when the Ship came near, slipt from her Anchors, and made towards the Ship; which thereafter was boarded, first by the Sloop, and then by the *Worcester*, about ten or eleven a Clock in the Forenoon. *Declares*, That there was both *Whites* and *Blacks* on Board that Ship, and most part *Whites*; but the Declarant did not know what became of them; but that the Sloop went off in a few Hours after the Engagement and did not return till after Two or Three Days. That the Declarant does not know what became of that Ship; but declares, that he was in a *Moorish* King's House, with about six of the Crew; and that that King was *Coge Commodo's* Master, who had bargained for one of the taken Ships; the Declarant cannot be positive which: And that at the same time the Supercargo, who was along with them, presented the King with a small Fowling-Piece. *Declares*, That the Declarant stayed ashore, trimming the Casks, for about six Weeks thereafter: And does not remember at present any more of the Affair. And declares, he cannot sign but by this Mark.

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JAMES GRAHAM.

Edin.

Edinburgh, 3. April. 1705.

IN Prefence of Sir Robert Forbes, Judge of the High-Court of Admiralty, compeared John Bruckley, one of the Crew of the Ship the Worcester; and declares, That he adheres to his former Declaration, emitted before Mr. James Graham, Judge-Admiral, the thirty first of March. And now adds, That the Men which were aboard the Ship, which was seized before Callicoiloan, were for the most part White Men; and the Declarant heard them speak the English Tongue, being in Number about Twelve or Fourteen. And declares, That Captain Madder was in the Sloop, and one of those That boarded the said Ship; and that the Men were put into the Sloop, and carried away to the Northward in the Sea; and the Declarant never heard any more of them. And that the Goods aboard the taken Ship were brought into the Ship the Worcester, and consisted of China Root, and

four Chests of Copper; which Chests were sold at Bengal, to a Bannian Merchant. And further adds That the Men seized in the taken Ship were killed after they were put into the Sloop, and before they were carried to the Sea Northward. And further adds, That immediately after the Action was over, the Declarant did hear the Supercargo, Callant, Captain Madder, John Roberts, and Edward Carry say, That the seiz'd Ship was Captain Drummond's Ship, belonging to the Scots African Company. And adds, That when the Worcester sailed from the Downs, the Declarant did not know where the Ship was bound; but heard it frequently said, they were going upon a Discovery. And declares this is the Truth, as he shall answer to GOD. And declares he cannot write, but by this Mark.

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ROBERT FORBES.

A P P E N D I X.

THE foregoing Account of the Trial of Captain Green and his Crew, being taken * closely from the Records of Court; and the usual form of the Court being to hear and discuss Objections against the Witnesses, before they be examined, *viva voce*, without any written Debate; it is therefore thought fit here to add the Objections that were made against the Witnesses, and the Answers given thereto, with the Interlocutors pass'd thereon; that there may be nothing wanting to the Reader's full Information.

And first, it was objected against Antonio Ferdinando, the Cook's Mate, That he could not be a Witness, because of his Poverty; he not being worth (as the Stile of the Court is) the Queen's * Unlaw, that is, ten Pounds Scots, in case he should transgress: And so, according to the Law of this Kingdom, was to be rejected. 2. That he was not a Christian, and therefore could not be received as a Witness against Christians, specially in a Pursuit that reached their Lives and Fortunes. Nor could he indeed be supposed to have the just Knowledge of the Religion of an Oath.

To which it was answer'd, 1. That tho' the Standard of Ten Pounds Scots, settled by the Law and Custom of this Kingdom, as to the Quality of Witnesses, might well be refused in a Trial of Crimes of this Nature against the Law of Nations, and which were to be tried accordingly; yet the Matter of Fact was false; Antonio Ferdinando, being worth more than ten Pounds Scots, by the very Wages due to him; and which, by the Pannels own Books, were attested to be fifteen Shillings per Menssem, whereof, to this Hour, he hath got no Payment. 2. Antonio Ferdinando was a Christian, as he himself owned from the Beginning; and that he was born of Christian Parents: Like as it's known, that such Names are only given to Christians. Besides, tho' his not being a Christian might be a * Prejudice against him, yet it could be no just

Exception against his Testimony as a Witness; since he both profess'd the Knowledge of GOD, and the Conscience of an Oath, as he had often declared.

The Judge and Assessors having consider'd the foresaid Objections and Answers, they repel the Objections in respect to the Answers, and allow the Witnesses to be admitted.

2. It was objected against Antonio Francisco That he was not worth ten Pounds Scots; and had indeed nothing; besides, that he was no Christian, but a Servant or Slave to Captain Green; and also had no Religion.

To which it was answer'd, 1. That tho' ten Pounds Scots be the Rate of Witnesses in our Scots Law; yet, as hath been said, this Rule cannot * vie in the Case of the * bear. Crimes libelled, committed against the Law of Nations in remote Parts, & in alto Mari, in the deep Sea; which made the Crimes to be Crimes excepted. And it's known to be the Rule and Privilege, as to Crimes atrocious and * occult; and therefore ex- * hidden. cepted to exempt even the Witnesses from the ordinary Qualifications. Nor was Antonio Francisco to be reckon'd no Christian; since, 1. He bears a Christian Name; and next declares, that a Christian Mistress he had in Peggy, who gave him to Captain Green, did first procure him to be Baptized and Christned. And 3. He professes the Knowledge of the true GOD. Nor, being a Christian, can he be reckoned any longer a Slave.

But upon the whole, as to these Two, and the whole other Witnesses; the Nature of the atrocious Crime against the Law of Nations, with the Manner of their having been committed, and the Endeavours used for their Concealment, ought principally to be remembered; since thereby, in the Opinion of all Lawyers, they become Crimes excepted: And that it is the known Privilege of Crimes excepted, to relax from the ordinary Rules, and to proceed on such Evidence as the Matter doth

doth afford, the Substance of the Probation being only observ'd.

The Judge and Assessors having considered the foresaid Objections, and Answers, they repel the Objections, in respect of the Answers, and allow the Witness to be admitted.

3. It was objected against *Anne Seaton*, that she could not be a Witness, because a Woman.

To which it was answered, that in Crimes where the Probation proceeds not upon *Testes requisiti*, but such as Providence offers, even Women are admitted. But 2. It's the general Opinion and Practice over all, that Crimes atrocious, occult and excepted, a Woman is never refused.

The Judge and Assessors having considered the foresaid Objection and Answer, they repel the Objection in respect of the Answer, and allow the Witnesses to be admitted.

** Excerpts out of the Instructions and Letters found in Captain Green's Books, to which Sir David Dalrymple's Speech to the Jury relates.*

** Extracts.*

IN the Instructions or Orders given by the Freighters of the *Worcester*, Captain *Thomas Green* Commander, to Mr. *Robert Callant* Super-cargo there occurs one Article in these Words,

We would have you write us by all Opportunities, especially from Sinde, by any Ships bound from thence to Persia; and for the greater Secrecy, especially of the Letter to be sent to Mauritius for us, here under is an Alphabet for you to write us by; your Subscription must be in common English, directing all such Letters to Captain Thomas Bowrey in Well-close-Square, London.

(*Nota*, At this Place the whole Alphabet is insert distinctly, and above each Letter a different Character is set down, to be used in Place of the Letters of the Alphabet.)

When your Cargo for England is provided, or near compleated, then we would have you sell the Sloop for what you can get, and invest the Produce in Goods for England.

And lower amongst the same Orders in another Article are these Words,

You must engage the Master of the Sloop not to let any Letter from himself or any other be sent

to England, but only our Letter, in which you may insert the Names of any Dead; and for the Care and Secrecy of those who go in the Sloop, in case no Letter or News comes to England, but our Letter concerning our Business, then we will on the return of the Ship give the Master and Crew one Month's Pay gratis, and they shall also have their Shares of the Benefit promised the Ship's Company for the Whale Fishing.

By a Letter dated London, 3 February, 1702, from Captain T. B---y to Mr. Callant, the said Captain advises him in these Words,

For the greater Security of our Affairs, when you write by the Alphabet in your Instructions, I would have you carry the last Letter of each Word to be in the room of the first Letter to the next Word, as for Example.

Captain Thomas Bowrey, Sir wee are all well.

Captai nthoma sbowre yfi rwe ear eal lwell.

Make no Title (as is usual) to begin your Letter, nor no Date, nor Compliment, no Name at last; But let all be comprehended in the Lines of your Letter, so as to make no distinction, and make but one Paragraph of all your Letter, and if any Men dead, set their Names immediately after your own Name subscribed to the Letter, all in Characters before directed, and please to keep this as Directions therein.

By another Letter from the said Captain T. B---y to the said Mr. Callant, dated London, 16 February 1702, he adds concerning the foresaid Cypher in these Words,

On further Consideration, I think, I have committed an Error in my Letter to you Yesterday, it being wrote in it as, viz.

Captai nthoma sbowre yfi rwe ear eal lwell.

That is,

Captain Thomas Bowrey, Sir we are all well.

Now, I doubt the naming any Name in the beginning, or making any Complement there, may be a Means to find the Key of the Alphabet, therefore pray Strike out of the Letter I sent you Yesterday, as above done, and begin directly with your Business, following the Directions given you. And whereas you are ordered to direct your said Letter to me, I would not have you mention my Name in the Subscription, but direct the said Letter to Mr. Nicholas Pope Scrivener, in Nicholas Lane, London, to pay 5 l. to the Bearer as in your Instructions.

CLXXXII. *The Trial of ROBERT FEILDING, Esq; at the Old-Baily for Bigamy, in marrying the Duchess of Cleveland, his former Wife being then living, Dec. 4. 1706. 5 Ann.*

On Wednesday the 4th of December, At the Sessions House in the Old Baily, This Day came on the Trial of Robert Feilding, Esq; for Felony, in Marrying her Grace the Duchess of Cleveland; Mary Wadsworth, his first Wife, being then alive. The Court being sat, proceed in this manner.

Clerk of Arraignment. **S** E T Robert Feilding to the Bar. (which was done.)

Robert Feilding, hold up thy hand (which he did). Cl. of Arr. Robert Feilding, you stand indicted by the Name of Robert Feilding, late of the Parish of St. James's, within the Liberty of Westminster, in the County of Middlesex, For that you, on the ninth Day

Day of November, in the fourth Year of Her now Majesty's Reign, at the Parish aforesaid, in the County aforesaid, took to Wife one Mary Wadsworth, Spinster, and the same Mary Wadsworth, then and there had for your Wife; and that you the said Robert Feilding, afterwards, viz. on the twenty fifth of the same Month of November, in the Year aforesaid, at the Parish of St. Martins in the Fields, in the said County, did feloniously take to Wife the most noble Barbara Duchess of Cleveland (the said Mary Wadsworth, his former Wife, being then living) against the Peace of our Sovereign Lady the Queen, her Crown and Dignity, and against the Form of the Statute in that Case made and provided.

How say'st thou, Robert Feilding, art thou Guilty of this Indictment, or not Guilty?

Feilding. Not Guilty.

Cl. of Arr. Culprit. How wilt thou be tried?

Feilding. By God and my Country.

Cl. of Arr. God send thee a good Deliverance.

Cl. of Arr. Call the Jury. Mr. Feilding, if you except to any of the Jury, you must do it before they are sworn.

Feilding. I do not challenge any of them.

The Jury sworn, viz.

Francis Chapman,
Thomas Moody,
Peter Lovigne,
Hugh Merchant,
Joseph D'avenish,
Edward How,

Edward Boswell,
John Mills,
Richard Hazzard,
Samuel Chace,
Thomas Yeomond,
John Johnson.

Proclamation made, That if any can inform the Queen's Justices, and the Queen's Council, of any the Matters the Prisoner stands charged with; let them come forth and they shall be heard.

Mr. Raymond. My Lord, and you Gentlemen of the Jury, I am, in this Case, Council for the Queen. The Prisoner at the Bar, Robert Feilding, stands indicted, That he on the ninth Day of November, in the fourth Year of her now Majesty's Reign, &c. (the Indictment repeated). To which Indictment he has pleaded not Guilty, and put himself on God and his Country, which Country you are. I hope if we prove the Indictment, you will find him Guilty.

Sir Ja. Mountague. My Lord and Gentlemen of the Jury, I am of Council with the Queen against the Prisoner, Mr. Robert Feilding, who stands indicted for taking to Wife Barbara Duchess of Cleveland, after he had before marry'd one Mary Wadsworth, who is still alive: This is a Crime that amounts to Felony; and tho' the Law doth not take away from him that shall be convicted thereof, the Benefit of his Clergy; yet, since it is such a Crime as doth take away from the Prisoner the Assistance of Council, I shall only state Matter of Fact, which is as followeth.

About a Year ago, or a little better, there was a young Lady left a Widow by Mr. Deleau, and reputed a great Fortune; Mr. Feilding thinking himself qualified for the greatest Fortune, had a Design upon this Lady; and in August, 1705, he applied himself to one Mrs. Streights to consult with her, and contrive some Method how he might have Access to court this Widow. This Mrs. Streights had no Acquaintance with the Widow her self but knew Mrs. Charlott Villars was acquainted with her, and used to cut her Hair; so the best Thing they could think of at that Time, was to make

Mrs. Villars their Friend, that by her Means he might have Admittance into the Lady's Company; for he did not question if the Lady had but once a Sight of his very handsome Person, she would have the same Affection for him, that he had met with from other Ladies, even on their first seeing of him. Mrs. Villars was promised 500*l.* to bring this Affair about; and tho' she doubted with her self, whether she could ever accomplish it, yet by these Means she might perhaps make a Penny of it to herself; and thereupon she promises Mrs. Streights to use her endeavour to serve the Major-General, meaning Mr. Feilding, tho' Mrs. Villars could not be sure such an Overture would be well received by Mrs. Deleau: Yet being acquainted with one Mary Wadsworth, a young Woman not much unlike in Person to Mrs. Deleau, she imagined it would be no difficult Matter for her to set up the said Mrs. Wadsworth to represent Mrs. Deleau; and accordingly it was done, and Mr. Feilding proved so intent upon the Matter, that he went in few Days to Doctors-Commons, to see for Mr. Deleau's Will (and found thereby that Mrs. Deleau was left very considerable). And that he might judge the better whether she were truly the Fortune she was represented to him, he took a Copy of the said Will, and soon after went to Mrs. Villars and told her, That what Mrs. Streights had said concerning Mrs. Deleau's Fortune was true: And being very well satisfied with her Fortune, he was resolved to get a View of her. Soon after, Mr. Feilding went to Tunbridge, and after two or three Days stay there, returned and called at Waddon, the Place where Mrs. Deleau resided, with a Pretence to see the House and Gardens, but in reality it was to see the Widow; he thought nothing else was then to be done, but to give the Lady a sight of his handsome Person he designed to lay at her Feet; but it happened that the Lady would not be seen her self, but her Servants were permitted to shew him the Gardens, and he fancied himself that he had had a Sight of Mrs. Deleau too; for a Kinswoman of Mrs. Deleau's looking out into the Garden while he was there, gave him the Sight of a Woman at the Window, and he presently concluded it could be no body but Mrs. Deleau admiring Beau Feilding. About three Days after Mr. Feilding's Return from Tunbridge, which was about a Fortnight after St. Bartholomew-tide last was Twelve-month, he told Mrs. Villars of his calling at Waddon, and that he had acquainted the Duchess of Cleveland of the fine Gardens that were there, and he said that her Grace had a great Desire to see them, and therefore directed Mrs. Villars to go from her Grace to Mrs. Deleau, to ask the Favour of her to permit her Grace to see the House and Gardens. Accordingly Mrs. Villars went down to Waddon; and Mrs. Deleau treated her very civilly, and told her whenever her Grace pleased, she should see her House and Gardens; but as she was a Widow she could not attend upon her Grace: But tho' the Duchess was expected after this, yet she did not go, for indeed she did not know any Thing of the Message. So the next Time Mr. Feilding attempted to see her, was at a Horse-Race at Banstead-Downs, whither he went for that Purpose, but did not see her. After this, or some Time before, he sent a Letter to Mrs. Deleau's House, but the Servants when they saw the Name to it, knowing the Character of Mr.

Feilding, threw it into the Fire.—When *Mrs. Villars* found that the *Duchess of Cleveland* knew nothing of her being sent to *Waddon*, and that it was only a Contrivance of *Mr. Feilding's* to get an Opportunity of seeing *Mrs. Deleau*, and that in Truth he had never seen her, she resolved to play Trick for Trick with him, and thereupon proposed the Matter to *Mary Wadsworth*, the Woman I before mentioned to be of her Acquaintance, but one that *Mr. Feilding* did not know, and one that would not worst her self much by such an Undertaking, whether it succeeded or not. *Mrs. Wadsworth*, upon the first opening of it readily embraced the Offer, and thereupon *Mrs. Villars* went to *Mr. Feilding* and told him, she had proposed the Matter to the Lady (*Mrs. Deleau*) which she at first rejected, but at last did give a favourable Ear to it; and that she did not fear, but if Matters could be prudently managed, his Desires might be accomplished.—A little before my Lord-Mayor's Day last was Twelve-month, she told *Mr. Feilding* that she had at length obtained of the Lady the Favour of a Promise of an Interview, and that she was shortly to bring her to his Lodgings, but he must take care not to let her know they were his Lodgings, or to give her the least Cause to suspect he had any Thing to do there: Accordingly *Mrs. Villars*, the Evening of my Lord-Mayor's Day, brought *Mrs. Wadsworth* in a Mourning Coach and Widow's Dress to *Mr. Feilding's* Lodgings: He was not within at the Time they came thither, but being sent for, came in soon after, and was extremely complaisant for some Time; but at length tho' he had been cautioned not to let the Lady know they were his Lodgings, yet he could not forbear shewing her his fine Cloaths, and what Furniture he had; and in a little Time after sent for *Mrs. Margaretta* to sing to her; and pretended he was so extremely taken with her, that nothing would satisfy him but being married that Night; but she, with a seeming Modesty, check'd his forward Behaviour, and made a shew of going away in displeasure; but before they parted, he prevailed upon her to promise not to put off their Marriage longer than *Wednesday Seven-Night*. My Lord *Mr. Feilding* rightly judged by this Conversation what an Interest he had fix'd in the Lady, and looking upon himself to be sure of her, he actually went to a Goldsmith and bespoke a Ring, and directed himself what Posie should be engrav'd. When the Day came which had first been agreed on, sham Pretences were made, not to seem over-hasty in so serious a Matter, and the Marriage was put off till the *Friday* following, being the 9th of *November* last was Twelve-month; at which Time *Mrs. Villars* and the Lady came again to *Mr. Feilding's* Lodgings, where he received her with an extraordinary Transport of Joy, and the Marriage must immediately be proceeded on; but she for some Time framed several Put-offs, and at length made an Offer to have gone away; but *Mr. Feilding* by no Means would permit her to go, without making her his own, which he was resolved should be done presently; and to make all Things sure, he ran out and lock'd the Chamber-door to keep her and *Mrs. Villars* in, whilst he went for a Priest; and taking Coach immediately drove to *Count Gallas's* the Emperor's Envoy; when he came to his Gate, he enquired of the Porter for one *Francisco Drian*, that was stiled, *The Father*

in *Red* upon account of a red Habit he usually wore; but he not being within, *Mr. Feilding* asked for another Father; and one Father *Florence* was called to him, whom he acquainted with the Business he came about; but whilst he was treating with Father *Florence*, the Father in *Red* luckily came in, and *Mr. Feilding* immediately took him away with him in the Hackney-Coach to his Lodgings. My Lord, and Gentlemen, we shall shew you that this Father in *Red* stay'd there about an Hour, and then went away.—We shall shew your Lordship likewise, That *Mr. Feilding* and *Mary Wadsworth* supped together, and after Supper he was actually marry'd to *Mrs. Wadsworth*. And that this Marriage was consummate, we shall prove by several Particulars, viz. That clean Sheets were laid upon the Bed, and all Ceremonies performed that are usual upon such Occasions; and they actually went to Bed together, and lay together all that Night; and the next Day the Lady and *Mrs. Villars* went away, and as *Mr. Feilding* supposed, to *Waddon*, the Widow *Deleau's* House; to which Place your Lordship and the Jury will find he directed his Letters to her afterwards, and in the Supercriptions stiles her the Countess of *Feilding*. To corroborate this Evidence we shall likewise prove to your Lordship, that about a Week after, he lay with her again at the very same Lodgings; and we can make it appear that he hath lain with her Three several Times since this first Night, twice before, and once after his Marriage with the *Duchess of Cleveland*. My Lord, we shall shew you that he made her Presents, furnish'd her with Money, and treated her as his Wife, until the Cheat was found out, which was not till *May* after; and then finding how he had been served, that instead of marrying a Fortune of 60000*l.* he had been impos'd upon and marry'd one not worth so many Farthings, he discarded her in great Wroth.

My Lord, we will call our Witnesses who will prove to your Lordship, step by step, how this Matter was brought about; and first we will begin with *Mrs. Villars*.

Mrs. Villars sworn.

Mrs. Villars: My Lord, there came one *Mrs. Streights* to my Lodgings and wanted to speak with me (it was *Bartolomew-tide* was Twelve-month) but I was not at home; when I came home, they told me *Mrs. Streights* had been there, and left word that I was always out of the way when it was to do my self good; she said it would be five hundred Pounds out of my way if I did not come to her. I met with her and *Mr. Feilding*, and being acquainted with *Mr. Feilding's* Design upon *Mrs. Deleau*, he asked me whether I knew the Lady? I said I had no particular Acquaintance with her, but I used to cut her Hair; He told me that he was in Love with her, and asked me whether I would assist him in his Courtship? And whether a Marriage might be brought about? I told him I could not tell, I did not know whether I had that Interest in the Lady as to be made serviceable in such a Design. *Mr. Feilding* enquired very strictly after her, and said, he would try Means to come into her Company that he might gain her Acquaintance: Upon which we parted at that Time.—And about three Days after *Mrs. Streights*

Streights came to my House again, and said, Mr. *Feilding* would speak with me. I went to him; and he told me, he found that the Lady was worth 60000*l.* as he had been told before. He asked me where it was she liv'd? I told him, in *Coptbal-Court*, near the *Change*. I told him likewise where her Country-House was; That it was at *Waddon* in *Surrey*. Mr. *Feilding* told me, He would go to *Tunbridge*, and call by the way to see the Gardens; and by that means he might have an Opportunity of seeing Mrs. *Deleau*; which he did accordingly. I was sent for again; and he told me he had seen the Gardens, and they were very fine: And that he saw the Lady through a Casement; and that she might have the more perfect View of him, he took divers Turns in the Garden, pull'd out his Watch and set it by the Sun-Dial: And that he came round the Country, and almost murder'd his Horses, to get a Sight of her. But he desired to be in her Company, that he might have a full View of her. He desired me to go to Mrs. *Deleau*, and tell her, that the Dukes of *Cleveland* had heard a great Character of her Gardens, and was very desirous to see them.—— I went and acquainted Mrs. *Deleau* with it: She said, she would not refuse a Woman of her Quality; but would take it as a great Favour, to shew her any Thing that belong'd to her: But desir'd that it might not be that Week, but the Week following; because she was to see a Race on *Banstead Downs*. I told Mr. *Feilding* this; and he made Answer for the Dukes of *Cleveland*, and said, The Dukes was not well; and could not go to see the Gardens. When I found that Mr. *Feilding* did not send me from the Dukes, but from himself, I was out of Countenance, that I should innocently impose upon the Lady. Mr. *Feilding* told me, he would go and see the Race upon the *Downs*; and when he came back, he would send for me, and acquaint me whether he had seen the Lady. And when he came to Town again, he sent Mrs. *Streights* to me, to come to him; and when I came to him, he told me he saw Mrs. *Deleau*, he believed, upon the *Downs*. Mr. *Feilding* made a Bow to them, and they to him. He said, From thence he went to *Epsom*, and sent a Letter to be deliver'd into Mrs. *Deleau*'s own Hands, by a Servant of his, not in a Livery. I think it was accordingly deliver'd. Mr. *Feilding* told me, Mrs. *Deleau* read it, and said it required no Answer: and said no more. Mr. *Feilding* asked me, whether I could not get a Letter to Mrs. *Deleau*? He said, he was much in Love with her. I told him, I believ'd he was mistaken; and that it was another whom he saw.——I perceiv'd that he had no Knowledge of Mrs. *Deleau*.——I acquainted a young Woman (whom I supposed he might have seen) with his Inclination (Mrs. *Wadsworth*): She said, she did not expect to be so happy; but wish'd it might be so. I engag'd to Mr. *Feilding* to do what I could to bring it about.——There were divers Letters pass'd between them till my Lord-Mayor's Day. Divers Presents were sent from Mr. *Feilding*, by me, to the Lady. The first Present was a Gold Apron, struck with Green: That was the first Present Mr. *Feilding* sent to Mrs. *Wadsworth*, whom he thought was Mrs. *Deleau* all the while; but it was Mrs. *Wadsworth*. I did not think Mrs. *Deleau*, who was a great Fortune, would agree to marry a Man of Mr. *Feilding*'s Character. Mr. *Feilding* kept sending of Presents and Letters from that

Time, from the latter End of *Bartolomeu-tide*, to my Lord-Mayor's Day. He sent her a Suit of white Sattin Knots, and Gloves, and other Things. He desir'd I would bring her to his Lodgings on my Lord-Mayor's Day, at Night; which I did about nine a Clock, in a Mourning Coach. Mr. *Feilding* was not at home, but came immediately. When he came in, he fell down upon his Knees, and kiss'd her, and express'd Abundance of fond Expressions. He asked her, *why she stayed so long? And whether she loved Singing?* He said, He would send for *Margaretta* to come up. When she came, Mr. *Feilding* bid her sing the two Songs which he lov'd;——which she did; The one was, *Charming Creature*; and the other was *Ianthe the Lovely*. After which, Mr. *Feilding* sent for two Pints of Wine, and some Plumb-Cakes. He urg'd very much to marry her; but she declin'd it, and made him a Promise to come to him the *Wednesday* following. In the *interim* she sent him a Letter, to acquaint him she could not come according to her Appointment; but she would come to him on the *Friday* following, which was the 9th of *November*. Then he sent her another Letter, to desire her not to fail, but come to his Arms; and told her, That there wanted nothing but the Holy Father to join their Happiness; for their Hearts were all one already. And when *Friday* came, Mrs. *Wadsworth* and I went to Mr. *Feilding*'s Lodgings again: He was not within; but came running into the Room in a little Time after with a great deal of Joy, and took Mrs. *Wadsworth* into his Arms, and said, *Nothing could ease his Mind, but a Promise to make him happy, in marrying him presently.*——He said, he would fetch the Priest; but Mrs. *Wadsworth* refused his Proposal, and would have dissuaded him from going then; and desired him to put it off till another Time, and would have gone away. But he would not hear of it; and said, She had disappointed him before; and that he repented he had let her go away before; but now he was resolved to make her his own, before she went away. Mr. *Feilding* then went for the Priest, and lock'd the Chamber-Door after him, and took the Key with him, for fear Mrs. *Wadsworth* should go away; and order'd *Boucher* to let no Body into the Dining-Room till his Return. Mr. *Feilding* returned in a little Time, and brought a Priest with him, in a long Red Gown lin'd with Blew, and a long Beard, and a Fur Cap. Mr. *Feilding* told her, that this was the Holy Father that was to make them one. Mr. *Feilding* then ordered the Man to lay the Cloth, and fetch a Dish of Pickles to Supper.——At supper Mrs. *Wadsworth* seemed cautious; and for fear the Priest should not be in Orders, said, *How shall I know that this is a Priest in Orders?* Mr. *Feilding* question'd him. Then the Priest pull'd a Picture out of his Pocket, about the Bigness of a Crown-Piece; and told them, *That none but Priests had such Pictures.* And that she might be still further satisfied, she desired another Token.

After this, *Boucher*, and the rest of the Servants were order'd down Stairs. Then the Priest call'd for Water, Salt and Rosemary, to make Holy Water. *Boucher* brought up Water and Salt, but could get no Rosemary. Mr. *Feilding* and I received it at the Dining-Room Door. Then Mr. *Feilding* lock'd the Door, and took the Key in the Inside. Mr. *Feilding* ask'd Mrs. *Wadsworth*, Whether it should

be

be done in the Bed-Chamber, or Dining Room? Mrs. *Wadsworth* agreed it should be in the Bed-Chamber. There were none present, but Mr. *Feilding*, Mrs. *Wadsworth*, the Priest, and my self. The Priest made Holy-Water, and blessed it: Then he set Mrs. *Wadsworth* at the right of Mr. *Feilding*: the Priest stood before them and read the Ceremony in *Latin*, as I understood; and Mrs. *Wadsworth* said, *She was not yet satisfied he was a Priest*. Then he laid down his Book, took from under his Gown a Piece of Silk like a Scarf, that was mark'd with a Cross in the middle; and said, None but Priests us'd such a Thing. Then Mrs. *Wadsworth* was well satisfied he was a Priest. Says Mr. *Feilding* to her, *Do you think, my Dear, that I would have any Body to do this Business, But the Holy Father?* Mrs. *Wadsworth* was well satisfied till he came to that Part, *Wilt thou have this Woman to thy wedded Wife?* She desir'd it might be spoke in *English* by him as well as he could. He did so. He ask'd Mr. *Feilding*, *Whether he would have this Gentlewoman to be his wedded Wife?* He said, *Yes, with all my Heart*. He asked the Lady then, *Whether she would have this Gentleman for her Husband?* She said, *Yes, faintly*: But says Mr. *Feilding*, *You don't speak it so earnestly as I do: You must say, With all my Heart and Soul; which she did*. Then the Priest blessed the Ring, and gave it to Mr. *Feilding*, to put it on the Lady's Finger. He said something in *Latin*, but what it was I know not. Then we went into the Dining-Room. *Boucher* brought up Wine; and when all had drank, the Priest was discharg'd. Mrs. *Wadsworth* and I went into the Bed-Chamber, and I put her to Bed. Mr. *Feilding* called her his *Dear Wife*, the Countess of *Feilding*; and said, He would make haste and fly to her Arms. After I put her to Bed, he went to Bed to her; and order'd me to come into the Room to see them in Bed; which I did. I rose the next Morning, and came to Mr. *Feilding*'s Room, where *Boucher* came soon after to light a Fire: Then I saw Mrs. *Wadsworth* in naked Bed with Mr. *Feilding*, Mrs. *Wadsworth* put on her Cloaths as soon as she could; and a Hackney Coach was call'd for her, and she went away. At parting with Mr. *Feilding*, she told him, she did not know when she could return; but about a Fortnight after, she came again. There were Fires made in both Rooms, and Candles lighted up; clean Sheets upon the Bed, and every Thing prepared for her lying there. Mrs. *Wadsworth* went to Bed. Mr. *Feilding* did not come home till late that Night. I saw them that Night in Bed, and went into the Room the next Morning, and saw them in Bed again: She rose, and went away as before. Mr. *Feilding* desir'd her not to stay so long as she had done before; for if she did, he would come and fetch her. She promis'd him she would return sooner. Mr. *Feilding* kept sending of Letters to her between Times, which was about fifteen or sixteen Days, till she came to him again. He desired her to come to him, and he would be at home to receive her. She accordingly came to him, after having given him notice of her coming. He was not at home when she came; but She went to Supper by herself. — She had for her Supper some toasted Cheese, a Pint of Wine, and a Bottle of Oat Ale. When he came home to her, he asked her, *Why she did not send for something better for Supper?* They went to Bed again, as before; and I saw them in Bed together. Mrs. *Wadsworth* got up in the Morning;

Mr. *Feilding* treated her; and away she went as before. Then Mr. *Feilding* kept writing to her [which Letters are inserted in their proper Places] and desir'd her to come to him again, as being the last Night she should lie with him at his Lodgings; for he was going to leave his Lodgings for altogether, and be with her Grace the Duchess of *Cleveland*. Mrs. *Wadsworth* came; but neither Mr. *Feilding* nor *Boucher* were at the Lodgings: But she had not been there long, but *Boucher* came in, and said, That he had brought his Master's Night-Gown and Slippers from the Duchess of *Cleveland*'s.

Council. Mrs. *Villars*, You say, most of the Service was in a Language you did not understand.

Mrs. *Villars*. It was, my Lord—But one Part of it was in *English*. I heard Mr. *Feilding* say, *He would take this Lady to be his wedded Wife*.

Council. Who is that Lady?

Mrs. *Villars*. That Lady Mrs. *Wadsworth*; pointing at her; (she being in Court).

Council. What did you hear Mrs. *Wadsworth* say?

Mrs. *Villars*. I heard her say, *That she took Mr. Feilding to her wedded Husband*.

Council. What did you observe else that was remarkable?

Mrs. *Villars*. I saw the Ceremony of the Ring performed. I saw the Priest bless the Ring with Holy-Water, and sign himself with the Sign of the Cross. The Priest held Mrs. *Wadsworth* by the lower Joint of the Finger and put the Ring on.

Council. What is Mrs. *Wadsworth*'s Christian Name?

Mrs. *Villars*. *Mary*.

Council. What did he say further, when he said, *I take thee to be my wedded Wife?*

Mrs. *Villars*. He named no Name, but *I take this Lady, &c.* — The Priest ask'd him, *Whether he took her with all his Heart and Soul?* He said, *I take her with all my Heart, and Soul, and Blood, and every thing else*.

Council. What Time was this?

Mrs. *Villars*. It was *Bartholomew-tide* was Twelve-month, as near as I can remember to the Time.

Council. Did Mr. *Feilding* tell you he had been at *Waddon*?

Mrs. *Villars*. Yes, he did; and said, That he had seen the Lady thro' the Window, whence he fell in Love with her.

Council. Why was this Marriage kept private?

Mrs. *Villars*. Because Mr. *Feilding* took the Lady to be Mrs. *Deleau*.

Justice *Powel*. How long was it before it was discover'd?

Mrs. *Villars*. It was not discover'd till the latter End of *May* last, or the Beginning of *June*.

Justice *Powel*. When was the Time Mr. *Feilding* was marry'd?

Mrs. *Villars*. It was the 9th of *November* was Twelve-month.

Council. What was the Reason why the Marriage was carry'd on so privately?

Mrs. *Villars*. The Reason was, because Mrs. *Deleau* had a Father alive, who had in his Hands a Part of her Fortune; and for fear of disoblighing him, Mrs. *Wadsworth*, that went for Mrs. *Deleau*, was willing it should be kept private.

Council. Can you tell the Reason of its being discovered?

Mrs. *Villars*.

Mrs. Villars. Mrs. Wadsworth sent to Mr. Feilding for Money.—Then Mr. Feilding found he had not a Woman of that Fortune which he took her to be. When Mr. Feilding did find it out, he took Mrs. Streights into a Closet, at the Duchefs of Cleveland's, and sent for me there: Then Mr. Feilding wanted to have the Presents returned. Mr. Feilding then beat me, and asked me whether that was a fit Wife for him? And then took a Thing made of Steel at one end, and a Hammer at the other end; and told me, if I would not unsay what I said of his Marriage with Wadsworth, he would slit my Nose off: And that he would get two Blacks; the one should hold me upon his Back, and the other should break my Bones.

Justice Powel. One would have thought you should have been afraid to have seen Mr. Feilding.

Mrs. Villars. My Lord, It was not till then found out.

Sir Ja. Mountague. My Lord I think she hath clearly proved the Marriage; and that she saw them three times in Bed together, in the Space of six Weeks after the Marriage.

Mr. Feilding. By what Name did Mrs. Wadsworth go?

Mrs. Villars. By no Name at all.

Mr. Feilding. Did I ever appear with her in Publick?

Mrs. Villars. No, never.

Mr. Feilding. What was the first Place I saw her in?

Mrs. Villars. The first Place you saw her, was at your Lodgings, last Lord Mayor's Day, was Twelve-month.

Mr. Feilding. My Lord, I desire it may be asked her, how she came to think that I should send such mean Presents as she hath mentioned, to a Lady of Mrs. Deleau's Fortune? They were not at all suitable to Mrs. Deleau.

Justice Powel. Ay, Mrs. Villars, What say you to that? Mr. Feilding thinks it a very strange Thing, that he should send such Trifles to a Lady of Mrs. Deleau's Quality.

Mrs. Villars. He did think, at that Time, that he made his Addresses to Mrs. Deleau; and I am sure such Presents were sent; and he was really marry'd to her, and marry'd her for Mrs. Deleau.

Justice Powel. Mrs. Villars, Mr. Feilding desires this Question should be ask'd you; When was the first Time you acquainted the Duchefs of Cleveland with this Matter?

Mrs. Villars. I will tell your Lordship. Mrs. Feilding, that is now, told me, Mr. Feilding beat her at the Lodge at Whitehall (I did not see the beating) and said, she should have Occasion to bring me upon my Oath, to prove that Mr. Feilding was marry'd to her the ninth of November. I went with Mrs. Feilding to the Duke of Grafton, and told him, I was sure he was marry'd the ninth of November before.

Justice Powel. How long was it after the beating, before you and Mrs. Feilding went to the Duke of Grafton?

Mrs. Villars. It was about three Weeks.

Justice Powel. Are you sure it was before that Time that there was any Parting betwixt Mr. Feilding and the Duchefs of Cleveland.

Mrs. Villars. Mrs. Feilding acquainted me with it her self, that the beating was before the Difference between the Duchefs of Cleveland and Mr. Feilding.

Council. Altho' you did not see what pass'd at Whitehall; Whether was this before the Difference between the Duchefs and Mr. Feilding?

Mrs. Villars. I believe it was about a Fortnight or three Weeks.

Mr. Feilding. How came it to pass that it was not discovered till now of late?

Mrs. Villars. It was not discover'd till she sent to Mr. Feilding for Money, about May, after the Marriage.

Justice Powel. Why did you not apply yourself to Mr. Feilding for the Reward?

Mrs. Villars. I was to have no Reward.

Mr. Feilding. Mrs. Villars, What Reward did the Duchefs of Cleveland promise you?

Mrs. Villars. I never saw the Duchefs of Cleveland; and I was never promis'd any Reward.

Justice Powel. Was you not to have had a Reward for helping Mr. Feilding to Mrs. Deleau?

Mrs. Villars. Mrs. Streights left such word at my Lodgings; but I had no Promise of it from Mr. Feilding.

Sir Ja. Mountague. My Lord, Mrs. Villars has given you so full an Account of every Thing I have open'd, that all that we have to do now, is to support Mrs. Villars's Evidence; and to make it appear to your Lordship, that she is right in all these Particulars that she tells you of. And the better to make our selves understood, we will go on, and give your Lordship an Account how these Things were carry'd on from Time to Time. But first we shall prove to your Lordship, How that after Mr. Feilding was thus marry'd to Mrs. Wadsworth, he did actually marry the Duchefs of Cleveland.

Mr. Feilding. My Lord, I do not deny my Marriage to the Duchefs of Cleveland.

Sir Ja. Mountague. Then, my Lord, we will not trouble you with any Proof of that Matter, but go on with making out the Circumstances of his Marriage with Mrs. Wadsworth; and we shall verify, in every Particular, Mrs. Villars's Evidence. And first we shall prove, that he actually took a Copy of Mr. Deleau's Will. For that call Mr. Searle (who was sworn).

Sir James Mountague. Mr. Searle, Give my Lord and the Jury an Account of what you know of Mr. Feilding's coming to Doctors Commons, to see the Will of Mr. Deleau.

Mr. Searle. My Lord, I am a Servant to Mr. Cottle, Proctor to the Prerogative Office. Mr. Feilding came to Doctors Commons about the Beginning of Michaelmas Term, 1705, and desired me to search, and see whether Mr. Deleau's Will was come into the Office, or no. I look'd in the Kalendar, and found it was come in; and spoke to the Clerk, in whose Possession it was, and he read it over to him; and he desired a Copy of it, which I wrote out. Mr. Feilding came in three Days after for it, but it was not done. I desir'd him to come another Time; which he did, and had it.

Council. Who did he bespeak it of?

Mr. Searle. He bespoke it of me, and had the Copy of me.

Council. When was this?

Mr. Searle. It was about the Beginning of Michaelmas Term.

Sir James Mountague. The next Thing we shall prove, is, that Mr. Feilding was actually at Wadon, Mrs. Deleau's House: And we shall prove that even by Mrs. Deleau (who was sworn).

Council.

Council. Pray, Madam, have you any Acquaintance with Mr. *Feilding*?

Mrs. Deleau. None at all.

Council. Do you remember he came to your House in the Country?

Mrs. Deleau. He did about *Bartholomew-tide* was Twelve-month.

Council. When he was there, had he a fight of you, Madam?

Mrs. Deleau. No, my Lord; he was not in the House, but in the Garden.

Council. Do you know Mrs. *Villars*?

Mrs. Deleau. I do, my Lord.

Council. Did she ever come to you upon such a Message, That my Lady *Duchess of Cleveland* and Mr. *Feilding* had a Desire to see the Gardens?

Mrs. Deleau. She did so; and it was about the same Time Mr. *Feilding* had been there, or some little Time after, I believe.

Council. Did you go to the Race on *Banstead Downs*?

Mrs. Deleau. No, my Lord.

Council. Did Mrs. *Villars* use to Cut your Hair?

Mrs. Deleau. No, my Lord—Her Mistress did.

Council. Was there any Letter brought to your House from Mr. *Feilding*?

Mrs. Deleau. I heard there was.

Council. Who receiv'd the Letter from Mr. *Feilding*?

Mrs. Deleau. Some of the Servants, but I receiv'd none; but some of the Servants receiv'd it. I was then at my Father's, and left Orders that they should take in no Letters but such as came from my Relations, which would come by themselves.

Council. When had you Notice of Mr. *Feilding's* being at your House?

Mrs. Deleau. My own Butler came up, and acquainted me Mr. *Feilding* was below. He came to my House with the Character of Major General *Villars*. I did not see him; but here's the Lady that saw him out of the Window; who, it seems, he took for my self.

(*That Lady sworn.*)

Council. My Lord, we only bring this Lady to prove what the first Witnesses said, That Mr. *Feilding* saw Mrs. *Deleau* thro' a Window—Madam, Do you remember Mr. *Feilding* was at *Waddon*, and when?

Lady. He was there about *Bartholomew-tide* was Twelve-month. I did see him thro' a Window, and inform'd my Cousin of it.

Council. Then call Mr. *Boucher* (*who was sworn*).

Council. Mr. *Boucher*, Pray give my Lord and the Jury an Account of all you know of this Matter.

Mr. Boucher. My Lord, I went with Mr. *Feilding* to my Lord-Mayor's Show last Lord-Mayors Day was Twelve-month. He went in his Chariot to Mr. *Feilding's* a Linnen-Drapers at the *Three-Legs* in *Cheapside*. I looked into the Balcony and saw Mrs. *Villars* there—My Master came down again, and went to Sir *Basil Firebrass's*; from thence I was order'd to go home, and meet my Master in *Bond-Street*; which I did. He ask'd me whether any body had been at his Lodgings to enquire for him? I said, no, and went home again. Then I found the Lady and Mrs. *Villars* at Mr. *Feilding's* Lodgings. They had been there but a little time, but Mr. *Feilding* came in. Mr. *Feilding* complemented the Lady, and ask'd her if she lov'd Singing? Mrs. *Margaretta* was sent for, and accommodated this

Lady and Mrs. *Villars* with two Songs. Mr. *Feilding* treated them with a Bottle of Wine and a Plumb Cake—*Margaretta* went away; and soon after Mrs. *Villars* and this Lady went away. So, says Mrs. *Heath* afterwards to me, Do you know what Woman of Quality that is in the Coach? This Mrs. *Heath* is the Landlady where Mr. *Feilding* lodged. Mrs. *Villars* and the Lady went away in a Coach. She was in a Mourning-Dress, and the Coach was a Mourning Coach.

Council. What Time was this?

Mr. Boucher. It was my Lord-Mayor's Day was Twelve-month, on the twenty ninth of *October*.

Council. Well, go on, and tell what you know of the Marriage.

Mr. Boucher. Not long after this, my Master order'd me to be at home, to get clean Sheets for the Bed, Wax-Candles, and Sconces, and Fires in both the Rooms: He told me some Ladies would be there that Night; and order'd if he was not at home when they came, to tell them, that he would be there presently. Accordingly they came, and he was not at home; but in a little Time he came and went up to them. Some time after that, he came down Stairs in great Hast, and said, *Boucher*, go and bespeak a Dish of Pickles. I did so; and brought over a Cloth, and the rest of the Things, and left them in the Window. I stay'd by the Stairs till he came back in a Hackney-Coach, with a Priest along with him in a long Gown, and long Beard, and a Furr-Cap; I knew him to belong to the Emperor's Envoy; and I heard Mr. *Feilding* call him Reverend Father. Then I was order'd to set the Table and Glasses, and Wine, and Things of that kind, upon the Side-board. I waited at Table all the while. When Supper was over, Mr. *Feilding* order'd me to go down and fetch Water, Salt, and Rosemary, I went and got Water and Salt, but could get no Rosemary. Then I was order'd to go down, and they were lock'd in about three quarters of an Hour: He then call'd, *Boucher*, says he, will you fill some Wine?—I did so, and perceiv'd upon the Thumb of this Lady, upon her Left Hand, a plain Gold Ring, which before Supper she had not. When this was over, the Priest went away. Presently after, says Mr. *Feilding*, take the Sheets from my Bed, and lay them on the other Bed, for Mrs. *Villars*; and see that none lie there. I told my Master 'twas done. Mrs. *Villars*, in the mean time, put the Lady to Bed. When I came down to tell them of it, I saw the Lady's Clothes upon a Stool in the Chamber; and Mrs. *Villars* folding them up, and laying them in another Room. I then light Mrs. *Villars* to Bed, and then went to Bed my self. In the Morning I was call'd to make a Fire; I then perceiv'd Mr. *Feilding* and this Lady in Bed together. The Fire being made, I was order'd to get a Hackney-Coach. Mrs. *Villars* dress'd the Lady hastily, and she was carried away in the Hackney-Coach. About a Fortnight after, Mr. *Feilding* order'd me to prepare the Lodgings again. This Lady came to my Master's Lodgings That Night, and had something for Supper; my Master order'd me to get ready Mrs. *Villars's* Bed: I did so. In the Morning was called down to make a Fire, which I did: the Curtains being open next the Fire, I perceiv'd them in Bed again. I was order'd to get a Hackney-Coach, which I did; and they went away again. This was about the Twenty fifth of *November*. Soon after this, I understood by some of the *Duchess of Cleveland's* Servants, that Mr. *Feilding*

was marry'd to my Lady Duchefs. At the same time Mr. Feilding ordered me to go to Mrs. Heath's to bring his Night-Gown, Cap and Slippers to the Duchefs of Cleveland's House, and to attend the next Morning with clean Linnen, his Wig, &c. And about, or on the Fifth of December, says he, Boucher get my Lodgings in Order again, for I expect Mrs. Villars and the Lady to be there; which accordingly I did. I was sent from the Duchefs of Cleveland's with his Night-Gown, Cap and Slippers. Mrs. Villars and the Lady came accordingly that Night, and had a beil'd Chicken for Supper. Mr. Feilding and the Lady lay together that Night; and in the Morning I saw them in Bed together; and when she got up, she went away again in a Hackney-Coach. That was the last time I saw the Lady in Mr. Feilding's Lodgings.

Council. Were you at Epsom with Mr. Feilding?

Mr. Boucher. I was there with him, and went to Waddon with him to Mrs. Delean's. Mr. Feilding went into the Gardens and walk'd in them.

Mr. Feilding. I would ask you, Boucher, whether the Priest that came in a Red Gown lin'd with Blue, whether you did not sometimes see him dine at the Duchefs of Cleveland's House?

Mr. Boucher. I did see him there, I cannot say often; but once I am sure I did.

Justice Powel. Was it not that Priest that was there that Night upon which Mr. Feilding was suppos'd to be married, at the Duchefs of Cleveland's.

Mr. Boucher. I saw him there once.

Justice Powel. Was it before or after that suppos'd Marriage?

Mr. Boucher. I cannot be positive whether it was before or after.

Mr. Feilding. Whose Servant are you at this time?

Mr. Boucher. I am now Cook to Coll. Webb's Regiment.

Mr. Feilding. How came you here?

Mr. Boucher. My Master desir'd me to go to the Duke of Grafton's House, where his Grace told me I was to justify the Truth of what I knew of Mr. Feilding's Marriage; that's all. I was sent for to England by my Master.

Mr. Feilding. I desire to know whether he did not only make Mrs. Villars's Bed, but lie with her likewise?

Council. Call Mrs. Martin (who was sworn).

Sir Ja. Montague. Mrs. Martin, Will you give my Lord and the Jury an Account of what you know of Mrs. Villars?

Mrs. Martin. I know Mrs. Villars.

Council. What do you know of her, and of any Body else coming to your Sister's House after Mr. Feilding?

Mrs. Martin. The next Day after the Lodgings were taken, Mrs. Villars came and ask'd for the Major-General, and continued coming almost every Day as long as he was at our House.

Council. What time did Mr. Feilding come first to your House?

Mrs. Martin. It was the beginning of October was Twelve-month.

Council. Did you ever see any other Gentlewoman come with her?

Mrs. Martin. My Lord, on my Lord-Mayor's Day at Night I saw Mrs. Villars come in, and another Gentlewoman with her.

Council. Did you see the Coach they came in?

Mrs. Martin. There are others that saw the Mourning-Coach.

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Council. What time was this?

Mrs. Martin. It was my-Lord Mayor's Day at Night.

Council. Where do you live?

Mrs. Martin. At Mrs. Heath's, my Sister's in Pall-Mall, at that time.

Council. Did Mrs. Villars and the Lady continue there all Night?

Mrs. Martin. No, they did not.

Council. Was there any Body came in afterwards?

Mrs. Martin. I did not see any Body.

Council. How long did they continue in your Sister's Lodgings that Night?

Mrs. Martin. I cannot tell.

Council. Did you see them there again?

Mrs. Martin. The second time was about November.

Council. Who came then?

Mrs. Martin. I did not see them come in; but Mrs. Villars came into the Parlour, and said, that there was the same Lady that had been there the Night before.

Council. Did they stay then that Night?

Mrs. Martin. I believe they stay'd there that Night.

Council. Did you see them go away in the Morning?

Mrs. Martin. I did not see them in the Morning.

Council. Did you ever see any Body come at them whilst they were there in an extraordinary Habit, a Red Gown, &c.?

Mrs. Martin. There was a tall Man knock'd at the Door in a long Gown, Blew Facing, and Furr-Cap, with a long Beard. He was conducted to the Major-General's, up Stairs.

Council. Do you remember the Supper that Night?

Mrs. Martin. I remember a Dish of Pickles.

Council. How long did the Gentleman in Red stay?

Mrs. Martin. I know not; I did not see him go away again.

Council. Do you remember that the Lady and Mrs. Villars, with a Gentleman in Red, and Mr. Feilding were together?

Mrs. Martin. I remember when they were together, Boucher was sent down.

Council. Do you remember any Bed got ready?

Mrs. Martin. I remember that Orders was given to his Servant to make ready a Bed, and to put on clean Sheets.

Justice Powel. Do you believe there was any Marriage that Night?

Mrs. Martin. I do not know any thing of the Marriage.

Council. Then call Mrs. Heath (who was sworn).

Sir Ja. Montague. Mrs. Heath, give an Account what time Major-General Feilding came to take Lodgings at your House.

Mrs. Heath. About the beginning of October last was a Twelve-month.

Council. Do you remember that one Mrs. Villars came to see him there?

Mrs. Heath. Yes, frequently, my Lord, she has been in my Parlour, and told me there frequently, that she came from a Lady of Quality.

Council. Did you ever see this Lady?

Mrs. Heath. I never saw her, my Family being retired from Lodgers.

Council. What Discourse did you hear from Boucher?

K k k k

Mrs. Heath.

Mrs. *Heath*. He said that a Woman of Quality was there, and that she came there two or three Times with Mrs. *Villars*.

Council. What Time did you hear of that Lady's being there first?

Mrs. *Heath*. On my Lord-Mayor's Day; for I dined in the City, and when I came home, my Family acquainted me with it. Mrs. *Villars* came down to me one Night, which was the Night the Man in Red was there, but I did not see him.

Sir *Ja. Mountague*. Do you know of their staying there all Night?

Mrs. *Heath*. Mrs. *Villars* came to me, and said that her Lady was a Person of Quality worth 80000*l*. she shewed me a little Picture, which she said was her Lady's Picture: That Night she came to me, and desired that the Lady and she might lie in a Room up two Pair of Stairs; for they had stay'd late, and did not care to go home. I disputed it, but she said we should have no trouble, for *Boucher* should make the Bed, and the General's Sheets should serve them.

Council. Do you remember at any Time after that, that Mr. *Feilding* came to you, and rail'd against Mrs. *Villars*?

Mrs. *Heath*. He did come to my House, after he had discharged my Lodgings, and he told me that Mrs. *Villars* was a very bad Woman; and that she imposed a Woman of the Town upon him for a Woman of Quality.

Council. What Time was it that Mr. *Feilding* told you so?

Mrs. *Heath*. It was two or Three Months ago, but I don't well remember the Time; says he, *Damner, I do not know how she contrived it, but I saw her at a Woman of Quality's House in the Country*. He said this at that Time.

Council. Let's hear it again.

Mrs. *Heath*. Mr. *Feilding* told me, *That Mrs. Villars was a Bitch, and had imposed a base Woman upon him, instead of a Woman of Quality*. He said likewise, *That he thought he saw the Lady look out of a Window of a Person of Quality's House in the Country*.

Justice *Powel*. Mrs. *Heath*, Did you ever hear or believe that they were married?

Mrs. *Heath*. I did not believe it a Marriage, but a Conversion; because his Man came down into the Parlour, and asked for Salt and Water and Rosemary; which occasioned these Words, *Lord, said I, I fancy they are making a Convert of this Woman*; because they said it was a Priest above. And his Man at that Time said, there was a Priest above.

Mr. *Feilding*. Did my Man, at that Time, tell you I was married to that Woman, or any Time else?

Mrs. *Heath*. Nothing, my Lord; no body told me Mr. *Feilding* was married at that Time.

Council. Then call Mrs. *Margaretta* (who was sworn).

Mrs. *Margaretta*. My Lord, I remember that Mr. *Feilding* sent for me to his Lodgings in *Pall-Mall*; I was sent for in the Evening, but I can't tell how long it was before he was married to my Lady *Duchels*.

Council. What Company was there in the Room at that Time?

Mrs. *Margaretta*. I cannot tell.

Council. What were the Songs you sung?

Mrs. *Margaretta*. I sung several *Italian* Songs, and one *English*, and that was *Iantbe the lovely*.

Council. Who was then in the Room?

Mrs. *Margaretta*. No body was there then, as I remember, but the Gentlewoman, Mr. *Feilding* and I.

Council. What sort of Woman was this you speak of?

Mrs. *Margaretta*. She was in Mourning; she had a Velvet-Scarf. I never heard her speak, for he desired me to sing that Song, *Iantbe the lovely*; for he said he had the Original of it, and had translated it out of *Greek*.

Justice *Powel*. Were you then more than once at Mr. *Feilding's* Lodgings?

Mrs. *Margaretta*. But once; and I saw no more there than the Gentlewoman that sat by the Fire with her Back towards me. But I did not see her Face, nor hear her speak.

Justice *Powel*. What Time was it?

Mrs. *Margaretta*. I cannot tell justly the Time; it was dirty Weather and dark: I believe it might be about Six a Clock, but am not sure.

Mr. *Feilding*. My Lord, she says there was but one Woman there: Mrs. *Villars* was not there.

Justice *Powel*. Name the Persons that were there.

Mrs. *Margaretta*. There was that Gentlewoman in Mourning, whose Name I do not know, Mr. *Feilding*, and my self; there was no body else that I saw; and no body could be there, but I must see them, for I was Mistress of all the Doors.

Justice *Powel*. Did Mr. *Feilding* pretend it was to entertain his Wife?

Mrs. *Margaretta*. No; he desired me to come to him, and left a Direction at my Lodgings, and said there were some People of Quality there; and when I came I saw none but the Lady that sat by the Fire.

Council. Then call Mrs. *Price* (who was sworn).

Council. Mrs. *Price*, do you live at Mrs. *Heath's* House?

Mrs. *Price*. I do.

Council. Give an Account to my Lord of the Mourning-Coach coming to Mr. *Feilding's* Lodgings on Lord-Mayor's Day was Twelve-month.

Mrs. *Price*. I saw a Mourning Coach come to Mr. *Feilding's* Lodgings at Mrs. *Heath's* House, but did not see the Ladies come out of it; two Ladies were lighted into Mr. *Feilding's* Lodgings, Mrs. *Villars* and another; and Mrs. *Villars* followed the other Lady up Stairs, and immediately Mrs. *Villars* came down, and ask'd for the General: *Boucher* in the mean Time came in, and told them he would be there presently. Accordingly he came. They continued some Time, and when they were gone, the Coach was gone.

Council. Was Mrs. *Margaretta* there?

Mrs. *Price*. I did not see her.

Council. Do you know of any other Time of their coming there?

Mrs. *Price*. Some time after my Lord Mayor's Day, this Gentlewoman and Mrs. *Villars* came again; at the same Time Mrs. *Martin* told me she let in a Gentleman in Red, in an *Armenian* Habit; but I cannot tell what he came there for; I think his Man *Boucher* said he was a Priest.

Council. Whilst the Priest was there, do you remember *Boucher's* coming down for any remarkable Thing?

Mrs. *Price*. I remember *Boucher* came down, but do not remember what he came down for.

Council. How long did they stay the second Time?

Mrs. *Price*.

Mrs. Price. They staid there all Night; there were clean Sheets put on the Bed, and Lodgings prepared for the Lady and Mrs. Villars.

Council. Do you know Mrs. Villars?

Mrs. Price. I did know Mrs. Villars by her coming to Mr. Feilding.

Justice Powel. Do you know what Reputation Mrs. Villars has?

Mrs. Price. I do not, my Lord.

Mrs. Heath called again.

Mrs. Heath. My Lord, I never had any Acquaintance with Mrs. Villars, no more than by her coming to the Major General. One Mrs. Howard came with her, and she has told me that she was a Woman of no Reputation, and that she was a Singer too, my Lord.

Council. Then call Thomas Sone (who was sworn).

Council. What do you know of Mr. Fielding's buying a Ring of you? Give us an Account of it?

Mr. Sone. I know Mr. Feilding, by Sight; he bought a Gold Ring of me, but I cannot remember the Time.

Council. How long ago do you think it is?

Mr. Sone. I believe it may be a Year ago.

Council. Was there any Pofy in it?

Mr. Sone. Yes, I grav'd a Pofy whilst he took a turn in the Alley: The Pofy was by his Direction (Tibi Soli).

Council. Who did you deliver this Ring to?

Mr. Sone. I sold it out of my Glafs to Mr. Feilding.

Council. Swear Mr. Wilkins. (He was sworn.)

Council. What do you know of Mr. Fielding's buying a Ring of Mr. Sone? The Time when this Ring was bought?

Mr. Wilkins. It is about a Year and Two Months ago; I was by when the Gentleman gave Direction for it; and I saw him write down (Tibi Soli).

Council. Then swear the Register of Doctors-Commons.

The Register of Doctors-Commons sworn.

Council. Shew the Register the Ring.

Register. My Lord this Ring was brought by my Lady Ducheſs's Proctor with the Letters.

The Ring produced, and shewn to Mr Sone the Goldsmith, who deposed, That that was the Ring which he made for Mr. Feilding; and the Pofy the same which Mr. Feilding directed.

Council. How do you know it to be the same which you sold to Mr. Feilding?

Mr. Sone. I know it to be the same by my Mark and Work.

Mr. Cooke, Proctor, sworn.

Mr. Cooke. My Lord, there was a Ring brought, it is the same that was exhibited in Court, and the Ring was brought first of all by the Lady, Mrs. Feilding; it was afterwards in the Custody of my Brother; my Brother brought it to me, and I delivered it to the Register, and believe it to be the same Ring by the Pofy (Tibi Soli).

Council. Now, my Lord, we shall prove Mr. Fielding's coming to Count Gallas's for a Priest.

Call Constantine Pozzy (who was sworn).

Council. Where do you live?

Pozzy. I am a Servant to the Emperor's Envoy.

Council. Do you know Mr. Feilding?

Pozzy. I know General Feilding by Sight; I remember one Night he came and asked for the Father in Red? I told him that he was not within;

then he ask'd for Count Gallas's Almoner (meaning Father Vanderber, his Lordship's first Chaplain) but he happened not to be within neither. I told him that Father Florence, one of the Chaplains was within. Then said Mr. Feilding call him to me; I did so. Upon which Mr. Feilding gave me Half a Crown. Mr. Florence came immediately to Mr. Feilding.

Council. Was there a Priest at that Time in Red that had a long Beard?

Pozzy. My Lord had such a Priest then; after Mr. Florence and Mr. Feilding had been discoursing some Time in the Hall together, Mr. Florence went up Stairs to Count Gallas; whilst Mr. Florence was up Stairs, the Father in Red came in; I saw Mr. Feilding and the Father in Red go away together in the Hackney-Coach before Mr. Florence came down.

Council. What Time was this?

Pozzy. It was in November, the beginning of it.

Council. Did you hear what Mr. Fielding and Mr. Florence did discourse of?

Pozzy. No, nothing.

Council. Then swear Mr. Florence (who was sworn).

Council. Give my Lord and the Jury, an Account of what you know of Mr. Fielding's coming to you.

Mr. Florence. I have seen Mr. Feilding.

Council. Upon what Occasion had you any Discourse with him?

Mr. Florence. It was on Friday Night, Post-Night, about the beginning of November, Constantine Pozzy came under my Chamber-Window, called to me and said, Here is Major General Feilding, he wants one of the Chaplains, he desires to speak with you. I went to him immediately, and introduced him into the Hall. The Major General spoke to me in French. Sir, says he, I come here to look for the Father in Red; but I understand he is not at home; you will do as well, be pleased to go along with me. He told me he had courted a young Lady for some Time, and now found her well disposed, and therefore desired me to go along with him to marry them. I understood there had been some Treatment between him and the Duchefs of Cleveland, and therefore I ask'd him whether it were to the Duchefs; He did not inform me. I told him I did not care to do any Thing out of the House; and desired him to let me ask my Lord; says he, give my Service to Count Gallas and tell him. I went up to him and spoke to him, and told him the Business Mr. Feilding came about. He bid me, says he, What you do, do it wisely. When I came down Mr. Feilding was gone, I was told that the Gentleman in Red came in, and that Mr. Feilding and he were gone away together.

Council. That which he would have you to do, was to have married him with a certain Lady, was it not?

Mr. Florence. It was so.

Council. What Time was that?

Mr. Florence. It was upon Friday, I am sure.

Council. Had you any Discourse with Mr. Feilding after this?

Mr. Florence. The next Sunday after this, says he, I give you many Thanks for the last Favour. I knew of no other Favour I did him but this.

Council. Then call Matthew Paul (who was sworn).

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Council.

Council. Do you give my Lord and the Jury an account of Mr. Feilding's beating a Gentlewoman; and if any Marriage was claimed at that Time by a Gentlewoman.

Paul. Mr. Feilding came to Whiteball-Gate in a Chariot; he litt out of it. There was a Hackney Coach brought two Women; one of these Women got out of the Coach, and came up to Mr. Feilding: Mr. Feilding call'd her Bitch; the Lady call'd him Rogue, and said she was his lawful Wife; at that Mr. Feilding having a Stick, he punch'd it at her; it happen'd upon her Mouth, and made her Teeth bleed. He order'd the Centry to keep her till he was gone, and he would give 'em a Crown. She said, as I told you before, that she was his lawful Wife, and for that Reason they did not care to meddle with her.

Council. Sir, Do you know what Time this was?

Paul. I cannot justly tell: It was as near as I can judge, about the latter end of May.

Council. Pray call Mrs. Feilding, and let the Witnefs see if he knows the Woman again that he saw Mr. Feilding beat.

Mrs. Feilding called into Court.

Council. Is this the Woman you saw?

Paul. This is the Woman, my Lord, I really believe.

Council. Then swear Mr. Seymour (who was sworn).

Council. Do you know Mr. Feilding?

Mr. Seymour. Yes, Sir.

Council. Do you remember his beating any Woman at Whiteball-Gate?

Mr. Seymour. Yes, Sir.

Council. What Time was it?

Mr. Seymour. It was in the last Summer, but I cannot be positive to the Time.

Council. Do you know the Gentlewoman when you see her?

Mr. Seymour. Yes, I do; that's the Gentlewoman (pointing to Mrs. Feilding) I am sure of it.

Council. What did she say to Mr. Feilding?

Mr. Seymour. She said to him, you are a Rogue, I am your lawful Wife.

Council. Then swear Captain Eaton (who was sworn).

Council. Captain, do you know any Thing of Mr. Feilding's beating a Woman?

Captain Eaton. I was at the King's Arms Tavern, and whilst I was there, the Drawer came to me, and told me there was two Women would speak with me; this Woman (pointing at Mrs. Feilding) and another, whom she call'd Mother. She told me she was married to Mr. Feilding, before he was married to my Lady Ducheſs, and desired me to acquaint my Lord Duke of Northumberland with it, that the Ducheſs of Cleveland might know of it: I told her I did not design to concern myself about it. See told me she had been much abused by him.

Council. What Time was this?

Captain Eaton. It was some time before the 18th of August; it was the latter End of June or beginning of July.

Council. Was it before the Difference between Mr. Feilding and my Lady Ducheſs?

Captain Eaton. It was before that Time.

Council. Now we shall produce Mr. Feilding's own Letters, where under his Hand your Lordship will find he took Mrs. Wadsworth, for Madam Delean.

Divers Letters produced in Court.

Council. Call Mr. Lilley. (He appears).

Council. Do you know these Letters to be Mr. Feilding's Hand-Writing?

Mr. Lilley. I am a Stranger to his Hand. Boucher call'd.

Council. Can you read and write?

Boucher. Yes, my Lord, I can.

Council. Do you know these Letters to be Mr. Feilding's Hand-Writing?

Boucher. This is his Hand, I believe. I have seen him write an hundred Times; I have had the Curiosity to observe his Hand, and this is his own Writing.

Council. Then swear Frances Beale (who was sworn).

Council. Do you know Mr. Feilding's Hand-Writing?

Beale. I do my Lord.

Council. Do you know that Letter to be his Hand?

Beale. I have seen him write several Times, and believe it to be his Hand.

Council. Now, my Lord, we will beg the Favour to read these Letters, and first of all, one directed

To the Countess of Feilding.

Sunday Night.

I Hope my Dearest Wife will easily believe that nothing can be Welcomer to me than the Assurance of her Health; but as I received hers but this Day, I could not have the Felicity of seeing her to Morrow, and she have notice of it; therefore if she thinks fit on Thursday next at Four a-Clock, I will see her at Puggy's, and there endeavour to repair this tedious Absence.

Eternally Your own, Feilding.

Another Letter proved to be his Hand by Boucher and Beale:

To my Dearest Wife, the Countess of Feilding.

Friday.

I Had return'd my Dear Wife's Favour long before now, but my Lady Ducheſs's Sickness on one hand, and more than ordinary Business (of which I will give my Dear a particular Account) on the other hand, has not given me a Moment of Time to write to my Love. Puggy brings you the Set of Knots you desir'd, and the Pattern of the Damask; or if my dearest Life wants any Thing else, she may with Pleasure command it; for I am never so well pleased as when employ'd by my Dearest Wife, and must be ever her affectionate Husband, till Death,

Feilding.

Another Letter proved by Boucher and Beale.

Nov. 27. 1705.

THE last Letter I had from my dearest Wife has mortified me much, finding, that notwithstanding all my Kindnesses, she taxes me with Coldness in my Letters, which I call Heaven to witness I never in the least intended; and beg my Dearest to give me some Warning before she taxes me of Unkindness. Puggy tells me that my Dear designs to come to Town to Morrow, which I hope she will put off till another Day, because I am obliged to be at her Grace's to morrow all the Afternoon, and till late at Night; but any other Day my Dear shall find she is always welcome to the Arms

Arms of him who loves her more than Life it self; and I shall never fail of giving her fresh Proofs that I am,
Her loving and affectionate Husband,
Feilding.

Justice Powel. It is plain it is his Hand; and that he wrote to one whom he terms his Wife.

Council. Do you know these Letters to be writ by Mr. *Feilding* and sent to his Wife?

Mrs. Villars. I have seen them before, and I believe them to be Mr. *Feilding's* Hand. I saw Mr. *Feilding* write them, as well as I can see by my Eyes; and when he had writ them, he deliver'd them into my Hands, and order'd me to deliver them to his dear Wife.

Council. What does he mean by *Puggy* in his Letters? Who is *Puggy*?

Mrs. Villars. He us'd to call me *Puggy*.

Council. My Lord, we have done for the present (having proved clearly his Marriage with this Woman) without Mr. *Feilding* denies his Marriage to the *Duchefs of Cleveland*.

Mr. *Feilding.* My Lord, I own my Marriage with the *Duchefs of Cleveland*.

Justice Powel. Mr. *Feilding*, You have heard from the Evidence that hath been given against you, That you were married to another Woman, before you were married to the *Duchefs of Cleveland*: And now is the Time to make your Defence.

Mr. *Feilding.* All the Evidence against me, consists in what Mrs. *Villars* hath said: She is the only Evidence that swears positively to this Fact; the rest are very inconsistent with themselves. I beg of your Lordship in a Case so nice as this is, where my Honour and Reputation, and every thing that is dear lies at State, that the Evidence in this Cause may be clear and positive. Mrs. *Villars* (my Lord) hath forsworn herself; 1. In that she swears she cut Mrs. *Deleau's* Hair: Mrs. *Deleau* takes notice, that she never cut it. And as to her Reputation, it's so bad, that when our Witnesses are heard, I hope your Lordship will see little Reason to believe any thing she says to be true. My Lord, we will prove, that she hath been in Custody of a Master of *Bridewel*; that there she hath received the Correction of the House; therefore I think she is not fit to appear as Evidence in this Court. She swears, that the Singing-Woman was at the Marriage; but it appears she was not, for the Singing-Woman contradicts it. And as to this Mrs. *Wadsworth*, who they set up, she was married to another Man, one *Bradby*.

Justice Powel. I must deal plainly with you, Mr. *Feilding*, from the Proof: I cannot speak of Mrs. *Villars's* Credit, for she is an ill Woman (no doubt) from her own Evidence, in that she put a false Woman upon you: But her Evidence is well supported by Circumstances of Time and Place; and all of them put together bid fair for a Proof, that you were married to this Woman. You may call what Witnesses you please to Mrs. *Villars's* Reputation, and they may be heard. No Woman of Reputation will bring a mean Woman to a Man, instead of a Person of Quality. I think you say, Mrs. *Wadsworth* was married to another Man at the same Time: Indeed that will be to the Purpose, if you can make it out.

Mr. *Feilding.* My Lord, I can: She was married to another Husband, one *Bradby*. Call *Elizabeth Basset* (who was sworn).

Justice Powel. Do you call this Woman to be Witnesses to the Marriage?

Mr. *Feilding.* My Lord, I do.

Justice Powel. Do you know Mrs. *Wadsworth*?

Mrs. *Basset.* My Lord, I do not know her from another Woman; but there was a certain Woman, two or three Months ago, came to take a Name out of the Register-Book.

Council. What Register do you speak of?

Mrs. *Basset.* The Register of Marriages in the *Fleet*.

Council. Who keeps that Book?

Mrs. *Basset.* I keep it at present: My Father-in-Law is the Keeper of them; but he is sick, and therefore he hath left them in my Charge.

Council. Where is your Father?

Mrs. *Basset.* He is not able to appear.

Council. Do you keep them in your Custody?

Mrs. *Basset.* Yes, I do.

Council. Does nobody else come at them but your self?

Mrs. *Basset.* No, not this Twelve-month; since they have been in my keeping.

Council. Who then makes the Entries?

Mrs. *Basset.* These were my Father's Books when he was in Health.

Council. What can you say of this Woman;

Mrs. *Basset.* I do not know her. But some time ago there was a Woman came to my House: She told me, she wanted to speak with Mr. *Basset*. I told her she could not speak with him. She pressed to speak with him: But when I told her he was ill, and could not be spoken with; says she to me, Here is a Marriage in your Book of one *Lilly Bradby* and *Mary Wadsworth*. Says she to me, If you'll put it out of your Book, I'll give you a Piece of Money.

Council. Is this the Woman that made you this Offer?

Mrs. *Basset.* I will not swear to the Woman: I never saw her but that one Time, my Lord, I am not positive in the Matter; but I believe it is.

The Certificate of the Marriage read.

Lilly Bradby marry'd to Mary Wadsworth, the 28th of October 1703. The Man of St. James's, the Woman of St. Margaret's Westminster.

Justice Powel. Who us'd to write down the Certificates in the Register-Book?

Mrs. *Basset.* Several People, my Lord, we hir'd to do it.

(*The Place of the Register shewn Mrs. Basset.*)

Council. Have not you yourself look'd upon this Place now given as Evidence?

Mrs. *Basset.* Yes, I have.

Council. Whose Hand is that? (*Pointing to the Certificate.*)

Mrs. *Basset.* It is my Father-in-Law's: He that was Clerk of the *Fleet*.

Council. Is the whole Leaf of his Hand-writing?

Mrs. *Basset.* I cannot tell.

Justice Powel. Can you read Writing?

Mrs. *Basset.* Yes, my Lord.

(*The Certificate view'd by the Court, and prov'd to be a different Hand from the rest.*)

Council. There are Hands various in this Book.
Mrs. *Basset.*

Mrs. *Basset*. My Husband's Brother us'd to make Entries sometimes.

Sir *James Mountague*. Does your Husband's Brother use only to make Entries at the latter end of the Book?

Mrs. *Basset*. I don't know.

Council. Do you know when the Entry was made?

Mrs. *Basset*. I do not know when the Entry was made.

Council. Do you remember, that there were any Gentlemen with you to examine the Book?

Mrs. *Basset*. Yes, Sir, there were.

Council. Did you shew them this very Book?

Mrs. *Basset*. I did not; because Mrs. *Wadsworth* said there would be some trouble about it.

Council. Have you several Registers at the same Time?

Mrs. *Basset*. Yes, there are several Ministers, and therefore are Entries made in several Books.

Council. Why were you so friendly to Mrs. *Wadsworth*; when the Gentlemen came to examine the Book for this Register, and you shew'd them other Books instead of this?

Mrs. *Basset*. I did not shew them that, because Mrs. *Wadsworth* desired me.

Council. What did Mrs. *Wadsworth* give you?

Mrs. *Basset*. She gave me nothing. I will not say it was Mrs. *Wadsworth*.

Council. Do you remember you shew'd any Books to these Gentlemen, where there were Marriages registred in 1703?

Mrs. *Basset*. The Book is at Home in my House.

Council. Do you keep two Books for the Register of Marriages, for one and the same Year and Time?

Mrs. *Basset*. There are several Books; and we enter sometimes in one, and sometimes in another; by reason that there are several Ministers, and each hath his particular Book.

Council. Did the Gentlemen ask you at that Time, whether there were more Books of Marriages?

Mrs. *Basset*. I do not remember.

Council. How many Books have you of that Year?

Mrs. *Basset*. But Two.

Council. Did you shew them any false Book? That is, Did you shew them a false Register of Marriages for a true one?

Mrs. *Basset*. I know nothing of that.

Mr. *Feilding*. Call Mrs. *Drinkwater* (who was sworn).

Justice *Powel*. Do you know Mrs. *Villars*?

Mrs. *Drinkwater*. I have known her above a Year.

Justice *Powel*. What is her Character and Reputation?

Mrs. *Drinkwater*. I know nothing of that — But I know so far of her, That she said she was married to Colonel *Feilding* on the fifth of November: She accordingly gave it out that she was with Child by him. And that she told me, that the Duchess of *Cleveland* proffer'd to give her 200 l. and 100 l. a Year, for fifteen Years, if she would prove a Marriage with Mr. *Feilding*: But that she would do more for Mr. *Feilding* for 40 l. than she would for the Duchess of *Cleveland* for a much greater Sum. And said, it was purely Want, that made her comply with my Lady Duchess's Desire. I have read all the Letters between Mrs.

Villars and the Colonel; and I never heard of any Marriage between Mrs. *Bradby* and Mr. *Feilding*, but between Mr. *Feilding* and Mrs. *Villars*.

Council. When was this Discourse between you and Mrs. *Villars*?

Mrs. *Drinkwater*. I cannot tell exactly the Day; but the Time they were marry'd was the fifth of November was Twelve-month, as she said.

Sir *Ja. Mountague*. You pretend to say, she said, That if Mr. *Feilding* gave her 40 l. she would do more for him, than she would do for a greater Sum from my Lady Duchess. How long was this ago when she said this?

Mrs. *Drinkwater*. It was about three Months, or better.

Council. Where was this Discourse pray?

Mrs. *Drinkwater*. It was at her Lodgings, when she lodged at the Back-side of *Red-Lion Square*, at a Widow Gentlewoman's House.

Council. How came you to be there when this Discourse was?

Mrs. *Drinkwater*. She, some Time before, gave me an Invitation to her Lodgings; and I went to give her a Visit, and then this Discourse happen'd.

Council. Who was by then?

Mrs. *Drinkwater*. None but I and She. She said it was Want and Necessity, that made her act after this manner.

Mr. *Feilding*. Did she not send for you, to tell you she was going to forswear herself?

Mrs. *Drinkwater*. She talk'd of it first.

Council. When did you tell the Colonel of it?

Mrs. *Drinkwater*. I do not know justly the Time.

Council. How long have you been acquainted with Colonel *Feilding*?

Mrs. *Drinkwater*. Not but since this Thing happen'd. I never had any further Conversation with him, than to speak in her Behalf to him. But I have this further to say, that an Outlandish Man came to me about a Fortnight's Distance, and said, If I could do any thing on the Behalf of the Duchess of *Cleveland*, it would be a considerable Sum of Money in my way.

Council. Where do you live yourself?

Mrs. *Drinkwater*. I live in the same House where Mrs. *Villars* lodged: I am a Servant to one Captain *Howard*: My Master is now in the Service.

Council. Who lives in the Family?

Mrs. *Drinkwater*. We have none but a Footman and my Master.

Mr. *Feilding*. Call Mrs. *English* (who was sworn).

Justice *Powel*. What have you to say?

Mrs. *English*. My Lord, I went down to Mrs. *Villars*'s Lodging the Morrow after last *Valentine's* Day, for some Money; for I washed for her. Says she, I have none at present. She told me, she would send to her Spouse for some. A Gentleman came in and said, I have none for you: Says he, my Master says, If a Crown will do, he will send it you out of Charity; but he cannot supply your Extravagances. On the fifth of November (she said) she was marry'd to Mr. *Feilding*; and she said, she would have Money from Mr. *Feilding*, or she would send her Soul to the Devil.

Mr. *Feilding*. Call Mrs. *Fletcher* (who was sworn). Give my Lord an account of what you know of Mrs. *Villars*.

Mrs. *Fletcher*. All I know of her and Mrs. *Bradby* is, Mrs. *Villars* lived with me a Twelve-month. She told me she had had two Bastards; one

one by my Lord *Torrington*, the other by my Lord *Stamford*.

Justice Powel. How long was this ago, that she was at your House for a Twelve-month?

Mrs. Fletcher. It was about four Years ago. She confes'd she had had two Bastard-Children; and that she had been in *Bridewel*. I have nothing more than from her own Tongue, that she was a very infamous Woman.

Sir Ja. Mountague. Mistress, How long have you been acquainted with *Mrs. Villars*?

Mrs. Fletcher. She was recommended to me by one in the Court, and by her good Behaviour.

Sir Ja. Mountague. Would you have a Correspondence with a Woman that had two Bastards? Pray what is your way of Living in the World?

Mrs. Fletcher. My Husband is a broken Mercer; he allows me 20l. a Year.

Council. What Vocation are you of?

Mrs. Fletcher. I drive little Trade, but work Plain-Work.

Sir Ja. Mountague. You are acquainted with *Mr. Feilding*; are you not?

Mrs. Fletcher. I know him.

Council. How long have you known him?

Mrs. Fletcher. About three or four Years.

Council. You would not scruple to assist *Mr. Feilding*, if he wanted a fair Lady. Look upon that Letter, and see whether it be your Hand-Writing, or no?

[Then a Letter was shewn her.]

Mr. Longford. If you deny it, we will prove it.

Mrs. Fletcher. It is my Hand-Writing.

Justice Powel. Mistress, you can say no more of it?

Mrs. Fletcher. No, my Lord.

Mr. Feilding. Call *Mrs. Gardiner*.

[Who was sworn.]

Justice Powel. What have you to say?

Mrs. Gardiner. My Lord, *Mrs. Villars* lodged in my House; and she came one Morning.

Council. When was it?

Mrs. Gardiner. It was the 6th of November last was Twelve-month; She came in then, and had been abroad all Night. She told me, she was married to Colonel *Feilding*. She gave a Pair of Gloves to me, and to this Gentlewoman; and likewise gave Favours and Garters in the House. But she desired me to keep it secret. *Mrs. Bradby*, about a Fortnight or three Weeks before *Christmas*, came into *Mrs. Villars's* Lodging, and happened to fall down as if she had been in a Swoon; and within a few Days she fell in Labour.

Justice Powel. Was it a Boy, or a Girl, she was deliver'd with?

Mrs. Gardiner. I was not there. It was not at my House, but at new Lodgings.

Justice Powel. Where was it she was brought to bed?

Mr. Feilding. We can bring Evidence of that, my Lord.

Justice Powel. Woman, how can you swear, that she was brought to bed before *Christmas*?

Mrs. Gardiner. I may say it, my Lord, because here is one, I believe, that will swear it. *Mrs. Villars* her self told me so; and the Midwife said she deliver'd her, for which *Mrs. Bradby* gave her a Guinea. The next Day after her Fall she was very ill, and continued so till she was brought to bed.

Justice Powel. Was she big?

Mrs. Gardiner. She was past breeding; she was very big.

Mrs. Drinkwater call'd again.

Justice Powel. What can you say about *Mrs. Bradby's* Labour?

Mrs. Drinkwater. My Lord, *Mrs. Villars* and I were at *Mrs. Bradby's* Labour.

Council. When was this?

Mrs. Drinkwater. To the best of my Remembrance, it was about a Fortnight before *Christmas*; but she did not look before *February*. I do not know, but the Fall she had in *Mrs. Villars's* House, might be the Occasion of her coming before her Time.

Justice Powel. Was she deliver'd of a live or dead Child?

Mrs. Drinkwater. I do not remember that, my Lord.

Council. Was it a Boy or a Girl?

Mrs. Drinkwater. I know not that neither.

Justice Powel. I thought verily that if you were at her Labour, that you could tell whether she had a Child or no Child?

Mrs. Drinkwater. There were others that were at her Labour, can justify that the Midwife said she had a Child.

Council. Don't you know what became of the Child afterwards?

Mrs. Drinkwater. To the best of my Knowledge, I think it died as soon as it was born.

Council. Just now you said, you did not know whether it was alive or no?

Mrs. Drinkwater. Here is *Madam Luet* will justify it.

Mrs. Villars call'd again.

Justice Powel. *Mrs. Villars*, Do you know she was with Child?

Mrs. Villars. I know that she miscarried.

Council. What time was it?

Mrs. Villars. After *Christmas*.

Mr. Feilding. Call the Keeper of the House of Correction (who was sworn).

Justice Powel. What can you say?

Keeper. All that I know of *Mrs. Villars*, is, that she was a Prisoner in the House where I live.

Justice Powel. Where is that?

Keeper. In *Westminster*. I remember this Person was in my Custody above five Years ago.

Justice Powel. Had she the Correction of the House?

Keeper. She had not the Correction of the House, because she was then with Child.

Mr. Feilding. Call *Mr. Minors* (who was sworn).

Justice Powel. *Mr. Minors*, What have you to say?

Mr. Minors. My Lord, in *October* was Twelve-month, when *Mr. Feilding* lodged at *Mrs. Heatb's*, I was then with *Mr. Feilding* almost every Day; I saw this Woman there every Day, except *Saturday* and *Sunday*. I din'd there, and there was *Mrs. Margaretta*, and sung these Songs which she spoke of now. Two or three Days after this, *Mr. Feilding* communicated to me his Treaty of Marriage with the Duchefs of *Cleveland*, and spoke to me to settle some Writings between them. (He produced the Writings). *Mr. Feilding* desired me that I would be ready with them by the beginning of *November*, or the latter end of *October*. This is all I can say of this matter. As to the Women, I saw these, and abundance of common Women of the Town: I saw him take no more notice of *Mrs. Bradby*, than he did of any of the others.

Justice Powel. When did you see *Margaretta* there?

Mr. Minors.

Mr. *Minors*. I cannot speak to a Day; but she was at Dinner when I dined there about *October* was Twelve-month.

Mr. *Feilding*. Call Mr. *Chomley* (who was sworn).

Justice *Powel*. What can you say?

Mr. *Chomley*. My Lord, Not long ago there was a certain Person taken up, by the Name of *Villars*, about a Twelve-month ago.

Justice *Powel*. Do you know her when you see her?

Mr. *Chomley*. My Lord, I believe that is the Person (pointing at her) but whether she was committed or not, I cannot say. I have seen her divers times at a lewd time of Night, when she ought to have been at home.

A Letter produc'd of Father *Dryan's*, and shewn to Mr. *Florence*.

(Mr. *Florence* sworn).

Council. Mr. *Florence*, Do you know this Letter?

Mr. *Florence*. I have seen it, and given an Answer to it accordingly.

Council. Is it *Dryan's* Hand?

Mr. *Florence*. I cannot say positively it is his Hand. There are some more of his Letters in the House; I cannot believe, or disbelieve it.

Council. Could *Francis Dryan* speak *English*?

Mr. *Florence*. Very little.

Council. How long was he in *England*?

Mr. *Florence*. About Eleven Months. He hath been gone a considerable Time.

Justice *Powel*. This Father that is now gone, Did he speak *English* at all?

Mr. *Florence*. He was learning of it. Some *English* he could speak; for I taught him from time to time.

Justice *Powel*. Do you think that he could enquire for Mr. *Feilding* in *English*?

Mr. *Florence*. I believe he might say, Is Mr. *Feilding* at home? But could speak little Sense in *English*.

Justice *Powel*. Do you think that if he were desired to speak these Words, *I take this Man for my Husband*, that he understood so much.

Mr. *Florence*. I believe he might say what another said before.

Then the *Queen's Council* reply'd.

Sir *Ja. Mountague*. My Lord, Mr. *Feilding's* Defence consists of Two Parts. First, he does endeavour to falsify his Marriage with Mrs. *Wadsworth*, by contradicting the Evidence of Mrs. *Villars*; and for that he calls divers to prove Mrs. *Villars* to be a dishonest Woman. My Lord, we think there is no Occasion for us to make a Reply to that Particular, since we our selves do not pretend to say she is a Woman of very good Reputation. That which we insist upon is, that Mr. *Feilding* hath been impos'd upon, and marry'd this Woman; and this we hope we have prov'd not only by Mrs. *Villars's* Evidence, but by other concurring Circumstances, which are so strong, that they cannot possibly be deny'd. And as to these Facts, he hath not at all contradicted our Evidence. For he does not so much as give your Lordship an Account how he came by the Ring, or for what End and Purpose he bespoke it. He does not deny that he directed the *Poſy* of it to be *Tibi Soli*. So that, my Lord, he gives no manner of Answer to all these Matters.

In the next place, he seems to admit that he had been foolish enough to be thus impos'd upon by these Intriguing Women. But, says he, they have not gain'd their Point; for this imposing upon me signifies nothing, because this Woman was Wife to

another Man, when we said she was marry'd to Mr. *Feilding*. Now this sort of Defence does, in great measure, admit the Thing we contend for, His Marriage with Mrs. *Wadsworth*; and whether he hath made it appear that this Marriage is null and void, shall be taken into Consideration next, by making some few Observations on the Nature of the Evidence that he hath produced to prove this Woman's Marriage with another Man. He says she is the Wife of one *Lilly Bradby*. That Man, by the Book, is describ'd to live in St. *James's*, and the Woman to be of St. *Margaret's Westminster*. But he hath not so much as given you any Account that there is such a Man in the World, that he would have to be the suppos'd Husband of this Woman. In the next place, they have not undertaken to produce one Witness that was by at this Marriage, not one Witness. And what do they rely upon to prove this Wedding? Truly, nothing but the Register-Book; and the Man that keeps the Register-Book is not here. It's true, indeed, they say that it's a true Register, but we desire the Jury may inspect it; for it appears by divers Circumstances to be a Counterfeit-Entry; for it is written in another Character than what the rest are; and it is written in the lower part of the Leaf, where we may suppose a Vacancy left to insert such a thing as this is, upon occasion. The Person that wrote it is not here. The whole Year that is set down here, is all entirely one Hand Writing; and it is not at all like the Writing of this Entry. I think they pretend to say, there is something of the like Hand-Writing in the same Book; and that they make use of to be a corroborating Circumstance. But that appears likewise to be at the latter end of another Book. The Book is *Rul'd*, and this Entry is writ below Lines without a Rule.

My Lord, this is what I think fit to take Notice upon the View of the Thing. We had an Intimation given us of this Book. It was rumour'd about the Town that this was the Defence which we were like to meet with. Therefore we did send to all Places where suspicious Registers were kept, and among the rest to this Fleet-Register. My Lord, we shall shew you that our Witnesses went to enquire for this Book; but there they found no Book where this Entry was written. It's a very unaccountable thing that this Book should be concealed. Here is a Woman indeed gives you a Reason why she did it. She says she did it, because she was desired to keep it secret by a Woman whom she never saw before; and of whom she says she never had a Penny. This, methinks, is very extraordinary. But this very Book was shewn them, if my Instructions be true, and the Place where this Entry is made was then a Blank, and filled up since. There was no such Entry at that time when they look'd upon it. This is all we shall say in respect of the Register, which is all the Evidence they bring to prove this Marriage.

But there is another thing they insist upon; They make it an Objection, That this Father in Red was seen at Dinner with the Dukes of *Cleveland*, after Mr. *Feilding* was marry'd to my Lady Dukes. As to that Matter, we say it does not appear when that time was; nor do they make it out that the Father in Red did know that he was married to the Dukes of *Cleveland* at that time; tho' in Fact they might be marry'd. Twenty People might be at Dinner there, and yet might be ignorant of this Marriage. It's possible that a Man may eat and drink with another, and yet not know whether he be married or unmarried. They do not make it appear that there was any Occasion given at Table that would

would give rise to such a Discourse. The Man not having an Opportunity to speak of it, to what end and purpose should he do it? The next thing they insist upon, and have endeavour'd to prove, is, That Mrs. Feilding was with Child, and brought to bed the Christmas after she was marry'd to Mr. Feilding. But they do not pretend to tell whether the Child she was brought to bed of, was dead or alive; or whether it was a Boy or a Girl; but at last it proved a Miscarriage. We have given your Lordship an Account how it is likely she should be with Child; for we have proved to you undoubtedly that she was married to Mr. Feilding; that they lay together several Times; and we have no Reason to suspect Mr. Feilding's Ability. Mr. Feilding knew she was with Child by him. He was the proudest Man in the World of this Thing, and call'd it young Lord Tunbridge. To prove this, my Lord, here is a Letter written by himself. The Style is something peculiar too; it is directed, *To the best of Wives, Anne Countess of Feilding*. Now, my Lord, Mrs. Delean, whom Mr. Feilding thought he had married, her Name is Anne, but Mrs. Feilding's Name is Mary.

The Letter produced and prov'd by Boucher and Beale, and it was directed

To the best of Wives, Anne Countess of Feilding, at Waddon.

Novem. 14. 1705.

Here is nothing can please me more upon this Occasion, than to hear my Dearest Wife say I had made her sick, by turning her Liver; for without that we could not hope for a young Lord Tunbridge; which would be, the next to my Dear herself, the most welcome Present to my Arms. Make haste then, my Dearest Life, to Cultivate the young Spark; and be sure you don't starve my Boy. As for your coming to me, it wholly depends upon yourself, who can best judge when it is most proper to come to me; which you can do, by giving out you are to stay all Night in London; and then you and Puggy have nothing to do but to come to me at Bed-time, and so we may go to Bed and lye till Morning, when Puggy may come again and call you. Adieu my Soul's Love, whom I must ever value more than Life.

Feilding.

Council. Call Mr. Longford (who was sworn).

Sir Ja. Mountague. Were you directed to go to the Fleet, and look into the Register-Book?

Mr. Longford. Mr. Attorney General telling me that he heard there would be some Pretence of a Marriage that would be set up, advised me to enquire after it. I was informed, that some Certificate was, or would be given in the Fleet. I went with Mr. Rescorloe to see the Books. We looked all over those Months for the Year 1703. This Book is the very Book I take it to be, but am not positive. That which we saw, I observed had an Entry dated the Year 1705, before the Marriages in the Year 1704, in yellowish Ink at the top of a Leaf.

Council. Call Mr. Rescorloe (who was sworn).

Sir Ja. Mountague. Do you remember that you saw that Book?

Mr. Rescorloe. I do remember that I saw that Book with Mr. Longford. Mr. Longford and I went by the Attorney General's Order, to search the Books at the Fleet, to see whether we could find any Entry of Lilley Bradby's Marriage with Mrs. Wadsworth. This Woman that gave her Evidence here brought in this Book, and we look'd back for three Years. We found no such Entry as she shews here

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in this Book. We ask'd her again, whether there were any other Books of Entries of Marriages? She said, No. I ask'd her, whether there had been any one there to see after such a Certificate; She said, there was a Woman and a Man about a Week or Fortnight ago. I ask'd her, whether she shewed them this Book? She said, she had shew'd them this Book, and they gave her a Shilling for searching it. She said positively there was no such Certificate entred in the Book, and that there was no other Book for the Entry of Marriages. We search'd the Month of October more strictly; we look'd for the very Certificate with the greatest Care and Industry that could be. We went to Bassett's House, who, this Woman said, was not at home. She laugh'd in her Sleeve, and said, he was a doating Man; and if he spoke two Words, he could not speak a third. I do really believe this to be the Book. I took good Notice of the Blank where this Certificate is entred, and did remark that there was a vacant Space under this Certificate, where was no Writing. Mr. Longford and I turned back again to the Year 1705, which was put before the Year 1704, and observed it then, as it appears now, to be the Book, Except this Entry. I do believe it to be the same Book we then saw.

Sir Ja. Mountague. There is but one thing more that I would mention, which is, that the Woman in the Top-knot confess'd, that this Letter was her own Hand-Writing. I desire it might be read.

The Letter was read. It is directed

To Major-General Feilding.

Tuesday Morning.

All that know the Name of Major General Feilding, must own the Generous and Charitable Actions that your Honour daily bestows upon 'em. I, among the rest, shall ever acknowledge your Goodness. It's Necessity that forces me to dispose of this Picture. Your Honour is a nice Judge of Painting, as well as an Admirer of such Pieces, which makes me humbly present it to you first; and in accepting the same, your Honour will highly oblige, as well as serve,

Your humble Servant,

M. FLETCHER.

POSTSCRIPT.

I long to see you. For your Encouragement, to grant me that Favour; I am now acquainted with a young Lady that's Pretty, and lives in good Fashion. Your Honour will oblige me in letting me receive your Commands.

Justice Powel. Gentlemen of the Jury, The Prisoner, Mr. Robert Feilding, stands indicted for a capital Offence, for Felony, in marrying a second Wife, his first being then alive. This is the Offence charged against him. The Council for the Queen have called several Witnesses to prove this Matter upon him. And the first is one Mrs. Villars, She hath given her Evidence from one end to the other, if you believe what she swears. She swears, that one Mrs. Streights came first to her Lodging, and she was not at home; but left word that she must needs speak with her; that she was always out of the way when any thing offer'd that would do her a Kindness; and that it would be 500 l. out of her way if she did not see her. It seems, that when Mrs. Streights met her, she acquainted her with Mr. Feilding's Inclinations; and being inform'd that she was acquainted with the Lady, that she us'd

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to

to cut her Hair, thought that she might have such an Interest in her, as to be made serviceable to bring the Matter about; which if she was, it might be worth 500*l.* to her. Mrs. Villars undertakes the Business to bring Mr. Feilding and Mrs. Deleau together; she did readily accept of it; thereupon Mr. Feilding and she discours'd together concerning this Matter: she told him she was acquainted with Mrs. Deleau, and that she would do the best she could to bring it about. Mr. Feilding upon this went to Mrs. Deleau's Country-House at *Waddon* in *Surry*, that thereby the Lady might have an Opportunity of seeing him. She says Mr. Feilding told her that he had Access to the Gardens; that when he was there he saw the Lady through the Glass-Window; he was willing to give the Lady a full View of him, therefore he stood still and set his Watch by the Sun-Dial, and took several Turns in the Garden; and he did afterwards send a Letter to her. Mrs. Villars was afterwards sent of a Message, as tho' it was from the Duchess of *Cleveland*, to acquaint the Lady that the Duchess had a great mind to see the Gardens. Mrs. Deleau told Mrs. Villars that she should be proud that a Person of her Quality should come to her. She said that Mr. Feilding sent her, and she found afterward that the Duchess of *Cleveland* did not intend to go; nay, that she knew nothing of the matter. But see how she managed the matter, and play'd this Trick upon Mr. Feilding; it is no better, if true. They agreed together that Mrs. Deleau should come to a Place where Mr. Feilding should appoint; that something of Musick, or some Entertainment should be provided, they contrived when it should be, the Time was on my Lord-Mayors Day at Night, and according to Appointment Mrs. Villars came with Mrs. Deleau, as Mr. Feilding thought, but in reality it was one *Mary Wadsworth*, which represented Mrs. Deleau; she came in a Mourning Coach, and dress'd in a Widow's Habit; after this manner they came to Colonel Feilding's Lodgings in *Pall-Mall*. The Lady truly was not to know that they were Mr. Feilding's Lodgings; however Mr. Feilding was not at home, but it was not long before he came: He came up to the Lady: You have heard what Addresses he made to the Lady, and how much Love he express'd towards her: Ask'd her, whether she lov'd singing? one *Margaretta* was sent for, and sung two Songs. Mr. Feilding was so taken with her he would have marry'd her presently; but she being coy, modestly declin'd it, and so they parted for that Time. Mrs. Villars was to bring her afterwards, which was on the 9th of *November*, on the Night the supposed Wedding was; Mrs. Villars brought her. When she came there, Mr. Feilding propos'd to be married to her forthwith; she seem'd to be shy at present, but Mr. Feilding said he would fetch the Priest immediately; he lock'd them in, took the Key with him, and returned in three Quarters of an Hour; the Priest she describes to be in a long red Gown lin'd with blue, a long Beard and a Fur-Cap upon his Head, so he brought him along with him; when he came, he said, *This is the Man that should join their Hearts together*. She tells you further that Mrs. Wadsworth question'd the Priest; required of him a Proof to shew he was a Priest in Orders. The Priest pull'd a Picture of the Pope out of his Pocket, which he said was a Credential for Priests. After Supper the Marriage was propos'd, whether it should be in the Dining-Room, or Bed-Chamber? That

was the Question. The Lady thought the Bed-Chamber best; he thought so too. Well then, in the Bed-Chamber it must be. The Priest did want Water, Salt and Rosemary, Things that he us'd in Performance of the Ceremony; Boucher was sent down for them; he brought up Water and Salt, but could get no Rosemary: After these Things were brought up, Boucher the Servant was turned out, and the Doors were shut. Then there was no Body present but Mr. Feilding, the Lady, the Priest and Mrs. Villars. Then she tells you of the Ceremony of the Wedding, the Ceremony of the Water, and the Ceremony of the Ring. After that was done, they proceeded to the Marriage; the Office was in *Latin*; when they came to the marriage Words, *I take thee to be my Husband*, &c. Mrs. Wadsworth desir'd it might be spoke in *English*; thereupon Mr. Feilding did say it in *English*, *I take this Woman to be my wedded Wife, with all my Heart and with all my Soul*. The Gentlewoman she said her Part likewise in *English*; *I take this Man to be my wedded Husband*; but Mr. Feilding observing her to speak it too low, desir'd her to speak it as earnestly as he did: Whereupon she did say, *I take this Man to be my Husband, with all my Heart, and with all my Soul*. The Ceremony of putting on the Ring the Priest directed; that was, to take hold of the End of one of her Fingers and put it on; she saw that done, and when the Ceremony was over, the Priest went away; that when he was gone away, she undressed the Bride, and put her to Bed, and then gave notice to Mr. Feilding that the Lady was in Bed. Then Mr. Feilding went to Bed, and she saw them in Bed together. Then she went to Bed her self in a Lodging that was provided for her up another Pair of Stairs: That the next Morning she arose, came down, went into the Room where there was a Fire made by Boucher: that then she saw them in naked Bed together. If you believe her, she swears the Marriage by this Priest, and the Consummation of it. Mrs. Villars goes further, and swears, that she brought her two other Times, and that those Times she saw them in Bed together as Man and Wife. I ask'd Mrs. Villars at last, how Mr. Feilding came to be undeceiv'd? She says, it was kept secret from *November* to *May*. Then Money was wanted; that was a great Disappointment to Mr. Feilding, for he thought he had marry'd a Lady that would have furnish'd him with Money. Then he discover'd the Fraud, and found he had been impos'd upon; then he was angry with her, beat her, and call'd her Names. Indeed, Gentlemen, I must deal plainly with you, if her Evidence stood alone, her Reputation is shaken to that degree, that in Truth, where a Man stands upon his Life, one would not have a great Regard for what such a Woman swears, if it were not supported otherwise. Now, tho' by her self she be not a good Evidence, yet the Matters of Fact which she swears to, are likewise proved by the concurrent Testimony of others.

First, They call Boucher, and truly he fortifies her Evidence in a great many Particulars, gives an Account of Mrs. Villars bringing Mrs. Wadsworth to Mr. Feilding's under the Character of a Person of Quality; gives an Account, just as she does, of their coming to Mr. Feilding's Lodgings in a Widow's Habit and Mourning Coach; their having a Treat of Plumb-Cake and two Bottles of Wine. He further gives an Account of their coming a second Time, and an Account of the Priest; knew

knew the Priest; knew him to be the Emperor's Envoy's Priest. He remembers the Priest coming to the Place; he remembers also the Circumstances of being sent for Water, Salt and Rosemary. He says he was order'd down, and the Chamber-door was shut, and the Priest was then in the Chamber with Mr. Feilding, the Lady, and Mrs. Villars; and that when the Priest was gone, Mr. Feilding and the Lady went to Bed; that *he saw them in Bed together*; that the People that were below, when *Boucher* was sent down for Salt and Rosemary, they could conclude no otherwise but that they were making this Lady a Convert. Now Gentlemen, this is a material Thing, that there was a Priest at that Time, and they were private together; this is a concurrent Evidence to strengthen Mrs. Villars's Testimony. There is Mrs. Martin, Mrs. Heath, and Mrs. Price, they remember several of these Matters perfectly well. Mrs. Martin saw this Person and her Mourning Coach; she saw the Lady and Mrs. Villars go up Stairs, and the Time when the Priest came in, she let him in; describes him by his particular Habit as the rest do. Mrs. Heath remembers Mrs. Villars coming with a Woman that she thought was a Woman of Quality, but saw not the Priest. Mrs. Villars told her she was worth 80000*l.* she ask'd her whether she might lie there that Night, for it was too late to go home? She agreed they should lie together, Mrs. Villars and Mrs. Wadsworth. But now here is another Circumstance that hath mighty Weight in it, that is, the Ring; they have brought the Person of whom Mr. Feilding bought the Ring to the Value of 20*s.* that the Ring was ready made, and Mr. Feilding directed the Poy (Tibi Soli) to be engrav'd in it. There was another Man by when Mr. Feilding bought the Ring and order'd the Poy for it; and this *very Ring with this Poy* has been produc'd first by the Proctor and Register; the Proctor does say it was first brought to him by Mrs. Wadsworth, who came to retain him in an Action of Nullity of Marriage; he took notice of the Ring, and said that it had this Poy in it. Afterwards when Mrs. Wadsworth came again he was not at home; it was in the Hand of his Brother, and he is sure it is the same Ring. The Goldsmith swears it to be that Ring Mr. Feilding bought of him; he knew it by the Mark and Workmanship of it; for Goldsmiths know one another's Work. This Gentlemen, hath a great deal of Weight in it; it is a very great Circumstance, unless they could tell you, which they have not, upon what Occasion this Ring was bought at this Time.

Gentlemen, They give a further Account of this Matter by the Testimony of Letters, which they prove to be Mr. Feilding's Hand. Mrs. Villars was the Carrier of these Letters; Mr. Feilding stiling her in them by the Name of *Puggy*, a Name by which it seems he used to call her. These Letters are proved by *Boucher* and a Lady in the Gallery, to be Mr. Feilding's Writing. These Letters have been read to you, they are written as from a Husband to a Wife; in them he owns her to be his Wife, calls her Countess of Feilding, stiles himself *her Husband*. These Letters have been read to you. This, Gentlemen, as I remember, is the Substance of the Evidence that hath been given for the Queen.

Sir *Ja. Mountague*. My Lord, be pleas'd to take notice of Mr. Feilding's going to the Emperor's Envoy for the Father in Red.

Justice Powel. It is true, I had forgot the Evidence of Mr. Florence a Chaplain, that is a Priest, now belonging to Count *Gallas* the Emperor's Envoy, and the Porter. They tell you about this Time Mr. Feilding did come to enquire for this Priest; and gave the Porter half a Crown (by a good Token); but the Priest he asked for not being at home, he enquired for Mr. Florence; he told Mr. Florence that he had been in Love with a young Lady a good while, but now had prevailed with her to marry him. And seeing the Father in Red was not there, he desired he would go along with him and do the Office. Mr. Florence told him it was improper for him to go without the Envoy's Leave; he went up to the Envoy and acquainted him with it, the Envoy gave him Caution to do it with Discretion; but when he came down again, in seems that the Red Father had been with Mr. Feilding in the mean Time, and were both gone together.

Now, Gentlemen, you hear what Defence Mr. Feilding makes against this great Charge against him.

First, He calls a great many Witnesses to prove that this Mrs. Villars was married, as she pretended to Colonel Feilding, and that she was a very common Woman, so far as that she has been in a publick House of Correction; and one of their Witnesses does bear hard upon her Testimony; that is, that she should declare to her that she was married to Colonel Feilding, and that my Lady Duche's should say to her, If you can make that out that you are married to Mr. Feilding, she would give her two hundred Pounds, and settle 100*l.* a Year upon her for fifteen Years together. Then as for Mrs. Wadsworth, they call you divers to prove that she was brought to Bed about Christmas after this supposed Marriage. But when they came to be examined they did not prove very much of that; for indeed it proved to be a Miscarriage; the Woman could not say she saw the Child, could not tell whether it was a Boy or a Girl; whether it was dead or alive; it did not appear by their Evidence that she went out her Time with a Child. Another part of Mr. Feilding's Evidence is this, to prove Mrs. Wadsworth married to another Person; and then admitting she was married to Mr. Feilding, 'tis a null Marriage. To prove that Mrs. Wadsworth was before married to another, they have brought the Book of Marriages of the Fleet, and in that Book there is an Account of one *Lilley Bradby*, married such a Time to Mrs. Mary Wadsworth; the Man of St. James's, the Woman of St. Margaret's Westminster. The Woman of the Fleet, in whose Custody this Book was, pretends that Mrs. Wadsworth came to her, and desired if any came to see the Book, that she would not let them see the Entry of her Marriage; and why? Because there would be Trouble about her Marriage. This Woman swears that there were two Men came to search the Book but she shewed them another Book; but this Book she did not shew them. She was ask'd whether she had two Books of Marriages for the same Year; She said she had several Books for the same Year: One Parson made his Entry in one Book, and another Parson in another Book. She pretends she did not shew them this Book; but the Book she shewed them was at home. I cannot conclude much from what this Woman hath said; but Gentlemen you have look'd upon this Book, and if you are satisfied from this Evidence, that *Mary Wadsworth* was married to

Bradby at this Time, I confess *Mr. Feilding* will not be within the Statute. You have look'd into the Book; they give you no Account that there was ever any such Man as *Bradby*, nor of no Co-habitation; but a meer Book is produced, and not of the *best Credit* neither; it is entred in the Bottom of the Leaf, but not in the Middle: it is written with *another coloured Ink*, and in *another Hand*, I ask'd the Woman whether she knew the Man that wrote it? She said yes; and it was her Husband's Brother's Hand. He is alive, why is not he produced?

Gentlemen, They have called no Witnesses to prove the Marriage with *Lilley Bradby*. There were two Gentlemen on the other side, they went to the *Fleet* to search the Books of the Entry of this Marriage. They say that a Person inform'd them that there had been there a Man and a Woman before them; these Gentlemen went and desired to see the Book, particularly for the Year 1703. They say the Woman did produce the Book of Marriages, but they could not see such an Entry; she denied to them that she had any other Book for that Year; they cannot swear positively that this is the Book that was shewn them; but one of them says he believes it to be the same, for in that which he saw, he observed Entries of the Year 1705, before the Year 1704. He took good notice of it, and so it is *found in Court*. The other Gentleman says, he took particular notice of the Space that was in the Book, where this Entry is now written. Now the Woman does not bring the other Book she pretended to have shewn them. Now, as to the Labour, they have produc'd a Letter under *Mr. Feilding's* Hand, whereby *Mr. Feilding* takes notice of her being with Child, directs the Letter to *Anne Countess of Feilding* at *Waddon*; he took it that he had married *Mrs. Deleau*, for her Name is *Anne*, he directed his Letter to her Country-Seat. There is another Thing of *Mr. Feilding's* coming to *Mrs. Heath*, and complaining what an ill Woman *Mrs. Villars* was, for she had served him a base Trick, instead of

a Woman of Fortune, she had put a common Woman upon him. Gentlemen, You have heard the Account too concerning his beating of her; for this Woman, it seems, was troublesome to him at *White-Hall*; she demanding him as her Husband, said she was his lawful Wife; he struck her and caused her to be held till he got away from her.

Gentlemen, It is a very great Charge, upon *Mr. Feilding*, it is true, if there be Evidence to maintain it; it does not really depend upon *Mrs. Villars's* Evidence; for if her Evidence were to stand alone, no Credit should be given to it; but as it is supported by concurring Evidence, I leave it with you, whether it be not sufficient to find *Mr. Feilding* Guilty. But if you think that *Mrs. Wadsworth's* Marriage to *Lilley Bradby* is proved sufficiently, then, altho' you think *Mr. Feilding's* Marriage with *Mrs. Wadsworth* sufficiently prov'd yet you are to find for the Defendant.

The Jury having withdrawn for some Time, brought in their Verdict, *That Mr. Feilding was Guilty of the Felony he stood indicted of.*

Mr. Feilding (in case he was found Guilty) had obtained the Queen's Warrant to suspend Execution of this Sentence; and then by his Council took Exceptions to the Indictment, and moved in Arrest of Judgment; but they were answered by the Council for the Queen; but *Mr. Feilding* having obtained a Suspension of the Execution, the Judges by a *Cur' advisare vult* (as the Form is) suspended giving Judgment till the next Sessions, and accepted Bail for *Mr. Feilding's* Appearance the next Sessions.

The next Sessions, being the fifteenth of *January* following, *Mr. Feilding* appear'd, and his Council waving their Exception (as being Frivolous) he was ask'd what he had to say why the Court should not proceed to Judgment and Execution? And then he craved the *Benefit of his Clergy*; which was allow'd. And then Judgment was given (as usual) That he should be burnt in his Hand. But he having the Queen's Warrant to suspend Execution, he was admitted to Bail.

The Proceedings against Robert Feilding, Esq; in Doctors Commons.

Notwithstanding *Mr. Feilding* was found Guilty of Felony at the *Old Baily*, her Grace the Duchess of *Cleveland* having instituted a Cause of Nullity of Marriage against the said *Mr. Feilding*, by reason of a former Marriage with the said *Mary Wadsworth*, in the Arches Court of *Canterbury*; and having by Examination on Oath, of divers credible Witnesses, made good and sufficient Proof of the several Articles of the Libel by her Grace exhibited in the said Court against the said *Mr. Feilding*, did proceed to obtain the Sentence of the said Court; and accordingly on the 23d day of *May*, in the Year of our Lord God 1707, the Right Worshipful Sir *John Cooke*, Kt. Dr. of Laws, Official Principal of the said Court, then judicially sitting in the Common Hall of *Doctors Commons*, *London*, being then present the Duke of *Grafton*, the Duke of *Northumberland*, the Earls of *Litchfield*, *Suffex*, *Jersey*, and the Lord *Quarrendon*; as also the respective Proctors of her Grace the Duchess of *Cleveland* and *Mr. Feilding*, did, at the Petition of her Grace's Proctor,

read and promulge his definitive Sentence in *Latin*, of the Tenor following, *viz.*

IN the Name of God, Amen. We *John Cooke*,
“ Kt. Dr. of Laws, Official Principal of the
“ Arches Court of *Canterbury*, lawfully appointed,
“ rightly and duly proceeding, having heard, seen,
“ understood, and fully and maturely discuss'd
“ the Merits and Circumstances of a certain Cause
“ of Nullity of Marriage, by reason of a former,
“ now depending before us, between the most noble
“ Lady, *Barbara* Duchess of *Cleveland*, the
“ Party Agent and Complainant, on the one Part;
“ and *Robert Feilding*, Esq; of the Parish of St.
“ *James's Westminster*, in the County of *Middlesex*,
“ the Party against whom it is complain'd,
“ on the other Part. The Parties aforesaid lawfully
“ appearing before us in Judgment, by their
“ Proctors respectively; and the Proctor for the
“ said most noble Lady, *Barbara* Duchess of *Cleveland*,
“ praying Sentence to be given, and Justice
“ to be done to his Party; and also the Proctor
“ of

“ of the said *Robert Feilding*, Esq; praying Justice
 “ to be done to his Party: And having carefully
 “ and diligently search’d into, and consider’d of the
 “ whole Proceedings had and done before us in this
 “ Court; and having observ’d all and singular the
 “ Matters and Things, that by Law in this Be-
 “ half ought to be observ’d; We have thought
 “ fit, and do thus think fit to proceed to the giv-
 “ ing our Definitive Sentence, or Final Decree,
 “ in manner following; viz.

“ Forasmuch as we have by the Acts enacted,
 “ deduced, alledged, exhibited, propounded, prov-
 “ ed and confessed, That the Proctor for the said
 “ most noble Lady, *Barbara* Duchess of *Cleve-*
 “ *land*, hath fully and sufficiently proved and
 “ founded his Intention in a certain Libel, and
 “ other Matters now remaining in the Registry of
 “ this Court, propounded and exhibited in this
 “ Cause on the Part and Behalf of his said Client;
 “ And that nothing hath been, on the Part and
 “ Behalf of the said *Robert Feilding*, effectually ex-
 “ cepted, deduced, alledged, exhibited, propound-
 “ ed, proved and confessed, which might, or could
 “ in any wise (touching our Sentence hereafter to
 “ be pronounc’d) hurt or weaken the Intention of
 “ the said most noble Lady, *Barbara* Duchess of
 “ *Cleveland*:

“ Therefore, We *John Cooke*, Knight, Doctor
 “ of Laws, the Judge aforesaid, having first called
 “ upon God, and setting him alone before our Eyes,
 “ and having heard Council thereupon; do pro-
 “ nounce, decree, and declare the before-named
 “ *Robert Feilding*, Esq; and one *Mary Wadsworth*,
 “ mentioned in the Proceedings of this Cause, be-
 “ ing free from all Contract and Promise of Mar-
 “ riage with any other (so far as appears to us)
 “ on the ninth Day of *November*, in the Year of
 “ our Lord God 1705, at a Place mentioned in
 “ the Libel in this Cause, did contract Marriage,
 “ and did solemnize, or procure the same to be
 “ solemnized between them; and did afterwards
 “ consummate the same: And that the said *Robert*
 “ *Feilding* and the said *Mary Wadsworth* were, and
 “ are Man and Wife. And that the said *Robert*
 “ *Feilding* Esq; after the Solemnization and Con-
 “ summation of the aforesaid Marriage, not hav-
 “ ing the Fear of God before his Eyes, on the
 “ 25th Day of the said Month of *November*, in
 “ the said Year of our Lord God, 1705, and in
 “ the Place also in the aforesaid Libel mention’d,
 “ did contract a pretended Marriage with the said
 “ most noble Lady, *Barbara* Duchess of *Cleve-*
 “ *land*. And also we pronounce, decree, and de-
 “ clare, that the said pretended Marriage, or ra-
 “ ther a Shew of Marriage, between the said *Ro-*
 “ *bert Feilding* and the said most noble Lady, *Bar-*
 “ *bara* Duchess of *Cleveland*, at the Time and
 “ Place libellated, was solemnized, or rather pro-
 “ phaned; the said *Mary Wadsworth*, alias *Feil-*
 “ *ding*, being then and since living. And also we
 “ pronounce, decree, and declare the same pre-
 “ tended Marriage, or rather Shew of Marriage,
 “ between the said *Robert Feilding* and the said
 “ most noble Lady, *Barbara* Duchess of *Cleveland*,
 “ so as aforesaid contracted and solemnized, or ra-
 “ ther prophaned, by reason of the former Mar-
 “ riage between the said *Robert Feilding* and the
 “ said *Mary Wadsworth* solemnized and consum-
 “ mated, was, and is, from the Beginning, void,
 “ and of no Force in Law, and doth, and ought
 “ to want the Force and the Effect of the Law.

“ Therefore, by this our Definitive Sentence, or
 “ our Final Decree, which we now promulge in
 “ these our Writings, We do pronounce, decree,
 “ and declare, the said most noble Lady, *Barbara*
 “ Duchess of *Cleveland*, was and is free from any
 “ Bond of Marriage with the said *Robert Feilding*,
 “ and had and hath the Liberty and Freedom of
 “ Marrying with any other Person.”

The Original Sentence was Signed thus,
JOHN COOKE.

The aforesaid Sentence having been publicly
 read by the Judge, at the Time, Place, and in
 the Manner aforesaid; the said Judge did decree
 one or more publick Instrument or Instruments
 thereof to be made (at the Petition of her Grace’s
 Proctor) by Mr. *Henry Farrant*, the principal Re-
 gister of the said Court, which accordingly he
 hath since issued under the publick Seal of the
 Office of the said Judge, on the Day following,
 viz. the 24th of *May*, 1707.

On *Wednesday*, the 25th Day of *June*, in the
 Year of our Lord 1707, before the Right Wor-
 ship Sir *John Cooke*, Knight, and Doctor of
 Laws, Official Principal of the *Archbishop’s Court* afore-
 said, in his Dwelling House at *Doctors Commons*; in the
 Presence of the said Mr. *Henry Farrant*, No-
 tary Publick, and Principal Register of the said
 Court; Mr. *Feilding*, by his Proctor, did renounce
 all Benefit of Appeal from the said Sentence, in the
 manner following, viz.

“ Appearing personally Mr. *Edward Cooke*, Proc-
 “ tor for her Grace, the most noble Lady, *Barbara*
 “ Duchess of *Cleveland*; and Mr. *Thomas Willy-*
 “ *mot*, Proctor for the said *Robert Feilding*, Esq;
 “ At which Time, the said *Willymot* did exhibit a
 “ certain Letter, or Epistle of the Tenor follow-
 “ ing; viz.

Mr. *Willymott*,
 W H E N Sentence is given in Behalf of her Grace
 the Duchess of *Cleveland*, pray enter no
 Instrument of Appeal, for I shall proceed no further
 therein.

Your Friend and humble Servant,

FEILDING.


“ And the said *Willymot* alledg’d, That the said
 “ Letter was all of the proper Hand-Writing of
 “ the said *Robert Feilding*; and that he the said
 “ *Willymot* receiv’d the said Letter from the said
 “ *Robert Feilding*. And the said *Willymot* further
 “ alledged, that no Appeal from the definitive Sen-
 “ tence given by the said Judge on the Part and Be-
 “ half of the said most noble Lady, *Barbara* Duchess
 “ of *Cleveland*, had been, or was interposed by, or
 “ on the Behalf of the said *Robert Feilding*. And the
 “ said *Willymot*, as Proctor of the said *Robert Feil-*
 “ *ding*, did renounce all Benefit of Appeal from the
 “ said Sentence, in the Presence of the said *Cooke*,
 “ as Proctor of the said most noble Lady, *Barbara*
 “ Duchess of *Cleveland*; who, on the Part and
 “ Behalf of the said most noble Lady, *Barbara*
 “ Duchess of *Cleveland*, accepted the aforesaid Al-
 “ legation and Renunciation of the said *Willymot*;
 “ and then also pray’d the golden Ring, and se-
 “ ven Letters, by him exhibited on the Part of her
 “ Grace, and annexed to the Libel in this Cause, to
 “ be

" be deliver'd out of the Registry of this Court, for
 " the Use of her said Grace. Whereupon the Judge,
 " at the Petition of the said Cooke (the said Let-
 " ters being first registred in the said Court) de-
 " creed the said golden Ring, and the seven Let-
 " ters, to be delivered to the most Noble Lady,

" Barbara Duchess of Cleveland, or to the said
 " Cooke, for the Use of her Grace; as by Act of the
 " Court had been expedited at the Time and Place
 " aforesaid, and now remaining in the principal Re-
 " gistry of the said Court, Relation being thereunto
 " had, doth and may more fully appear."



CLXXXIII. *The Trials of JAMES STIRLING of Keir, and Others in Scotland, for High-Treason, Nov. 15. 1708.* 7 Ann.

 CURIA JUSTICIARIA,
 S. D. N. Reginae, tenta in novo
 Domo Sessionis Burgi de Eding-
 burgh, decimo quinto Die Mensis
 Novembris, Millefimo, Septingentesimo,
 Octavo; per Nobilem & Potentem Comitem,
 Georgium Comitem de Cromertie, &c.
 Justiciarium Generalem, & Honorabiles Viros
 Adamum Cockburn de Ormiston, Justiciarium
 Clericum; Dominos Joannem Lauder de
 Fountainhall, Gulielmum Anstruther de eodem,
 & Gilbertum Eliot de Minto; Magistrum
 Robertum Steuart de Tillicourie, & Magistrum
 Jacobum Erskine de Grange; Commissionarios
 Justiciarii Diet. S. D. N. Reginae.

Curia Legitime Affirmata.

Intran.

James Stirling, Laird of Keir.
 Archibald Seaton, Laird of Touch.
 Archibald Stirling, Laird of Carden.
 Charles Stirling, Laird of Kippendavie; and
 Patrick Edmonston, of Newtoun.

INDicted and Accused at the Instance of Sir James Steuart, Her Majesty's Advocate, for Her Highness Interest, and as having Special Warrant from Her Majesty for that Effect. That where, by the Law of GOD, and the Laws of this, and all other well-govern'd Realms, the Crime of Treason and Leve-Majesty, and the Treasonable and Unlawful Rising and Continuing in Arms, are most Atrocious and Heinous Crimes, punishable by Forfeiture of Lands, Life and Estate, or other Pains of Law. Likeas by the Act of Parliament, Jac. I. Par. 1. Cap. 3. it is statute, That no Man openly rebel against the King's Person, under the Pain of forfeiture of Life and Goods. And by the Act of Parliament, Jac. II. Par. 6. Cap. 24. it is statute, That who commit Treason against the King's Person, or Majesty, or who rise in Feire of Weir against him, shall be punished as Traitors. And by the Act of Parliament, Car. II. Par. 1. Sess. 1. Cap. 3. it is declared to be High-Treason, for the Subjects more, or less, upon any Pretext, to rise and continue in Arms; and to make Treaties or Leagues with Foreign Princes or States, or among themselves, without His Majesty's Special Authority first interponed. And by the Act of Parliament, Car. II. Par. 1. Sess. 2. Cap. 2. it is statute, That if any Person shall Plot, Contrive or

Intend, Death and Destruction to the King, or Bodily Harm tending thereto; or Deprive, Depose, or Suspend Him from the Stile, Honour, and Kingly Name of this, or any other His Majesty's Dominions; or levy War or take up Arms against Him, or any Commissionate by Him; or entice Strangers, or others, to invade any of his Dominions, and express and declare such Treasonable Intention; he shall be adjudged a Traitor, and punish'd as in the Case of High-Treason. Likeas by the Act of Parliament, 1702. intituled, Act Recognizing Her Majesty's Royal Authority, it is declared, That it shall be High-Treason in any of the Subjects of this Kingdom, by Writing, Speaking, or any other manner of way, to disown, quarrel, or impugn Her Majesty's Royal Power and Authority, or Right and Title to the Crown. And by the Act of Parliament, 1703. intituled, Act Asserting and Recognizing Her Majesty's Authority, it is again statute and declared, That it shall be High-Treason, in any of the Subjects of this Kingdom, to disown, quarrel or impugn, Her Majesty's Right and Title to the Crown of this Kingdom, or Her Exercise of the Government thereof. NEVER-THELESS it is of Verity, That the said James Stirling of Keir, Archibald Seaton of Touch, Archibald Stirling of Carden, Charles Stirling of Kippendavie, and Patrick Edmonston of Newtoun, all and each of them were guilty of the said Crimes, in sua far as they all, and each of them, shaking off all Fear of GOD, and Regard to Her Majesty's Person, Authority and Laws, upon one or other of the Days of the Months of February March or April last, when an Invasion of that Part of Great-Britain called SCOTLAND was threaten'd, by an Enemy-Fleet of Ships with Forces, and an Army aboard, sent by the French King or by the Pretender, who went some Time by the Name of the Prince of Wales, and now assumes to himself the Name, Stile and Title of King James, as King of Her Majesty's Dominions; with a manifest and open Design to invade Her Majesty's Dominions, and to destroy Her Majesty and Her good Subjects; at least to deprive and depose Her Majesty from the Stile, Honour, and Princely Name of these Her Dominions; Did convocate and convene in Arms, with others their Accomplices; such as Major William Graham, Alexander Steuart, Uncle to Ardvorlich, George Seaton, Brother to the said Archibald Seaton, and Mr. Charles Fleeming, alias Hay, Brother to the Earl of Wingtoun, all since absconded, and upon the same Account declared Fugitives: And thus did rise and continue in Arms without Her Majesty's Special Authority first interponed;

poned; and did levy War, and take up Arms against Her Majesty. And farther, they having never before qualified themselves by any Mark of good Affection to Her Majesty or Her Government, did (at the Time aforesaid) gather themselves together, with their Accomplices, in Arms, with Swords and Pistols, and other offensive Weapons, in an open Correspondence with the said Enemies and Invaders, at the very Time of their said Invasion; and being so convocate and convened in Arms, did march in one Body, or Company, with their said Accomplices, several Days and Nights, to and from several Places, in the Shires of Stirling, Perth, and other Shires adjacent, on purpose to encourage and strengthen the said Invaders, or at least to raise Her Majesty's other Subjects in Rebellion against Her. Like as for that End, they did openly drink to the good Health of their Master, as they called him; who could be none else but the said Pretender. And did by their said Rising in Arms, and open Correspondence with Her Majesty's said declared Enemies, and otherways, entice them and others to invade Her Majesty's Dominions, to the destroying of Her, and Her good Subjects; at least to deprive and depose Her from the Stile, Honour, and Princely Name of Queen and Sovereign of this and Her other Dominions; or at least thereby endeavour the Alteration of the Right of Succession to the Crown, so happily by Law settled upon Her Majesty and Her Successors. By all which, they, and each of them were guilty, Art and Part, of the foresaid Crimes of Treason, Rebellion, and Lese-Majesty, at least of Treasonable Rising and Convening in Arms, without Her Majesty's Special Authority first had thereto; at least of a most unlawful Convocation in Arms, in a most dangerous and threatening Season and in open Correspondence with the said Enemies and Invaders; to the Destruction of Her Majesty's Government, and of the Quiet and Peace of Her Dominions. Which Crimes, all or any of them, being found proven against all or any of the forenamed Persons, by the Verdict of an Assize, before the Lords, Justice-General, Justice-Clerk, and Commissioners of Justiciary; They, and each of them, ought to be condemn'd by Sentence and Doom of the said Lords Commissioners, to forfeit their Lands, Lives and Goods, as Traitors; and be otherways punished in their Persons and Goods, by the Pains of Law, to the Example and Terror of others to commit the like in Time coming.

Sic subscribitur,

J. A. STEUART.

PURSUERS.

Sir James Steuart, of Goodtrees, Her Majesty's Advocate.

Mr. William Carmichael, one of Her Majesty's Solicitors.

Sir Walter Pringle; and

Sir Francis Grant.

Advocates

Procurators in DEFENCE.

Sir Patrick Home.

Sir David Forbes.

Sir James Steuart.

Mr. Alexander Macleod.

Mr. James Graham.

Mr. Walter Steuart.

Mr. John Elphinstone.

Mr. Colin Mackenzie.

Mr. Charles Cockburn; and

Mr. David Lauder.

Advocates.

My Lord Advocate judicially produced Her Majesty's Letter, authorizing and requiring his Lordship to raise and insist in the aforesaid Process; whereof the Tenor follows, superscribed thus:

ANNE R.

" Right Trusty and Well-beloved, We greet you well. Whereas James Stirling, Laird of Keir, Archibald Seaton, Laird of Touch, Archibald Stirling, Laird of Carden, Charles Stirling, Laird of Kippendavie, and Patrick Edmonston, of Newtown, were about the Time of the late intended Invasion apprehended by Warrants, for Suspicion of Treason, and treasonable Practices, against Us and Our Government; and have since been committed by Warrants for High-Treason, Depositions upon Oath having been made against them: Our Will and Pleasure is, and We do hereby authorize and require you, to raise a Process in the ordinary Form, before the Commissioners of Justiciary, against them, and each of them, for the treasonable Practices wherewith they, or any of them, are, or shall be charg'd. And herein you are to take the Assistance of Sir David Dalrymple, Mr. William Carmichael, Sir Walter Pringle, and Sir Francis Grant, Advocates; or any two of them, if necessary; and who are hereby required to concur with you accordingly. For all which, this shall be your Warrant." Given at Our Castle at Windsor, the nineteenth Day of July, 1708, in the seventh Year of our Reign.

By Her Majesty's Command,

Subscribed thus, S U N D E R L A N D.

Directed on the Back thus,
To Our Trusty and Well-beloved,
Sir James Steuart, Our Advocate for Scotland.

Which being read in Presence of the said Lords, Justice-General, Justice-Clerk, and Commissioners of Justiciary, they ordained the same to be recorded.

Sic subscribitur,

CROMERTIE, I. P. D.

Thereafter, there was a Petition presented to the said Lords, by James Stirling of Keir, Archibald Seaton of Touch, Archibald Stirling of Carden, Charles Stirling of Kippendavie, and Patrick Edmonston of Newtown, humbly shewing, " That the Petitioners being indicted at the Instance of Her Majesty's Advocate, for the Crimes of Treason and Lese-Majesty; and this being the Day of their Appearance and Trial, they had according to the Privileges allowed to all the Lieges, and confirm'd by Acts of Parliament, made choice of the following Lawyers, to appear before their Lordships in their Defence; viz. Sir Patrick Home, Sir David Forbes, Sir James Steuart, Mr. Alexander Macleod, Mr. Walter Steuart, Mr. James Graham, Mr.

" Mr. Colin Mackenzie, Mr. Charles Cockburn, and
 " Mr. John Elphinstone. And it being also usual in
 " Cases of Treason, That Lawyers are publickly
 " authorized and warranted to manage the Trials
 " in their Pannels Defence; therefore humbly cra-
 " ving their Lordships would be pleased to allow
 " of the Petitioners Choice of the Lawyers above-
 " mentioned, and to authorize these Gentlemen
 " accordingly, as the said Petition bears.

Which being consider'd by the said Lords, They,
 by their Deliverance thereon, allowed such Advoca-
 tes as the Pannels should think fit to employ to
 appear and debate for them in the above-mentioned
 Indictment; they being already sufficiently autho-
 rized by Law for that Effect.

Sic subscribitur,
 C R O M E R T I E, I. P. D.

The said Indictment being read, and fully debated
viva voce, in Presence of the said Lords, Pannels
 and Affizers; the said Lords, Justice-General, Ju-
 stice Clerk, and Commissioners of Justiciary, or-
 dained the Pannels to give in their Information
 thereon betwixt and Wednesday's Night next: and
 Her Majesty's Advocate to give in his, betwixt and
 Friday's Night thereafter, in order to be record-
 ed; and continued the Dyet till Monday next,
 at nine a Clock in the Forenoon; and ordained
 the whole Affizers and Witnesses to attend then,
 each of them under the Pain of one Hundred
 Marks; and the Pannels to be carried back to
 Prison.

INFORMATION for the Laird of Keir, and Others, against her Ma- jesty's Advocate.

IT is alledged for the Pannels, denying always
 the Indictment, and hail Articles and Qualifi-
 cations thereof; 1. That the Indictment is not re-
 levantly libelled, in respect it does not condescend
 upon any Overt-Act or Deed done by them, that
 could possibly be stretched to infer the Pains li-
 belled; and the Acts of Parliament libelled on, ex-
 pressly require such Facts and Deeds, to infer the
 Pains of Treason therein mentioned. As Act 3.
 Parl. 1. James I. *That none rebel openly or no-
 tourly.* And Act 14. Parl. 6. James II. bears, *And
 if it happens, any within the Realm, openly or no-
 tourly against the King to Rebel, or make War
 against the King's Lieges, against his Forbidding, &c.*
 And Act 2. Sess. 2. Parl. 1. Charles II. has these
 Words: *And shall, by Writing, Printing, Preach-
 ing, or other malicious and advised Speaking, ex-
 press or declare such their Treasonable Intentions,
 &c. And the Act 1702. bears, That it shall be High-
 Treason, by Writing, Speaking, or any other manner
 of way, to disown or impugn Her Majesty's Royal
 Authority, &c.* Which Laws and generally all Laws,
 as well as the Nature of Crimes, require, That
 the same should be by express Words, Writs, or
 Deeds: and not strained by remote Inferences and
 Conjectures: And in the present Case, there is nei-
 ther Words, Writ, or Deeds condescended on, that
 could possibly be drawn to infer the Crimes li-
 belled.

2. Whereas the Indictment bears, That the Pan-
 nels did convocate and convene in Arms, with
 others their Accomplices, and so did rise and con-
 tinue in Arms, without Her Majesty's Special Au-
 thority first interponed; and did levy War, and
 take up Arms against Her Majesty, &c. It is an-
 swered, That albeit Levying War against Her Ma-
 jesty, or rising and continuing in Arms without
 Her Majesty's Authority, be undoubtedly Treason
 when duly qualified; yet there is no Circumstance
 of Fact, Word or Writ, condescended on in the
 Indictment, that can be imagined to infer a Rising
 in Arms, or Levying War against her Majesty. And
 albeit the Law statutes anent Rising in Arms, or Le-
 vying War generally; yet in all Libels duly found-
 ed thereupon, the Subsumption must condescend
 upon Particular Facts and Deeds, capable to be
 found and construed a Rising in Arms. The Com-
 mon Law expresses it thus: *Qui injussu Principis
 bellum gesserit, delectumve habuerit, exercitum com-
 paraverit.* And our Law, Act 75. Parl. 9. 2. Ma-
 ry, explains what it is to rise in Arms; viz. *That
 no manner of Persons attempt to do, or raise any
 Band of Men of War, or Horse or Foot, with Cul-
 verins, Pistolets, Pikes, &c. or other Munition bel-
 lical whatsoever, for Daily, Weekly, or Monthly
 Wages, in any Times to come, without special Licence
 in Writ had of our Sovereign Lady, and Her Succes-
 sors thereto.* And Sir George Mackenzie, in his Ob-
 servation on Act 2. James I. defines Rising in Arms
 thus: *The Rising of Men in warlike manner, by
 Mustering them, or Forming them in Companies, or
 Swearing them to Colours.* Nor are these Quali-
 fications by themselves sufficient, unless there be a
 formidable Number: And therefore he cites the
 Case of Macleod of Affint, Feb. 2. 1674, where
 the Lords of Justiciary refused to sustain the Arti-
 cles wherein it was libelled, the raising of Men,
 and disposing of them under Colours, to be rele-
 vant; except it were alledged, that they were an
 hundred Men or upwards, and were under Co-
 lours, or mustered under weekly or daily Pay.
 Whence it is evident, that the Rising in Arms must
 be by publick and notour Appearance of Compa-
 nies in Arms, so as their Design and Opposition to
 Authority could not be doubted; whereof the least
 Shadow cannot be alledged in this Case.

3. Whereas the Libel bears further, That the
 Pannels did gather themselves together, with their
 Accomplices, in Arms, with Swords and Pistols,
 and other offensive Weapons, in an open Corre-
 spondence with the said Enemies and Invaders, at
 the very Time of the Invasion. It is answered,
 That the said Article anent Correspondence is not
 relevantly libelled; their being no particular Con-
 descendance of any Acts of Correspondence pass'd
 betwixt the Pannels and the Enemy, as is necessary
 to be condescended on for inferring the Crime li-
 belled. Correspondence with the Enemy, in the
 Common Law, is thus express'd; *Quive hostibus
 nuncium literasve miserit, signumve dederit, sece-
 ritve dolo malo quo hostes consilio juventur.* And
 no such Fact or Qualifications can ever be pre-
 tended, or alledged in this Case and their meet-
 ing together so few in Number of near Relations
 and Neighbours, as it were lawful for them to do
 at all times, so the accidental Circumstance of an
 imminent Invasion could never render the same un-
 lawful. Nor could their Travelling together for
 some Space in the Country, be strained to any De-
 sign of encouraging Enemies, or to raise the Sub-
 jects in Rebellion; whilst they were no other ways
 appoint-

appointed or attended, than as they (and others of their Character) do usually travel, in a most peaceable manner, without giving the least Occasion, by Word or Deed, to any Rebellion or Sedition. And as there was not then any Body of Men in Arms in the Kingdom, against Authority, to whom they could be imagined to resort; so it is an Evidence that they had no mind of Convocating themselves against Authority, that they did not use the Means in their Power, by convocating their Tenants and Followers in Arms, either for assisting themselves, or giving Countenance and Encouragement to others on any such Designs.

4. Whereas the Libel mentions, That the Pannels did openly drink to the good Health of their Master, as they called him; who could be none else but the *Pretender*; it is no ways relevant. 1. Because the drinking of any Person's Health is not a Crime, their being no Law against it. 2. There is no Person named, whose Health is said to be drunk; and therefore cannot infer any Crime. And the Gloſs put thereupon, That it could be no other but the *Pretender*, is only a Conjecture and uncertain Inference of the Pursuers; which can be no wise sufficient to fix a Crime upon others, who can only be answerable for what is clearly expreſs'd and declar'd by them, by plain Words, Writs, or Deeds.

It was reply'd for the Pursuer, 1. That the Libel was most relevant, in so far as it did expressly bear, That the Pannels did rise and continue in Arms, without her Majesty's Special Authority first interponed: And the said *Act 5. Parl. 1. Car. II.* declares it *Treason to the Subjects, or any Number of them, more or less, upon any Ground or Pretext whatsoever, to rise and continue in Arms, without His Majesty's Special Authority.* And the particular Qualifications and Circumstances of their said Rising in Arms, will appear from the Probation.

2. The Pannels rising in Arms, leaving their own Houses, and marching in a Body thro' the Shires of *Stirling* and *Pertb.* in Company with the other Persons mention'd in the Libel, whereof some have been since denounced for not Compearance, to underly the Law therefore; at the same time that the Nation was threatned by an Invasion of a *French* Fleet, with Land-Forces Aboard, cannot be understood to be upon any other Design, than on purpose to encourage and strengthen the Invaders, and in open Correspondence with them, especially whilst the Pannels can adduce no reasonable Cause for their so Convocating and travelling together; and this was sustain'd *Treason* in *Caldwel's* Case.

3. The Laws libelled on, do not only make actual Rising in Arms, and Levying War against the Sovereign, to incur the Crimes and Pains of Treason, but likewise any Attempt so to do: For any Attempt or *Conatus* in the Case of Treason, is to be punished with the same Pains as the consummate Crime, as the Law says, *Eadem enim severitate voluntatem sceleris qua effectum puniri Jura voluerunt.* And Attempts are reckon'd as Treason in the Acts above-mention'd.

4. The Libel bearing Art and Part, is sufficiently relevant, notwithstanding the Generality thereof, such Libels being expressly ordained to be relevant by the Act of Parliament 151. *Parl. 12. Ja. 16th.* So that no Objection can be sustained against the Libel as Irrelevant, upon the Account of the Generality thereof, since Art and Part is libelled; which takes off any Objection, for not particularly condescend-

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ing upon the Pannels Accession to the Crimes libelled.

It is Duplyed for the Pannels to the *First*, That albeit the Rising in Arms without Authority be mention'd in General, to infer the Crime of Treason, since the Law could not descend to every particular Qualification, that might happen to infer Rising in Arms to be Treason, but left the same to be determined by the Judges competent: Yet the Pursuer of a criminal Libel must adduce special Qualifications, and circumstantiate Matters of Fact, that may be sufficient to infer, That the Pannels did treasonably rise in Arms, or otherways the Libel cannot be sustain'd. For as it could not be allowed to libel in General, that a Person is guilty of Murder, so no more can it be allowed to libel in General, that a Person is guilty of rising in Arms without Authority; the Propositions in these Libels being equally founded in Law; but the Subsumption must be cleared and qualified by circumstantiate Matters of Fact, inferring the respective Crimes; and if it were otherways, these evident Inconveniences would follow.

As, 1. That the Pannels would be deprived of the Benefit of Exculpations, which could not easily be brought to meet with general Libels; whereas special circumstantiate Matters of Fact might have been more readily taken off by proper particular Grounds of Exculpation, whereby the Deeds condescended on, might be applied to other reasonable Causes, that might wholly exclude the *animus delinquendi*, or *dolus*, requisite in all Crimes.

2. This Inconveniency would likewise be inevitable, That the Assize would become Judge of the Relevancy, as well as of the Probation. For if the Libel bearing in General, the Pannels to be guilty of rising in Arms against Authority, should be sustain'd, and the Qualifications left to be determin'd by the Probation, then the Assize would be Judges both of the Relevancy and Probation; for they behoved to determine, whether the Qualifications arising from the Probation, did amount to a Rising in Arms, or other Crimes, generally mention'd in the Statute: whence it might come to pass, that Pannels might be put to the Knowledge of an Inquest upon irrelevant Crimes; and therefore Crimes should be particularly subsumed, as *Sir George Mackenzie* observes in his *Criminals Tit. Libels.* Page 465.

To the 2d. it's Duplyed, That whether the Pannels Travelling for some Space from their own Houses, either for Diversion or Business, in the most peaceable Manner imaginable, had happen'd in the Time in the threatned Invasion or not, could never alter the Nature of that Deed, since it cannot so much as be pretended, that they were *versantes in illicito*; the Travelling in such a peaceful Manner singly with Domestick Servants, being unquestionably allowed by Law. And this Defence of the Pannels Travelling in their usual Manner, and with their ordinary Equipage, was so evident of it self, that the Pursuers acknowledged there could nothing culpable be inferred from it at other Seasons; but that the Crime now insisted on, was founded, in that their Meeting and Travelling was the Time of the threatned Invasion, when a Fleet of Enemies Ships was upon the Coast. And yet the Libel does not bear, that the Pannels knew of any such Design, or that the *French* were actually upon the Coast; and without this Knowledge, the Circumstance which the Pursuers insist chiefly to make the Crime, was, as to the Pannels, no Circumstance at all. So that the Libel shortly resolves in the Pannels Travelling

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with

with their ordinary Equipage, after their usual way, in a peaceable Manner; which neither in common Sense, nor in the Construction and Interpretation of our Law, and Opinion of our Lawyers above-mention'd, can be pled a Rising in Arms against Her Majesty or Government, or give the Occasion of the least Suspicion of any Intention that way. Neither can Suspicions, albeit there had been more evident Grounds for them, be sufficient to infer a Crime; the Law saying expressly, That *ex suspicionibus nemo est damnandus*, Leg. 5. ff. de Pen. And whereas it is pretended, that the Pannels have given no reasonable Account of their Progress and March at that Time; and therefore leaves place for the Pursuers Conjectures; the same is no ways of any weight to fortify the Pursuers Libel; it being sufficient for the Pannels to alledge, That the meeting of a few Gentlemen, and Travelling with Swords and Pistols, as they were hitherto used, does not infer a Rising in Arms. And to pretend that the Pannels should give special Accounts of their Progresses, is plainly to found a Criminal Charge or Libel *super inquirendis*, and so expressly discharged by Law: And doubtless it is sufficient for the Pannels to say, that their Meeting or Travelling together with such small Retinue, and in such peaceable and unprovided Manner, could not give the least Jealousy to any Person whatsoever; and if this Defence were not sustained, the natural Liberty of the Lieges would be very much circumscribed; and no Man could be sure, but the Action of his Life which he intended should be most innocent, should be the most fatal, as concluding him under Treason, and the worst of Crimes. And the Practique in *Caldwel's* Case is greatly differenced from this, in that there was a considerable Body of Men with all sorts of Arms actually in Rebellion against the Government at the Time; and that *Caldwel*, with his Associates, likewise of a Considerable Number, had intercepted common Posts, and particularly some Letters to the Earl of *Eglington*, a Privy-Counsellor, which was an Overt-Act, and sufficiently declared their bad Design; besides these Sentences were reduced, and the Persons restored *per modum Justitiarum*.

To the 3d. it is Duplyed, That albeit it be generally received by Lawyers, that Attempt or *Conatus* in Treason is punishable as Treason; yet that is never to be understood of a naked Design or *actus animi*; the Law saying expressly, that *Cogitationis pœnam nemo patitur* Leg. 18. ff. de Pen. and *neminem qui male facere voluit plesti equum est nisi quod factum voluit etiam fecerit*. But that *Voluntas* or *Conatus* mention'd in Law, must break out into an external Act; if not consummating the intended Crime, at least in choating the same, so as to become a Deed obvious to the external Senses, before it can be subjected to the Censure of human Laws. And albeit *Dolus* or *Propositum* be requisite in all Crimes; yet not as it is latent in the Mind, but as it is express'd and declar'd by an external Act. And so *Mattheus de Crim. in Proleg.* says, *Dolo contrahi crimen diximus, per dolum autem factum dolum intelligimus*. As it is clear by the express Statutes libelled upon, particularly the said Act 2d. sess. 2. Parl. 1st Ch. II. That Treasonable Intentions should be expressed and declared by Writing, Printing, or advised Speaking, before the same can be said to have inferred the Pains mention'd in the Act; yea, even where there was Writing alledged upon; yet in Mr. *Robert Caddel's* Case, that was not found sufficient to infer the Crimes in the Statute, unless it should have been qualified, that the Writing was published, and out

of the Writers's Hand, whereby the Attempt would become manifest; and in the Case of an Overt-Act, which was the Point upon which *Balmerino's* Trial proceeded; and without which, no Crime could have been found against him. And in the present Case, as the Pannels had truly no manner of ill Design, so no external Act whatsoever is, or can be condescended on, either of Word or Deed, that infers any Design of the Pannels to oppose Authority, or to act any thing contrair to Law, or their Duty to the Sovereign; for as they used their natural and innocent Liberty of Travelling in a peaceable Manner with their near Relations and Neighbours, for their Diversion or Business, so when they were called by Authority, they did not absent or withdraw themselves, but readily appeared and gave Obedience, upon the first Citation.

To the 4th. it is Duplyed, That the Libelling of Art and Part, is not sufficient to exclude the Objection upon the Generality of the Libel, because Art and Part relates to the particular criminal Facts, and Qualifications thereof libelled, and includes an Alternative, that the Person complain'd upon, was either Actor, or Art and Part of the criminal Facts and Deeds particularly libelled. Which general and indefinite Qualification of Accession, Law and Custom had not allowed, without a more special Condescendence of the Parties Accession to the Deeds libelled, which could only be certainly and distinctly known by the Probation: But still that does not take off the Necessity of special Condescendences of the Qualifications that make up the principal Crime libelled, without which Pannels could not have the Benefit of Exculpations; nor could the Relevancy be determined by the Judges, but remitted with the Probation to the Assize, which always has been cautiously shunned as of dangerous Consequence. And in the present Case, the sustaining of the Libel in the Generality thereof above-mention'd, would be a most dangerous Preparative; it being evident, that if a few Gentlemen, Meeting and Travelling together with their ordinar Retinue and Equipage, which is generally with Swords and Pistols, could be thought to fall under the Act of Parliament, of Rising in Arms without the Sovereign's Consent, no Gentleman in the Kingdom could be free from Grounds of a Criminal Process, if the bearing such Weapons should be construed a Rising in Arms; and few or many, making no Difference, as the Pursuer contends, it would necessarily follow, that two or three Persons meeting or Travelling with Swords or Pistols, might be liable to a Process of Treason, as rising in Arms without Authority; which were most absurd, and of dangerous Consequence to the Lieges. And as no Company can ever be found to have met and travelled in a more peaceable and inoffensive manner than the Pannels have done, doing no Injury by Word or Deed, to any Person whatsoever, and travelling in such a simple Manner, as did exclude all imaginable Jealousy of their having any Warlike Designs, or creating the least Disturbance to themselves or others, and giving a ready Obedience when called by Authority on a simple Citation: So they ought to be Assailized from the said groundless and irrelevant Libel.

The Pannels shall not take up the Lords Time in informing more particularly upon the other Circumstances of the Libel, such as drinking of Healths, Correspondence, and enticing of the Country; by reason that my Lord Advocate did not insist upon these in the Debate, but only pretended

to have libelled them as Aggravations, which is of no Moment in a Process of Treason, and can be of no manner of Effect in this Case, where the Crime libelled is so manifestly elided. *Sic subscribitur,*
Alexr. Macleod.

*Information for her Majesty's Advocate
against the Lairds of Keir, Touch,
and others, now Prisoners in the
Tolbooth of Edinburgh.*

HER Majesty's Advocate, holding the Indictment as repeated, and here premised, before he offer to answer and remove the Exceptions and Objections made against it for the Defenders; takes leave to remember what cannot well be forgot, That the Occasion of the present Trial was an actual Invasion of an Enemy-Fleet with French, Irish and Popish Forces aboard, in March last, threatening an imminent Invasion upon our Coast, to destroy her Majesty, and all her good Subjects, and ruin our Religion, Laws and Liberties.

Which Invasion was the more formidable, that it was intended and carried on by *Papists* and French, and by *Irish Papists*, the Dregs of both, which are certainly the worst Characters that can be apprehended in an Enemy.

While we stood thus threatned by such Enemies that had risen up against us, and were ready to swallow us up quick, so that the Waters had overwhelmed us, and the Stream had gone over our Soul, if GOD had not appeared for us; and Her Majesty, by his Blessing upon her careful and most vigilant Conduct, interposed for our Delivery, and when the Enemy was upon our Coast, and ready to enter our *Firth*, and when all good Men were in the greatest Suspence of the saddest Apprehensions of what might ensue, by turning our Country at least to a Field of Blood, and Scene of all Confusions and Mischiefs: Yet there were found amongst us, even among *Scots Protestants*, a Knot of Men who may justly seem to have wished and longed for that which all Men besides feared.

It is now indeed made an Argument to exculpate, that they were so few; and yet it may far more reasonably to be wondered, that there was so much as one Man to be found of such a desperate Resolution and Practice.

The Five Gentlemen now in the Pannel, being of the Knot mentioned, so soon as this Invasion was noised abroad, and when it was brought just upon our Coast, then they think fit to leave their Houses, and going with their Horses and Servants, and all well armed with Swords and Pistols, and other invasive Weapons, they rise and continue in Arms, without any lawful Authority interposed: And thus appearing in Arms, and marching from Place to Place in several Shires, and for several Days and Nights, as it were in Correspondence with the foresaid Invaders, did what in them lay (if not to rise to their Assistance, at least) to disturb Her Majesty's good Subjects, from the Opposition and Defence that was at that Time so necessary.

It's true, when their Hopes were disappointed, then they shrunk home, and such of them as had more to lose than they knew how to save otherways, compeared and rendred when called; when

others of them that had no more Guilt, but less to lose, thought fit to retire and abscond: Whereupon Her Majesty most justly ordered, that the Persons now in the Pannel should be brought to this present Trial.

The Indictment exhibit against them, founds, upon most plain and positive Laws and Acts of Parliament, *That none rebel openly against the King's Person or Government; That none levy War and take up Arms against the King and His Government; And that for any of the Subjects, more or fewer, to rise and continue in Arms upon any Pretext, or to attempt the same without His Majesty's special Authority first interposed, it shall be High-Treason; and that if any levy War, or take up Arms against the King, or entice Strangers or others to invade, and express and declare such treasonable Intentions, he shall be adjudged a Traytor, and punished as in the Case of High-Treason.* And then the Indictment subsumes in the very Terms of the Law, *That at such a Time, and in such a Manner, and with the other Circumstances mentioned, the Defenders did actually rise and convene, and continue in Arms without Her Majesty's special Authority first interposed; which in Law is justly construed to be the Levying of War, and taking up Arms against Her Majesty, and did plainly appear to be in a real Correspondence with, and for the Encouragement of the French Invaders; whom thereby, and otherways they did entice, to the invading of Her Majesty's Dominions, and the destroying of Her and all Her good Subjects: Of which Crime the Defenders being Actors, Art or Part, ought to be punished with the Pains of Law.*

To this Indictment the Defenders made Answer, denying the Crime libelled with all its Qualifications; that the Indictment is not relevant, in respect it doth not condescend upon any Overt-Act or Deed that can be stretched to infer the Crime, or any treasonable Intention; and that all the Acts of Parliament libelled upon, require such open Facts and Deeds; and the Act of Parliament, *Car. II. Parl. 1. Sess. 2.* requires expressly, *That by Writing, Printing, Preaching, or other malicious and advised speaking, such treasonable Intentions should be expressed or declared; nothing of which can be found in this Case.*

To which it is replied, 1. That it is granted, That neither inward Thoughts nor Intentions, unless some way expressed or declared, can be made criminal, and far less treasonable; but on the other Hand, when the Law and Acts of Parliament does set down a specifick palpable Deed, such as rising and continuing in Arms, which is visibly an open Overt-Act, and requires no more for the declaring of the Rebels Intention, save his so rising and continuing in Arms, without having Her Majesty's Authority interposed; what more can be required, either as to the Overt Act, since the Fact it self is truly and openly such; or as to the Certainty of the Parties Intention when the Law hath ascertained it, viz. By the want of Authority; which is plainly the present Case? But 2. It is to be adverted, That our old Laws libelled upon, do indeed bear open and notour Rebellion: As likewise, *The levying of War against the King and His Person and Government:* But these Laws having been found very liable to the very Exceptions that the Defenders now make against the Indictment, when in the Year 1661 this came to be considered, and the Parliament judged fit to ascertain and define the Crime of Treason, so as every Man might most plainly understand it, and

that there could be no Place for any of the former Evasions: The Act of Parliament condescends upon rising and continuing in Arms, as the very open and Overt Act requisite to the Crime; and withal fixes the treasonable Intention, upon this one Qualification, That the rising and continuing in Arms, is without His Majesty's Authority interposed, a Negative that proves it self, and requires no other Evidence. 3. As to what the Act of Parliament, *Car. II. Par. 1. Sef. 2. Cap. 2.* requires, *That such treasonable Intentions should be expressed and declared;* these Words are plainly subjoined to a long Enumeration of several Points and Kinds of Treason, and are certainly only to be applied to the Cases wherein the Intention may be doubtful, but can never in any good Sense or Reason be applied to such Deeds as the Law itself declares to be open and to import the Intention, such as rising and continuing in Arms, levying of War, or taking up Arms, where both the Deed and the Intention are manifest, and by Law declared and condemned. And in effect to alledge, where there is an open rising in Arms, or a levying of War, or the Maintaining a Fort or Garrison, That yet the Intention should be desiderate, where the Law requires no more to prove, but that it is done without Authority, is visibly absurd.

Secondly, Where it is objected, that albeit rising and continuing in Arms without Her Majesty's Authority be undoubtedly Treason, yet it must still be qualified by some Circumstances of Fact, Word or Writ, to infer the Intention; and to libel rising in Arms is but general, and it ought to be cleared by some particular Fact and Deed libelled, to make the rising criminal. Thus the common Law says, *Qui injussu principis bellum gesserit, delectumve habuerit exercitum Comparaverit, &c.* And our Act of Parliament, *Q. Mary*, explains the Matter, *viz. That no Man raise Bands of Men of Weir on Horse or Foot, with Pistols and other bellical Arms, for daily or Monthly Wages, without special Licence, &c.*

To all which it is answered, that it is granted by the Defenders, that rising and continuing in Arms, if duly qualified to be against Her Majesty, is undoubtedly Treason: But then it is not as evident, that all the Qualification that the Act of Parliament requires, is, that the same be done without Her Majesty's Authority? So that where the Qualification is so plainly Defined, to require any farther, is to impose on the Law. It's true, that the Act *Queen Mary*, speaks of raising of Bands of Men of Weir, and keeping them under Pay; and the Common Law may also have something of that Nature. But if the Act of Parliament 1661, thought fit so far to secure the Prerogative as to cut short and forbid all rising in Arms without Her Majesty's Authority, under the Pain of Treason, is not this plain Law, which the Defenders could neither misken, nor ought to have transgressed?

The Case of *Affint* is much insisted on, That it was not found to be a treasonable Rising, unless there had been more than an hundred Men convened, and mustered under Colours and Pay. But 1. A Practick cannot change the Law. 2. The Reason of that Practick is manifest, *viz.* That *Affints* Convocation was covered with another Colour and Pretext, and was certainly not against the Government; and therefore the said Qualifications were required, which doth no ways hold in this Case.

For to deal plainly, and to cut off all the Defenders groundless Pretexts, that they were only innocently convened, that they had no Arms, but such as are

ordinary and allowed to Gentlemen in their Travelling; that they were only a small Number of Friends and Neighbours for their Diversion and Recreation: That they had no Correspondence with the Invaders, tho' their meeting and travelling together happened about that Time: And *lastly*, that if they should be overtaken on the Fact and Deed libelled against them, none could be in Safety to travel with Arms, even in the smallest Company.

To all this it is answered, 1. For all that the Defenders have alledged or can alledge for Excuse, yet their meeting and marching in Arms, at the Time and Manner that they did, is generally under this Prejugee by all that ever heard it, that it was at least the height of Folly, and had the worst of Appearances.

But 2. If the Defenders would have the Deed to be considered with all its Circumstances, it is not declined. Now as to the Deed it self, it is open and palpable, *viz.* rising and continuing in Arms. 2. It has all the Qualification that Law requires to make it criminal, *viz.* That it was without Her Majesty's Authority being interposed. But 3. Admit of all the Circumstances that the Defenders can alledge for alleviating, are they not only bare Supposition and Question? What if they meet by Rencontre? What if they met for Diversion? Are not such Meetings ordinary? And what was acted by them against the Government? All which do not import so much as one positive colourable Excuse. Whereas to consider the Deed certainly condemned in Law on the other side, with its undeniable Circumstances, *viz.* That the Defenders left their own Houses, having no just Occasion to invite them abroad: That they met in such a Company as perhaps all of them never met before; that they met well mounted, and with Swords and Pistols of all sorts, better appointed than most Men that go to War; that they were thus well mounted and armed, beyond what the Law and Act of Parliament 1693, allows to Men of their Fashion, there being none of them qualified to the Government; that all this happened when the Invasion was generally known, and just upon our Coast: That they marched backward and forward for several Days and Nights, as it were hovering in expectation of what they look'd after: That they did not at all dissolve and go home, until their Hope of the Invasion was lost; and that since several of them have absconded. Can any Man lay and reflect upon these Things together, but he must say, That besides their being clearly Guilty in the Terms of Law as having risen and continued in Arms without her Majesty's Authority, which in the Construction of Law, is to levy War against Her Majesty, their Intention was as treasonable as the Law presumes: so that upon the whole, this Judgment may be both righteously and safely pass'd in this Matter, *viz.* That their rising and continuing in Arms at the Time and in the Manner, and with the other Circumstances libelled, without Her Majesty's Authority first interposed, was Treason, unless they could exculpate, by at least some colourable or probable Pretext, which they never can prove, or have so much as alledged.

Nor could a Judgment of this Nature so clearly founded, be of the least ill Consequence or Inconvenience, since every ordinary Meeting bears its own Excuse; nor can indeed a lawful Meeting of this Sort be found without Excuse. And further, it would secure the Government according to the true Intention of the Law, against all suspicious and evil Designs and Attempts in Time coming.

The

The Defenders object, That the Indictment doth not libel relevantly, as to the Point of Correspondence with the Invaders; which should be qualified by a Condescendence on the particular Acts of Correspondence; and, as the Common Law expresses it, That *Hostibus nuncium literarum miserunt, signumve dederunt, feceruntque dolo malo quo hostes consilio juventur.*

To which it is answered; If Correspondence with Invaders had been the principal Crime libelled, the Defenders might have contended for such a Condescendence *quo modo* they corresponded: But when the Correspondence is only libelled, *viz.* an open and real Correspondence, by their rising at the same Time in Arms without Authority, that a Foreign Enemy was actually invading: This real Correspondence, or this Correspondence *in re ipsa*, is more than sufficient to make out the Presumption of Law; *viz.* That their Rising and Continuing in Arms without Authority, was plainly against Authority. If at the Time of the Invasion, some Hundreds of disaffected Persons had got together in Arms; would it have been doubted, but that their getting together at that Time in Arms, without Her Majesty's Authority, was really to correspond with the Invaders, and to countenance and encourage them in their Invasion. If then all the Difference be, that the Defenders did convene in a smaller Number; it only remains to be considered, That the Act of Parliament doth expressly declare against any Number, their Rising and Continuing in Arms without Authority; and that the same is Treasonable; which fully reaches the Number libelled.

As to what is added, of their being so small a Number, and only armed in the ordinary Manner accustomed by Gentlemen Travellers; it is already answered, and withal it is certain, that the greatest Mischiefs may have their Rise from small Beginnings. And as for the Defenders, they were very early in their Appearance, and visibly did what in them lay, both to encourage the Invaders, and to raise an Insurrection in the Country: And it was only the Goodness of God, and her Majesty's vigilant Conduct, that cut off both their further Hopes, and the increasing of their Numbers; which might have been infallibly expected, if the Invasion had succeeded.

The Defenders take notice of that Part of the Indictment, which alledges, That they did openly drink the good Health of their Master, who could be none else but the Pretender; which they alledge is no ways relevant to infer the Conclusion of the Libel.

To which it is answered, That the foresaid Drinking having been only mentioned in the Libel, for a further Illustration of the Defenders Intentions, it is granted, that *per se* it is not relevant to infer a Crime. But, 2. Being joined with the other Circumstances above mentioned, even in its doubtful Sense, it cannot be denied to import a further Discovery of these Gentlemen's Intentions, in appearing and continuing in Arms without Authority; which (in Effect) is the principal Crime, sufficiently declared by the Act of Parliament itself, tho' it were not administrate by this and the other Circumstances above-mentioned.

The Defenders go on to resume and answer the Charge brought against them; but the whole of the Matter being above abundantly cleared, it may suffice to notice, that they still insist, That the Rising in Arms libelled without Authority, is but ge-

neral, and so could not infer the Crime of Treason, unless more particularly qualified: Whereas it is certain, that the Rising in Arms is a specifick Act; and of the which, if libelled circumstantiately as to Time and Place, as it here is, makes a most particular Libel: and for qualifying the Intention of the Act, and of the Risers, all that the Law requires, is, That the rising and continuing in Arms, be without her Majesty's Authority first interposed; which, in the Construction of Law, is to levy War against her Majesty.

The Defenders alledge, That to libel rising in Arms in general, is no better than to libel Murder in general: But if Murder be libelled circumstantiately, as to the Person murdered, and the Time and Place; the Libel is no doubt particular and relevant, without any further Qualification. What then should hinder, why rising and continuing in Arms circumstantiately libelled as to Time and Place, and plainly qualified as the Law requires, (*viz.* without her Majesty's Authority) should not also be a particular and relevant Libel of Treason?

But the Defenders say, That by such a Libel they are deprived of the Benefit of Exculpation. But this is wholly groundless; it having been often said, That if the Defenders can but qualify any probable Pretext for their rising and continuing in Arms without Authority, to take of the Presumption of the Law, it should be admitted. But when they can qualify no Pretext, nor can assign the least probable Cause for their rising and continuing in Arms as they did, except it was to countenance Invaders, or to raise Insurrections within the Country; how is it possible, that this their rising in Arms without Authority, as is libelled, should not be Treason? Nor is there any thing here left to the Judgment of the Assize, save most plain and palpable Matter of Fact; *viz.* That the Defenders rose, and continued in Arms; which being qualified as the Law requires, *viz.* That it was without her Majesty's Authority, it inevitably presumes the treasonable Intention; which being further joined with the Circumstances mentioned in the Indictment, cannot but evince to all Men, That the rising and continuing in Arms without Authority, and in the Circumstances above-mentioned, was an Overt-Act of Rebellion; specially when nothing is, or can be adduced, to give it a more probable Interpretation.

The Defenders insist much, That they were not *versantes in Illicito*; That they only went out for Diversion, or Business, with their ordinary Arms and Servants: But what can be more *Illicitum*, than to rise and continue in Arms without Authority; the very Deed forbid by the Law as Treasonable? And what need of any further Qualifications of their Intention, since the Law makes *without Authority* to be sufficient? And the Indictment doth also superadd most pregnant Circumstances, to verify their ill Intention? which are not so much as offered to be cavilled, except by, What if this? or, What if that? which plainly signify nothing.

The Defenders seem to insinuate, That they did not so much as know there was an invading Fleet upon our Coast: But it is so notour, that at that Time the Invasion was universally known, and likewise signified by a Proclamation That this Alledgeance is manifestly disingenuous.

But the Defenders further alledge (*Esso*) That rising and continuing in Arms, as they did, was suspicious; yet Suspicions cannot found a Libel of Treason.

Treason. But the Defenders advert not, That it is not Matter of Suspicion that is objected, far less their travelling with their ordinary Horses, Arms and Equipage, as formerly they were wont; but plainly that at such a Time, when the Country was openly invaded by a foreign and most formidable Enemy, they, being never qualified to the Government should have run together in Arms, without her Majesty's Authority; which is all that the Law requires to make them guilty, and which in Effect, with the other Circumstances libelled, declares their treasonable Intentions to a Demonstration.

The Defenders say, That their Case differs from *Caldwal's*: But albeit they may vary in some Circumstances, yet it's certain, that as to the main, *Caldwal* and his Complices were found guilty of Treason, only for their raising of about Thirty or Forty, and continuing in Arms without Authority, when there was another Party in the Country engaged in an open Insurrection. So that the Defenders have in like manner risen and continued in Arms without Authority, when there was a far more dreadful Enemy imminent upon our Coast, cannot but fall under the same Construction. And that *Caldwal's* Process and Doom was afterwards reduced, signifies nothing; since it was reduced for Reasons wholly different and alien from the Case in Hand, and which are so well known, as they need not be repeated.

The Defenders do also endeavour to take off what was alledged from the Act of Parliament, That even the Attempt and *Conatus* in this Case is condemned, by telling us, that this *Conatus* doth also require an Overt-Act. But *Esto*, it be so; what more Overt-Act can be required, than open Rising in Arms? And what Doubt can there be of the Intention and Design, when both the Act of Parliament, and the other Circumstances of the Deed, do so fully clear it? And therefore it is in vain to notice either *Caldwal's* Case, wherein there was indeed no Sentence; or yet *Balmerino's* Case, where the Overt-Act was thought to be doubtful; when the rising and continuing in Arms is, in this Case, an Act both Overt in itself, and expressly defined to be such by the Act of Parliament.

The Defenders are at some Pains to make it believed, That the Libelling of Art and Part cannot sustain this Indictment. But, 1. The Advocate adheres to his Indictment, as libelled and qualified with Art and Part. 2. Though Art and Part be libelled, and the Act of Parliament makes it a Supplement for Relevancy in all Cases; yet her Majesty's Advocate finds no Necessity to enter further into that Debate, than to adhere as above; seeing that his Indictment is founded on clear Law, and that he as clearly subsumes in the Terms of Law; viz. The rising and continuing in Arms without her Majesty's Authority interposed; the Levying of War, and taking up Arms against her Majesty, and open Corresponding with her Majesty's Enemies, and our Invaders; and that not only by the abovementioned real Correspondence, but even by enticing them other ways to invade, as shall be proven, if needful. All which are too manifestly Acts and Deeds of Rebellion, to need the constructive Support of Art and Part, further than that Actor Art and Part, are perpetually connected together.

And therefore, upon the whole, since, as hath been said, the Country was (at the Time libelled) in the most imminent Hazard of a most destructive

Invasion; and that at that very Time, the Defenders, to the great Surprize and Astonishment of all her Majesty's good Subjects, did flee out in Arms, and convene and march, and troop together in Arms, without her Majesty's Authority, which in Law is sufficient; and that with the other aggravating and most concludent Circumstances above libelled, which were not offered to be taken off with any rational or probable Pretext: It appears to be without Question, That the Defenders fall under all the Conclusions of the Libel, and ought to be made liable in the Pains thereof.

In Respect whereof, &c.

Sic subscribitur,

J. A. STEUART.

CURIA JUSTICIARIA S. D. N. *Reginae, tenta in novo Sessionis Domo Burgi de Edinburgh, Vigesima secundo Die Mensis Novembris, Millesimo, Septingentesimo, Octavo; per Nobilem & Potentem Comitem, Georgium Comitem de Cromertie, &c. Justiciarium Generalem, & Honorabiles Viros Adamum Cockburn de Ormiston, Justiciarium Clericum; Dominos Joannem Lauder de Fountainhall, Gulielmum Anstruther de eodem, & Gilbertum Eliot de Minto; Magistrum Robertum Steuart de Tillicoultry, & Magistrum Jacobum Erskine de Grange; Commissionarios Justiciarum Dist. S. D. N. Reginae.*

Curia Legitime Affirmata.

Intran.

James Stirling, of Keir.

Archibald Seaton of Touch.

Archibald Stirling of Carden.

Charles Stirling of Kippendavie; and

Patrick Edmonston, of Newtown.

Indicted and accused at the Instance of Sir *James Steuart*, her Majesty's Advocate, and as having special Warrant for that Effect, for the Crime of Treason and Lese-Majesty in manner mentioned in the Indictment raised against them thereanent.

PURSUERS.

Sir *James Steuart*, her Majesty's Advocate.

Sir *Walter Pringle*, and

Sir *Francis Grant*.

Advocates.

Procurators in DEFENCE.

Sir *Patrick Home*.

Sir *David Forbes*.

Sir *James Steuart*.

Mr. *Alexander Macleod*.

Mr. *James Graham*.

Mr. *Walter Steuart*.

Mr. *John Elphinstone*.

Mr. *Colin Mackenzie*.

Mr. *Charles Cockburn*, and

Mr. *David Lauder*.

Advocates.

The Lords, Justice-General, Justice-Clerk, and Commissioners of Justiciary, having considered the Indictment at her Majesty's Advocate's Instance, against *James Stirling of Keir, Archibald Seaton of Touch, Archibald Stirling of Carden, Charles Stirling of Kippendarvie, and Patrick Edmonston of Newtown, Pannels*, with the foregoing Debate thereon; **THEY FIND**, The said Pannels, their rising and continuing in Arms without her Majesty's Authority, and actual Corresponding with an open Enemy upon the Coast, ready to invade this Part of Great Britain called SCOTLAND, Relevant to infer the Pains of Treason libelled against the Pannels; and repel the whole Defences proponed for the Pannels, and remit the whole to the Knowledge of an Assize.

Sic subscribitur,

CROMERTIE, I. P. D.

The said Lords, for several Causes and Considerations, continued the Dyet of the said Cause 'till Three a-Clock in the Afternoon; and ordained Assizers and Witnesses to attend then, ilk Person under the Pain of one hundred Merks, and the Pannels to be carried back to Prison.

Post Meridiem.

CURIA JUSTICIARIA S. D. N. Regina, tenta in novo Sessionis Domo Burgi de Edinburgh, Vigesimo secundo Die Mensis Novembris, Millesimo, Septingentesimo, Octavo; per Nobilem & Potentem Comitem, Georgium Comitem de Cromertie, &c. Justiciarium Generalem, & Honorabiles Viros Adamum Cockburn de Ormiston, Justiciarium Clericum; Dominos Joannem Lauder de Fountainhall, Gulielmum Anstruther de eodem, & Gilbertum Eliot de Minto; & Magistrum Jacobum Erskine de Grange; Commissionarios Justiciarum, Dic. S. D. N. Regina.

Curia Legitime Affirmata.

Intran.

*James Stirling, of Keir.
Archibald Seaton of Touch.
Archibald Stirling of Carden.
Charles Stirling of Kippendarvie; and
Patrick Edmonston, of Newtown.*

Indicted and accused at the Instance of her Majesty's Advocate, and as having special Warrant for that Effect, for the Crime of Treason and Lese-Majesty in manner mentioned in the Indictment raised against them thereanent.

PURSUERS.

*Sir James Steuart, her Majesty's Advocate.
Sir Walter Pringle, and
Sir Francis Grant.*
Advocates.

Procurators in DEFENCE.

Ut ante.

ASSIZE.

*Sir Thomas Young of Rosebank.
John Hamilton, Portioner of Newbott'e.*

*William Turnbull of Currie.
James Kinloch of Stonygate.
James Deans of Woodhouselee.*

*Henry Nisbet, younger, of Dean.
Sir James Fleeming of Rathbories.
Sir John Clark of Pennycook.
John Hunter, Merchant in Edinburgh.
David Cleland, Merchant there.*

*James Gordon, Merchant in Edinburgh.
Gilbert Campbell, Merchant there.
William Duncan, Merchant there.
Alexander Brown, Merchant there.
Robert Wakwood, Merchant there.*

The Assize lawfully sworn, and no Objection of the Law made by the Pannels in the Contrary.

The Pursuer for Probation adduced the Witnesses after Deponing, viz.

Mr. David Fenton, in Dunkeld, aged forty Years, or thereby, married; solemnly sworn, purged of partial Counsel, examined upon the Libel, depones, That about the Time libelled, being about the twentieth or twenty first of March; tho' he knows not the Pannels Names, yet, by their Faces, he remembers they were at his House at Dunkeld, some of them two Days, and some but one Day; that two of them, that came there on Sunday, went away on Monday Morning; viz. Carden and Kippendarvie; and that the rest went away from his House on Tuesday. Depones, that all of them were in Arms; all of them having Swords, and some Pistols: But he cannot remember how many Pair of Pistols he saw. That nine of them owned themselves to be Masters; and that there were seven Servants; and that he saw no other Weapons but Swords and Pistols, as said is. Depones, That all the Masters lodged in his House; but that the Servants and Horses lodged in common Stables. Depones, That he did not hear any of them speak of the Government, or the Invasion that was then intended: And that he knows nothing of their Purpose or Design of coming to his House, or why they were together. Depones, that when they went away, some of them went to the East Boat on the Water of Tay, in the way towards Perth; and others of them crossed at the West Boat, in the way towards Strathbrand. And this is all he knows, and is the Truth, as he shall answer to GOD.

*Sic subscribitur,
Da. Fenton.*
CROMERTIE.

John Maccleran, Change-keeper at the Bridge of Turk, aged forty six Years and upwards, married; solemnly sworn, purged of partial Counsel, examined upon the Indictment, and Interrogate, depones, That about the fifteenth of March last, he saw the five Pannels at his House, but that he was not at Home when they came, and came Home the next Day: And that he saw with them, William Graham, Alexander Steuart, Brother to Ardvorlich, and a Brother of Touch's; and remembers of none others, but some Servants, whose Names he knows not. That they went away from his House the next Morning; and that all of them had Swords, and some of them had Pistols; and saw them have some few Guns, but he knows not how many. Depones, that he was not sent on any Message, nor knows

knows of none other there being sent on any Message from his House by the Pannels; and that they went from his House straight *Eastward* towards *Lenie*: And that he did not hear them speak of any Person that they expected to meet at his House. *Causa scientiæ patet.* And this is all he knows; and is the Truth, as he shall answer to GOD.

And being further Interrogate, if he heard the Pannels speak of the Government, or of King *James*, or the Prince of *Wales*, or of the *French* Invasion, or of their landing in any Place in the *North*; depones *Negative*. And this is also the Truth, as he shall answer to GOD.

Sic subscribitur,
John Maccleran.
CROMERTIE.

Daniel Morrison, Servant to the Laird of *Keir*, aged twenty three Years or thereby, unmarried, solemnly sworn, purged of partial Counsel, examined and Interrogate, depones, That about the Time libelled, he saw the Pannels, with some others to the Number of ten or twelve Horse at *Dunkeld*, and at *Appinadove*, and at the Head of *Locheearn*; and that they had Swords and Pistols, but no other Weapons that he saw; depones, That the first Place he saw the Pannels, was at a Place near the Bridge of *Turk*, and went then to *Appinadove*, and from that to *Dunkeld*; depones, that he heard, That there was one *Campbell* who commanded a Party at the Bridge of *Allan*, and that *Keir* being informed thereof, and that they designed to apprehend him and his Horses, occasioned his going away with his Horses; and that *Touch* was with him that Morning, and went along with him to *Dunkeld*, and that they met *Carden* and *Kippendavie* at the Bridge of *Turk*; and that *Newtown* came there that Night, and from thence went all to *Locheearn*; depones, he heard them speak nothing of the pretended Prince of *Wales*, or of the Invasion then intended; and that *Keir*, *Carden* and *Touch*, came home together from *Dunkeld*; and that to the best of the Deponent's Memory, it was on the 23d of *March* that they were at *Dunkeld*, and that he knows not what was the Occasion of their parting; and depones, That it was on the seventeenth of that Month that they went from *Keir*: and depones that *Carden* and *Newtown* had neither Sword nor Pistol that he saw, and that none of the Servants had either Pistol or Sword, except *Keir's* Man, who had a Sword; and depones, That *Touch's* Brother, who was in Company had neither Sword nor Pistol that the Deponent saw. *Causa scientiæ patet.* And this is the Truth as he shall answer to GOD. And depones he cannot write. *Sic subscribitur,*

Cromertie.

Peter Wilson, Servant to the Laird of *Keir*, aged thirty Years, or thereby, *solutus*, solemnly sworn, purged of partial Counsel, examined upon the Libel, and Interrogate, depones, That about the seventeenth Day of *March* last, *Keir*, accompanied with *Touch* and his Brother, and others, to the Number of five Horse, came from *Keir*, and were that Night at the Bridge of *Turk*, where *Carden* and *Kippendavie* met them, and went all of them next Day to *Appinadove*, where one Mr. *Hay* met them; depones, That the Occasion of *Keir's* going from his House, was the Apprehensions he had of being seized with his Horses, by the Forces then

lying at *Stirling*, as he heard. Being Interrogate, if he heard the Pannel speak any thing concerning the Government, the Prince of *Wales*, and the intended Invasion, depones *Negative*; but that they heard that Admiral *Bing* had chased the *French* Fleet off the Coast, before they went from *Keir*; depones, That several of them had Swords and Pistols, but cannot be positive whether *Carden* and *Touch's* Brother had any or not; or if any of the other Servants had any, except the Deponent himself; and that they had no other Weapons that he saw; and depones, That it was at *Locheearn*, and not at *Appinadove*, that Mr. *Hay* met them. *Causa scientiæ patet.* And this is the Truth as he shall answer to GOD. *Sic subscribitur,*

Patrick Wilson.
Cromertie.

The Lords, Justice-General, Justice-Clerk, and Commissioners of Justiciary, ordain the Affize presently to inclose, and to return their Verdict to Morrow at twelve a-Clock, in the High Council-house, and the hail fifteen Assizers to be present each of them, under the Pain of two hundred Merks.

CURIA JUSTICIARIA, S. D. N.
Reginæ Tenta in Pratorio Burgi de Edinburgh, Vigesimo tertio Die Mensis Novembris millesimo Septingentesimo Octavo per Nobilem & potentem Comitem de Georgium Comitem de Cromertie, &c. Justiciarum Generalem, & Honorabiles Viros Adamum Cockburne, de Ormiston Justiciarum Clericum, Dominos Joannem Lauder de Fountainhall, Gulielmum Anstruther de Eodem, & Gilbertum Eliot de Minto, & Magistrum Jacobum Erskine de Grange, Commissionarios Justiciarum Dist. S. D. N. Reginæ.

Curia legitime affirmata.

The said Day, the Persons who passed upon the Affize of *James Stirling* of *Keir*, and others, returned their Verdict in Presence of the said Lords, whereof the Tenor follows.

Edinburgh, 22d November, 1708.

The above Affize having inclosed, did choise Sir *James Fleeming* of *Rathboryres* their Chancellor, and *Gilbert Campbell* Merchant in *Edinburgh*, to be their Clerk. And having considered the Indictment pursued at her Majesty's Advocate's Instance, as having special Warrant from her Majesty for that Effect, against *James Stirling* of *Keir*, *Archibald Seaton* of *Touch*, *Archibald Stirling* of *Carden*, *Charles Stirling* of *Kippendavie*, and *Patrick Edmonston* of *Newtown*, for the Crime of Treason and Lese-Majesty, with the Debate thereupon, the Lords, Justice-General, Justice-Clerk, and Commissioners of Justiciary their Interlocutor pronounced thereupon, and Depositions of the Witnesses adduced, They all in one Voice Find the Libel not proven. In Witness whereof (written by the said *Gilbert Campbell*) these Presents are subscribed by our said Chancellor and Clerk, Day and Date aforesaid. *Sic subscribitur,*

James Fleeming.
Gilb. Campbell, Clerk.

After opening and reading of which Verdict of Affize, the Lords, Justice-General, Justice-Clerk, and Commissioners of Justiciary, Assolized the Pannels, and dismissed them from the Bar: Whereupon they took Instruments. *Sic subscribitur,*

Cromertie, I. P. D.

CLXXXIV.

CLXXXIV. *The Trial of HENRY SACHEVERELL, D. D. upon an Impeachment before the House of Lords for High Crimes and Misdemeanors, February 27, 17⁰⁰, 9 Ann. **

The First Day.

ABOUT Eleven of the Clock the Lords came from their own House into the Court erected in *Westminster-Hall*, for the Trial of *Henry Sacheverell*, Doctor in Divinity, in the manner following.

The Lord Chancellor's Gentlemen-Attendants, two and two.

The Clerks of the House of Lords, with the two Clerks of the Crown in the Courts of *Chancery* and *King's-Bench*.

The Masters in *Chancery*, two and two.

Then the Judges.

The Peers Eldest Sons, and Peers Minors, two and two.

The Yeoman-Usher of the House.

The Gentleman-Usher of the Black Rod.

Then the Peers, two and two, beginning with the youngest Barons.

The Serjeant at Arms, with his Mace.

Then one of the Heralds.

Then the Lord Chancellor alone.

The Lords being seated in the Place for that Purpose prepared in *Westminster-Hall*, and the Commons in a Committee of the whole House being in the Seats prepared for them, and the Managers for the House being at their Lordships Bar, the Serjeant at Arms made Proclamations as follow.

Serjeant at Arms. O yes! Our Sovereign Lady the Queen doth strictly charge and command all manner of Persons to keep Silence, upon Pain of Imprisonment.

Serjeant at Arms. O yes! *Henry Sacheverell*, Doctor in Divinity, come forth, save thee and thy Bail, or thou forfeitest thy Recognizance.

Then Doctor *Henry Sacheverell* came to the Bar and kneeled; his Counsel, viz. *Sir Simon Harcourt*, *Mr. Dodd*, *Mr. Phipps*, *Mr. Dee*, and *Dr. Henschman*, standing near him at the Bar; and rising again by Direction of the Lord Chancellor, the Serjeant at Arms again made Proclamation as follows.

Serjeant at Arms. O yes! Whereas a Charge of High Crimes and Misdemeanors has been exhibited by the House of Commons, in the Name of themselves and all the Commons of *Great Britain*, against *Henry Sacheverell*, Doctor in Divinity; all Persons concerned are to take Notice that he now stands upon his Trial, and they may come forth, in order to make good the said Charge.

Lord Chancellor. Doctor *Sacheverell*, it is needless to give you any Directions concerning your Behaviour during the Time of your Trial, or the ordering your Defence, because the Lords have not only allowed, but assigned you the Counsel you desired, some both of the Civil and Common Law, who will be able to direct and advise you, not only in

the Substance, but Form of your Defence. The Lords have also made an Order for summoning all such Witnesses as you have propounded to appear for you. And that you might be the better able to provide for your Defence, you have had your Liberty on the first Application for it, and giving Security for your Appearance; you have also had all the Time you thought fit to desire, in order to prepare for your Defence: So that you ought ever to remember, that their Lordships have used towards you all the Indulgence you could reasonably expect.

Then the Clerk, by Direction of the Lord Chancellor, read the Articles of Impeachment, Doctor *Sacheverell's* Answer, and the Replication of the House of Commons, as follows.

ARTICLES exhibited by the Knights, Citizens, and Burgeſſes, in Parliament assembled, in the Name of Themselves and of all the Commons of Great Britain, against *Henry Sacheverell*, Doctor in Divinity, in Maintenance of their Impeachment against him for High Crimes and Misdemeanors.

WHEREAS his late Majesty King *William* the Third, then Prince of *Orange*, did with an armed Force undertake a glorious Enterprize for delivering this Kingdom from Popery and Arbitrary Power; and divers Subjects of this Realm, well affected to their Country, joined with and assisted his late Majesty in the said Enterprize: And it having pleas'd Almighty God to crown the same with Success, the late happy Revolution did take Effect, and was established. And whereas the said glorious Enterprize is approved by several Acts of Parliament, and amongst others, by an Act made in the first Year of the Reign of King *William* and Queen *Mary*, intitled, *An Act, declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown*; and also by one other Act made in the same Year, intitled, *An Act for preventing vexatious Suits against such as acted in order to the bringing in their Majesties, or for their Service*; and also by one other Act made in the same Year, intitled, *An Act for appropriating certain Duties for paying the States General of the United Provinces, their Charges for his Majesty's Expedition into this Kingdom, and for other Uses: And the Actings of the said well-affected Subjects in Aid and Pursuance of the said Enterprize*, are also declared to have been Necessary, and that the same ought to be justified. And whereas the happy and blessed Consequences of the said Revolution are, the Enjoyment of the Light of God's true Religion established among us, and of the Laws and Liberties of the Kingdom; the Uniting her Majesty's Protestant Subjects in Interest and Affection, by a legal Indulgence or Toleration granted to Dissenters; the Preservation of her Majesty's

jeſty's Sacred Perſon ; the many and continual Benefits ariſing from her Maſteſty's wiſe and glorious Adminiſtration, and the Proſpect of Happineſs for future Ages, by the Settlement of the Succeſſion of the Crown in the Proteſtant Line, and the Union of the two Kingdoms. And whereas the Lords Spiritual and Temporal, and Commons in Parliament aſſembled, did, by their Addreſs of the Seventeenth of December, in the Year of our Lord One thouſand ſeven hundred and five, lay before her Maſteſty the following Vote or Reſolution, viz. *That the Church of England, as by Law eſtabliſhed, which was reſcued from the extremeſt Danger by King William the Third of glorious Memory, is now, by God's Bleſſing, under the happy Reign of her Maſteſty, in a moſt ſafe and flouriſhing Condition ; and that whoever goes about to ſuggeſt or inſinuate that the Church is in Danger under her Maſteſty's Adminiſtration, is an Enemy to the Queen, the Church, and the Kingdom :* And by their ſaid Addreſs did humbly beſeech her Maſteſty to take effectual Meaſures for making the ſaid Vote or Reſolution publick, and alſo for puniſhing the Authors and Spreaders of ſuch ſeditious and ſcandalous Reports ; and on the twentieth Day of the ſame December her Maſteſty was pleaſed to iſſue her Royal Proclamation accordingly. Yet nevertheleſs the ſaid Henry Sacheverell preach'd a Sermon at the Aſſizes held at Derby, Auguſt the Fifteenth, in the Year of our Lord One thouſand ſeven hundred and nine, and afterwards published the ſame in Print, with a Dedication thereof ; and the ſaid Henry Sacheverell alſo preach'd a Sermon at the Cathedral Church of St. Paul, before the Lord Mayor, Aldermen, and Citizens of London, on the fifth Day of November laſt, being the Anniverſary Thankſgiving to Almighty God for the Deliverance from the Gunpowder-Treafon, and for beginning the late happy Revolution, by giving his late Maſteſty a ſafe Arrival here, and for completing the ſame, by making all Oppoſition fall before him, till he became our King and Governor ; which ſaid Sermon he the ſaid Henry Sacheverell likewiſe published in Print, with a Dedication thereof to Sir Samuel Gerrard, Baronet, Lord Mayor of the City of London ; and with a wicked, malicious, and ſeditious Intention to undermine and ſubvert her Maſteſty's Government and the Proteſtant Succeſſion as by Law eſtabliſhed ; to defame her Maſteſty's Adminiſtration ; to aſperſe the Memory of his late Maſteſty ; to traduce and condemn the late happy Revolution ; to contradict and arraign the Reſolutions of both Houſes of Parliament ; to create Jealouſies and Diviſions amongſt her Maſteſty's Subjects ; and to incite them to Sedition and Rebellion.

ARTICLE I.

He, the ſaid Henry Sacheverell, in his ſaid Sermon preach'd at St. Paul's, doth ſuggeſt and maintain, *That the neceſſary Means uſed to bring about the ſaid happy Revolution, were odious and unjuſtifiable : That his late Maſteſty, in his Declaration, diſclaimed the leaſt Imputation of Reſiſtance : And that to impute Reſiſtance to the ſaid Revolution, is to caſt black and odious Colours upon his late Maſteſty and the ſaid Revolution.*

ARTICLE II.

He, the ſaid Henry Sacheverell, in his ſaid Sermon preach'd at St. Paul's, doth ſuggeſt and maintain, *That the ſoſaid Toleration, granted by Law,*

is unreaſonable, and the Allowance of it unwarrantable : And aſſerts, That he is a False Brother with relation to God, Religion, or the Church, who defends Toleration and Liberty of Conſcience : That Queen Elizabeth was deluded by Archbiſhop Grindall, whom he ſcurriloſly calls a False Son of the Church, and a Perfidious Prelate, to the Toleration of the Genevian Diſcipline : And that it is the Duty of ſuperior Paſtors to thunder out their Eccleſiaſtical Anathemas againſt Perſons intitled to the Benefit of the ſaid Toleration ; and inſolently dares, or deſies, any Power on Earth to Reverse ſuch Sentences.

ARTICLE III.

He, the ſaid Henry Sacheverell, in his ſaid Sermon preach'd at St. Paul's, doth falſely and ſeditiouſly ſuggeſt and aſſert, *That the Church of England is in a Condition of great Peril and Adverſity under her Maſteſty's Adminiſtration ; and in order to arraign and blacken the ſaid Vote or Reſolution of both Houſes of Parliament, approved by her Maſteſty as aforeſaid, he, in Oppoſition thereto, doth ſuggeſt the Church to be in Danger ; and, as a Parallel, mentions a Vote, That the Perſon of King Charles the Firſt was voted to be out of Danger at the ſame Time that his Murderers were conſpiring his Death ; thereby wickedly and maliciously inſinuating, That the Members of both Houſes, who paſſed the ſaid Vote, were then conſpiring the Ruin of the Church.*

ARTICLE IV.

He, the ſaid Henry Sacheverell, in his ſaid Sermons and Books, doth falſely and maliciously ſuggeſt, *That her Maſteſty's Adminiſtration, both in Eccleſiaſtical and Civil Affairs, tends to the Deſtruction of the Conſtitution : And that there are Men of Characters and Stations in Church and State who are False Brethren, and do themſelves weaken, undermine, and betray, and do encourage, and put it in the Power of others, who are profeſſed Enemies, to overturn and deſtroy the Conſtitution and Eſtabliſhment ; and chargeth her Maſteſty, and thoſe in Authority under Her, both in Church and State, with a general Male-Adminiſtration : And, as a publick Incendiary, he perſuades her Maſteſty's Subjects to keep up a Diſtinction of Faſtions and Parties ; inſtils groundleſs Jealouſies, fomentſ deſtructive Diviſions among them, and excites and ſtirs them up to Arms and Violence : And that his ſaid malicious and ſeditious Suggeſtions may make the ſtronger Impreſſion upon the Minds of her Maſteſty's Subjects, he the ſaid Henry Sacheverell doth wickedly wreſt and pervert divers Texts and Paſſages of Holy Scripture.*

All which Crimes and Miſdemors the Commons are ready to prove, not only by the general Scope of the ſame Sermons or Books, but likewiſe by ſeveral Clauſes, Sentences, and Exprefſions in the ſaid Sermons or Books contained ; and that he the ſaid Henry Sacheverell, by preaching the Sermons, and publiſhing the Books aforeſaid, did abuſe his Holy Function, and hath moſt grievouſly offended againſt the Peace of her Maſteſty, her Crown and Dignity, the Rights and Liberties of the Subject, the Laws and Statutes of this Kingdom, and the Proſperity and good Government of the ſame. And the ſaid Commons, by Proteſtation, ſaving to themſelves the Liberty of exhibiting at any time hereafter, any other Article or Impeachment againſt the ſaid Henry Sacheverell ; and alſo of replying to his Answers, or any of them, and of offering Proofs

of all the Premises, or of any of them, and of any other Article or Impeachment that shall be exhibited by them, as the Case, according to Course of Parliament, shall require, do pray that he the said *Henry Sacheverell* be put to answer to all and every the Premises; and that such Proceeding, Examination, Trial, Judgment, and exemplary Punishment, may be thereupon had and executed, as is agreeable to Law and Justice.

The ANSWER of Henry Sacheverell, Doctor in Divinity, to the ARTICLES exhibited by the Knights, Citizens, and Burgeffes in Parliament assembled, in the Name of themselves and of all the Commons of Great Britain, in Maintenance of their Impeachment against him for High Crimes and Misdemeanors.

THE said *Henry Sacheverell*, saving to himself all Advantages of Exception to the said Articles for the Generality, Uncertainty, and Insufficiency thereof, and of not being prejudiced by any Words or want of Form in this his Answer, admits, That at the Request of *George Sacheverell, Esq;* High Sheriff of the County of *Derby*, he preached a Sermon at the Affizes held for that County, on the 15th Day of *August*, one thousand seven hundred and nine; and that at the Desire of the Right Honourable *Sir Samuel Garrard, Baronet*, Lord Mayor of the City of *London*, he also preached a Sermon at the Cathedral Church of *St. Paul*, before the said Lord Mayor, and the Aldermen and Citizens of *London*, on the fifth Day of *November* last; and that he caused the said Sermons to be printed: But denies that he preached, or caused the same to be printed or published, with any such wicked, malicious, or seditious Intent, as in the Preamble of the said Articles is affirmed; the said *Henry Sacheverell* having been induced to print the Sermon he preached at *Derby*, at the Request of the Gentlemen of the Grand Jury for that County, to whom he humbly presumed to dedicate the same, as the most publick Acknowledgment he was capable of making, for the peculiar Honour he had received by their publick Approbation of that Sermon. And the said Lord Mayor having been pleased to express his good Liking of the said Sermon preached at *St. Paul's*, the said *Henry Sacheverell*, at his Request, caused the same to be printed, with a Dedication thereof to him. And for Answer to the said Articles, humbly saith,

Answer to First Article.

To the first Part of the first Article, the said *Henry Sacheverell* denies, That, in his said Sermon preached at *St. Paul's*, he doth suggest and maintain, that the necessary Means used to bring about the happy Revolution were odious and unjustifiable. Nor doth he in any Part of that Sermon affirm any Thing concerning the necessary Means used to bring about the happy Revolution. The said *Henry Sacheverell* is so far from reflecting on his late Majesty, or the happy Revolution, that he endeavours, in that Sermon, to clear the Revolution, and his late Majesty, from the black and odious Colours which their greatest Enemies has endeavoured to cast upon both.

And as to that Part of the said Article, whereby the said *Henry Sacheverell* is charged with suggesting and maintaining, that his late Majesty, in his Declaration, disclaimed the least Imputation of Resistance;

the said *Henry Sacheverell* doth acknowledge himself to have made such Suggestion; and declares, that he made it not in Dishonour, but in Vindication of his said Majesty. The Resistance the said *Henry Sacheverell* represents the late King to have disclaimed, being such a Resistance as tended to the Conquest of this Realm, as plainly appears from that Part of his late Majesty's Declaration which is referred to, and *verbatim* set forth at the Bottom of the same Page, in which he mentions his late Majesty's disclaiming any such Imputation.

Whether the said *Henry Sacheverell* was mistaken or not, in expressing himself as if the late King had disclaimed any Imputation of Resistance, when he the said *Henry Sacheverell* meant thereby, that the late King disclaimed the Imputation of a Design of Conquest, he humbly conceives, such a Suggestion by him, plainly designed for the Honour of the late King, cannot in any reasonable Construction be thought a Reflection on his said Majesty, or deemed any Crime or Misdemeanor.

For the further Justification of what the said *Henry Sacheverell* said in Reference to his late Majesty's having disclaimed any the least Imputation of Resistance, the said *Henry Sacheverell* humbly observes, That in his late Majesty's Declaration, the following Passages are contained: *We have thought fit to go over to England, and to carry over with us a Force, sufficient, by the Blessing of God, to defend ourselves from the Violence of Evil Counsellors. — We think fit to declare, that this our Expedition is intended for no other Design, but to have a free and lawful Parliament assembled.*

As to the last Charge in the said Article, the said *Henry Sacheverell* denies, That he doth in his said Sermon suggest and maintain, that to impute Resistance to the said Revolution, is to cast black and odious Colours upon his late Majesty and the said Revolution. The Persons whom the said *Henry Sacheverell*, in his Sermon describes, as casting black and odious Colours upon his late Majesty and the Revolution, are not those who impute Resistance to the late Revolution, of whom the said *Henry Sacheverell* affirms nothing, but those new Preachers and new Politicians, who teach, in Contradiction to both Gospel and the Laws, that the People have the Power vested in them, the Fountain and Original of it, to cancel their Allegiance at their Pleasure, and to call their Sovereign to Account for High Treason against his Subjects; nay, and to dethrone and murder him for a Criminal, as they did the Royal Martyr by a Judiciary Sentence; who are Maintainers of anti-monarchical Schemes, and of such damnable Positions as are, by the Laws of Church and State, condemned for Rebellion and High Treason; and who urge the Revolution in Defence of such Principles. Unless, therefore, those who impute Resistance to the Revolution, be the same with those new Preachers and new Politicians above specified, the said *Henry Sacheverell* affirms nothing concerning them.

The said *Henry Sacheverell*, upon the strictest Search into his said Sermon preached at *St. Paul's*, doth not find that he hath given any the least colourable Pretence for the Accusation exhibited against him in this first Article, but barely by his asserting the utter Illegality of Resistance to the Supream Power upon any Pretence whatsoever; for which Assertion, he humbly conceives he hath the Authority of the Church of *England*, which in divers Passages of her Homilies, too large and too numerous to be here specified, but by the said *Henry Sacheverell* ready to be produced, hath taught and incul-

inculcated this Doctrine, as founded on the Word of God; particularly in the second Part of the Sermon of Obedience, contained in the former Book of Homilies, set forth in the Time of King *Edward* the VIth, where are these Words: *Here good People, let us all mark diligently: It is not lawful for Inferiors and Subjects in any Case to resist and stand against the superior Powers; for St. Paul's Words be plain, that whosoever withstandeth, shall get to themselves Damnation; for whosoever withstandeth, withstandeth the Ordinance of God.*

Which said Book of Homilies is affirmed in one of the Thirty Nine Articles of Religion, which concern the Confession of the true Christian Faith, to contain a godly and wholesome Doctrine, and is ordered to be read in Churches, by the Ministers, diligently and distinctly, that they may be understood of the People. And the said *Henry Sacheverell*, in further Maintenance of the said Doctrine and Position, contained in the Book of Homilies, and of the Authority of those Books, saith, That by an Act of Parliament made in the thirteenth Year of the Reign of *Queen Elizabeth*, intituled, *An Act for the Ministers of the Church to be of sound Religion*, 'tis enacted, *That no Person should thereafter be admitted to any Benefice with Cure, except he should first have subscribed the said Articles in the Presence of the Ordinary, and publicly read the same in the Parish Church of that Benefice, with Declaration of his unfeigned Assent to the same.* And that by an Act made in the fifth Year of her present Majesty's Reign, intituled, *An Act for securing the Church of England as by Law established*, it was enacted, *That the said Act, made in the said thirteenth Year of the Reign of Queen Elizabeth, should remain and be in full Force for ever; and be inserted in express Terms in any Act which should be made for ratifying the Union of the two Kingdoms of England and Scotland; and therein declared to be an essential and fundamental Part thereof.* And the said Act was accordingly inserted in express Terms, in an Act for the Union of the two Kingdoms; and thereby ratified and declared to be an essential and fundamental Part thereof.

And the said *Henry Sacheverell* doth further humbly insist, and is advised, that the afore said Assertion is agreeable to, and warranted by, the Common Law of England, and divers Acts of Parliament now remaining in full Force.

The said *Henry Sacheverell* doth with all Humility aver the Illegality of Resistance on any Pretence whatsoever to be the Doctrine of the Church of England, and to have been the general Opinion of our most orthodox and able Divines, from the Time of the Reformation to this Day: This Doctrine hath, in the most solemn Manner, been taught in that University, whereof he hath been for more than twenty Years a Member; this hath been often, with publick Approbation of each House of Parliament, preached and printed; and in Terms of greater Force than any used by the said *Henry Sacheverell*, hath by the Right Reverend Fathers of our Church, dead and living, been avowed and maintained.

And the said *Henry Sacheverell* was the rather induced to preach against the Doctrine of Resistance of the supreme Power upon the fifth Day of November, because on that Day the Church commemorates our Deliverance from the traitorous Attempts of rebellious Papists, and because the Lawfulness of resisting the supreme Power, was originally a Popish Doctrine; for which Reasons, as he humbly conceives, the Rubrick of the Office appointed for

that Day, by her late Majesty *Queen Mary* (of blessed Memory) directs, That after the Creed, if there be no Sermon, shall be read one of the six Homilies against Rebellion.

Whilst therefore the Church of England as by Law established, is in a safe and flourishing Condition under her Majesty's happy Administration, whilst Popish Tenets are by all good Protestants condemned and abhorred, whilst the Laws of this Realm continue in their full Force and Vigour, the said *Henry Sacheverell* humbly hopes, that a dutiful Son of that Church, a sincere Protestant, and a faithful Subject of her Majesty, shall not suffer for asserting the Doctrine of Non-resistance of the supreme Powers. But if this Doctrine be declared erroneous, and it should please God that he should suffer for asserting it, he trusts that God will enable him to shew his steady Belief of this Doctrine, by a meek and patient Resignation to whatever shall befall him on that Account.

Answer to the Second Article.

To that Part of the second Article which charges, that he the said *Henry Sacheverell* doth suggest and maintain, *that the Toleration granted by Law is unreasonable, and the allowance of it unwarrantable*; the said *Henry Sacheverell* saith, That, upon the most diligent Enquiry, he hath not been able to inform himself that a Toleration hath been granted by Law; but admits, that an Act did pass in the first Year of King *William* and *Queen Mary*, intituled, *An Act for exempting their Majesties Protestant Subjects dissenting from the Church of England, from the Penalties of certain Laws.* Which Exemption the said *Henry Sacheverell* doth not any where maintain or suggest to be unreasonable; or that the Allowance of it is unwarrantable; but hoped, that he had prevented any such Misapprehension, by declaring his sincere Meaning in these Words, contained in his Sermon preached at *St. Paul's*; — *I would not be here misunderstood, as if I intended to cast the least invidious Reflection upon that Indulgence which the Government hath condescended to give them, which I am sure all those who wish well to our Church, are ready to grant to Consciences truly scrupulous; let them enjoy it in the full Limits the Law has prescribed them.*

If there be any other Expressions concerning Toleration, which may seem to carry a dubious Sense in any other Parts of his Sermon, he hopes that they will not be applied to the Exemption granted by Law, but will be interpreted agreeably to his avowed Approbation of that Law.

And to such Part of the said second Article as charges, that the said *Henry Sacheverell* asserts, *That he is a false Brother with Relation to God, Religion, or the Church, who defends Toleration and Liberty of Conscience*; he the said *Henry Sacheverell* saith, That he having so plainly declared himself in Favour of the Exemption granted by Law, when he blames those, who, upon all Occasions, defend Toleration and Liberty of Conscience, cannot be thought to reflect on the Defenders of that legal Exemption or Indulgence which he himself approves and defends: He doth indeed suggest it to be one Part of the Character of a false Brother, *upon all Occasions to defend Toleration and Liberty of Conscience; and to excuse the Separation, lay the Fault upon the true Sons of the Church, for carrying Matters too high.* Which universal Defence of Toleration, and Excuse of Separation, attended with the laying the Fault of such Separation

tion upon the true Sons of the Church, are by him jointly mentioned in one and the same Clause of the Sentence, and in one and the same Branch of the Character. So that his Reflection doth not extend to all who defend Toleration and Liberty of Conscience, much less to those who defend the Exemption granted by Law to Protestant Dissenters; but to such only, who at the same Time they defend universal Toleration and Liberty of Conscience, do also excuse the Separation, and lay the Fault thereof upon the true Sons of the Church, for carrying Matters too high. And these he did then, and still doth, with all Humility, conceive to be justly blameable, and, if Members of this Church, to be false Brethren.

And as to that Part of the second Article, whereby the said Henry Sacheverell is charged with asserting, *That Queen Elizabeth was deluded by Archbishop Grindall, to the Toleration of the Genevian Discipline*; he the said Henry Sacheverell saith, he humbly conceives he hath good Authority from the Histories and Monuments of those Times for such Assertion; but whether he hath, or hath not, he humbly apprehends such Assertion to be no Proof of his maintaining or suggesting, That the Exemption of Protestant Subjects dissenting from the Church of England from the Penalties of certain Laws, granted by an Act made in the first Year of the Reign of King William and Queen Mary, (which Exemption he supposes to be intended by the legal Indulgence or Toleration granted to Dissenters, mention'd in the Preamble of the Articles, and by the Toleration granted by Law, mentioned in this second Article) is unreasonable, or the Allowance of it unwarrantable. For he is humbly of Opinion, that there is a wide and manifest Difference between a Toleration of the Genevian Discipline, and an Exemption of Protestant Dissenters from the Penalties of certain Laws; between a Toleration allowed merely by the Regal Power, and an Exemption granted by Act of Parliament; which Exemption he is so far from thinking unreasonable or unwarrantable, that from the bottom of his Heart he wisheth it, under the same Restrictions and Limitations, extended to all her Majesty's Protestant Subjects throughout the whole Kingdom of Great Britain.

And as to such Part of the second Article, whereby the said Henry Sacheverell is charged with *scurrilously calling the said Archbishop Grindall a false Son of the Church, and a perfidious Prelate*; the said Henry Sacheverell humbly hopes, that any harsh Expressions he hath used concerning that Prelate, may be rather excused, because the said Archbishop having permitted Innovations to be obtruded on the Church, did thereby incur the high Displeasure of so good and pious a Princess as Queen Elizabeth, by whose Order he was suspended, and continued under such Suspension to the Day of his Death. However, the said Henry Sacheverell presumes, that no Words spoken of an Archbishop above one hundred and twenty Years since deceased, will, in Construction of Law, amount to an High Crime and Misdemeanor.

And as to such Part of the second Article, whereby the said Henry Sacheverell is charged with maintaining, *That it is the Duty of superior Pastors to thunder out their Ecclesiastical Anathema's against Persons entituled to the Benefit of the said Toleration*; he the said Henry Sacheverell saith, That he doth not maintain or suggest that it is the Duty of superior Pastors to thunder out Ecclesiastical Anathema's against Persons entituled to the Benefit

of the Toleration; which Persons, where he speaks of such Anathema's, are neither by him mentioned nor intended; but if the Expressions by him unapplied to any, must be determined to any one sort of Persons, he humbly conceives, that the Connection of his Discourse will determine them to *those schismatical and factious Persons, who take Permission for Power, and advance Toleration immediately into an Establishment*; and such schismatical and factious Persons, he humbly apprehends, are not the Persons entituled to the Benefit of the Act of Exemption, which was designed only to give some Ease to scrupulous Consciences in the Exercise of their Religion.

And as to the last Part of the second Article, whereby the said Henry Sacheverell is charged with *insolently daring or defying any Power on Earth to reverse such Sentences*; the said Henry Sacheverell saith, That the Sentence which he the said Henry Sacheverell dares any Power on Earth to reverse, is such, and such only, as is ratified in Heaven; and such Sentence he still affirms to be by any earthly Power irreversible; and hopes it will not be thought Insolence in him to affirm, what he conceives would be Blasphemy in any one to deny: And doth further acknowledge himself firmly to believe, that some Sentences pronounced by the Pastors of the Church are ratified in Heaven; and that some Persons exempted from Punishment by the particular Laws of the Land, may yet, by the Laws of Christ, be justly liable to such Sentence; and that Schism, or a causeless Separation from a Church imposing no sinful Terms of Communion, is a Sin, which exposes the Persons guilty thereof to the Censures of the Church.

Answer to the Third Article.

As to so much of the third Article, as charges the said Henry Sacheverell, *That he doth falsely and seditiously suggest and assert, that the Church of England is in a Condition of great Peril and Adversity under her Majesty's Administration; and that, in order to arraign and blacken the said Vote and Resolution of both Houses of Parliament, approved by her Majesty, he, in Opposition thereto, doth suggest the Church to be in Danger*; the said Henry Sacheverell denies that he hath either asserted or suggested the Church of England to be in a Condition of great Peril and Adversity under her Majesty's Administration; but he doth freely acknowledge, that he hath in his Sermon suggested, *That when National Sins are ripened up to a full Maturity, to call down Vengeance from Providence on a Church and Kingdom, debauched in Principles, and corrupted in Manners, and instead of the true Faith, Discipline and Worship, given over to all Licentiousness both in Opinion and Practice, to all Sensuality, Hypocrisy, Lewdness, and Atheism, then we, (that is evidently) all the Members of such a Church or Kingdom, are in Danger in such deplorable Circumstances.* And this Suggestion of Danger arising to a Church and Kingdom from Vice and Infidelity, he humbly presumes is not opposite to the Vote of the two Houses, or Seditious, but entirely agreeable to what is solemnly declared in an Act of Parliament made in the ninth and tenth of his late Majesty King William the Third, for the more effectual suppressing of Blasphemy and Profaneness; wherein it is affirmed, *That many Persons had of late Years openly avowed and published many blasphemous and impious Opinions, contrary to the Doctrines*

trines and Principles of the Christian Religion; greatly tending to the Dishonour of Almighty God, which might prove destructive to the Peace and Welfare of this Kingdom: And he conceives, that since the passing that Act, the detestable Crimes for the effectually suppressing of which that Act was intended, have greatly increased. And the said Henry Sacheverell saith, the Suggestions by him made of Dangers arising to us from Vice and Infidelity, he apprehends to be in no wise more seditious or repugnant to the Vote of the two Houses approved by her Majesty, then the like Suggestions occurring in the solemn Prayers of the Church authorized by her Majesty, and frequently used before each House of Parliament; wherein we beseech God, that no Sedition may disturb the State, nor Schism distract this Church; and that he would give us Grace seriously to lay to Heart the great Dangers we are in by our unhappy Divisions.

And as to so much of the said third Article, whereby 'tis charged, *That the said Henry Sacheverell, as a Parallel, mentions a Vote, That the Person of King Charles the First was voted to be out of Danger, at the same Time that his Murderers were conspiring his Death; thereby wickedly and maliciously insinuating, that the Members of both Houses who passed the said Vote, were then conspiring the Ruin of the Church;* he the said Henry Sacheverell doth say, That he doth not draw any Parallel between the Vote concerning the King's Person, and the late Vote of the two Houses, which he neither there, nor elsewhere in his Sermon, mentions: But had he suggested one Vote to be parallel to the other, which he hath not, yet would not he thereby have wickedly and maliciously insinuated, that the Members of both Houses, who passed the late Vote, were then conspiring the Ruin of the Church; but would only have intimated, that as some Persons were conspiring the Murder of the King, whilst others, no way privy to their wicked Intentions voted his Person to be out of Danger; so when the two Houses voted the Church of England to be in no Danger under her Majesty's Administration, there might be some others who were conspiring the Ruin of the Church; and many others, who, by their Vice and Infidelity, were drawing down God's Vengeance both on Church and Kingdom.

As the Vote of both Houses, made four Years ago, did concern those only who did then insinuate the Church of England to be in Danger under her Majesty's Administration; so it cannot, he presumes, affect those who do now suggest the Christian Faith, which is the Foundation upon which every Christian Church stands, to be endangered by those atheistical and irreligious Principles which are daily from the Press propagated amongst us, notwithstanding the Provision made by the said Act for suppressing Blasphemy and Profaneness: So that the said Henry Sacheverell thinks, that he might with Truth affirm, (as he did in his Sermon preached at Derby) *That there were never such outrageous Blasphemies against God and all Religion, Natural as well as Revealed, vented publicly with Impunity, in any Christian Church or Kingdom in the whole World, as at present in our own;* of which Assertion the said Henry Sacheverell is ready to produce undeniable and ample Proofs, if called thereto.

Answer to the Fourth Article.

As to the fourth Article, it contains several Charges of a very high and criminal Nature, of which

the said Henry Sacheverell knows his Heart to be entirely innocent; and he observes with Comfort, That whereas in the former three Articles he is said to have maintained or asserted, as well as to have suggested, the Doctrines and Things therein laid to his Charge, in this fourth Article he is not accused of maintaining and asserting, but barely suggesting what is therein contained: And he humbly hopes, that bare Suggestions or Insinuations, could they with any Colour or Probability be made out, as he is fully satisfied they cannot, will not, under the most mild and gracious Government, (at a Time when several new Laws have been made for securing the Liberties of the Subject) by your Lordships, the great Guardians of our Laws and Liberties, be adjudged sufficient to involve an English Subject in the Guilt and Punishment of high Crimes and Misdemeanors.

To the several Parts of the said fourth Article, the said Henry Sacheverell doth in all Humility answer: As to such Part thereof whereby it is charged, *That the said Henry Sacheverell, in his said Sermons and Books, doth falsely and maliciously suggest, that her Majesty's Administration, both in Ecclesiastical and Civil Affairs tends to the Destruction of the Constitution;* he the said Henry Sacheverell saith, That he hath not made any mention, in either of his Books or Sermons, of her Majesty's Administration in Ecclesiastical or Civil Affairs, or of her Ministers: So far is he from suggesting that her Majesty's Administration, both in Ecclesiastical and Civil Affairs, tends to the Destruction of the Constitution, that amongst the inestimable Blessings which are owing to our Deliverance annually commemorated on the fifth of November, he reckons this to be one, *That her Majesty, the good and pious Relict of the Royal Family, sits now happily upon the Throne of her Ancestors; and prays that God may long preserve Her, for the Comfort and Support of the Church; and professeth, that what he spoke proceeded from a tender Concern for her Majesty's Person and Government:* And in the Dedication also of his said Sermon preached at St. Paul's, solemnly declares, as he did before in his Discourse, *That his only Aim and Intention was earnestly to contend for the Safety, Rights, and Establishment of her Majesty, together with those of the Church.*

And as to such Part of the said fourth Article, whereby it is charged, *That the said Henry Sacheverell doth suggest, that there are Men of Characters and Stations in the Church who are false Brethren;* the said Henry Sacheverell saith, That the false Brethren, as described by him in his Sermon, are *either those who propagate false Doctrines, or who give up the Discipline and Worship of the Church, or who are for a Neutrality in Religion, or who wish well to the Church of England, and are ready to sacrifice their Persons and Estates in their Vindication, but do not shew their Zeal in the Communion of the Church, as well as for it, in obeying her Precepts, as well as defending her Rights.* These being the several sorts of false Brethren enumerated by the said Henry Sacheverell, if he should have suggested that there are Men of Characters and Stations in Church and State, (Words by no Means restrained to the highest Characters and Stations) to whom the Denomination of false Brethren, in some or more Senses of that Word, as by him interpreted, doth belong, he humbly hopes that such Suggestion would not be deemed False, Malicious, or highly Criminal.

And as to such other Part of the said fourth Article, whereby it is charged, That the said Henry Sacheverell doth suggest, *That there are Men of Characters and Stations in the Church and State, who do themselves weaken, undermine, and betray, and do encourage and put it into the Power of others who are professed Enemies, to overturn and destroy the Constitution and Establishment*; the said Henry Sacheverell denieth that he suggesteth any such Things concerning Men of Characters and Stations in Church and State. Where he speaks of those who weaken, undermine, and betray, and encourage and put it in the Power of our professed Enemies to overturn and destroy the Constitution and Establishment, there Men of Characters and Stations are not mentioned by him; and where he mentions Men of Characters and Stations, twelve Pages afterwards, the only Place wherein he mentions them, there he speaks nothing of weakening, undermining and betraying, or encouraging and putting it in the Power of our professed Enemies to overturn and destroy the Constitution and Establishment: And hopes therefore that he shall be no ways answerable for a supposed Reflection, which depends upon the Conjunction of Passages so widely distant from, and so little relating to each other. The Weakners, Underminers, and Betrayers of our Constitution, and the Encouragers to whom the said Henry Sacheverell doth in any Part of his Sermon refer, will, he presumes, upon a candid Examination of those Passages, appear to be one of these three Sorts of Persons; either, *First, such as by their Writings endeavour to subvert the Foundation of our Church and State*; or, *Secondly, such, whether Writers or others, who are for a Latitudinarian Heterogeneous Mixture of all Persons of what different Faith soever, uniting only in Protestancy, which would let into her Bowels those who neither believe her Faith, own her own Mission, submit to her Discipline, or comply with her Liturgy*; which he afterwards styles the Model of an universal Coalition; or, *Thirdly, those occasional Conformists, who have so far eluded the Corporation and Test Acts, by their abominable Hypocrisy, as to have undermined the Foundations, and endangered the Government, by filling it, (as far as they could) with its professed Enemies, that is, with themselves*. Of all these, and their Encouragers, the said Henry Sacheverell confesses himself to have suggested that they do, in his Opinion, weaken, undermine, and betray the Constitution: But that either these, or their Encouragers, are Men of Characters or Stations in the Church or State, he hath not any where suggested.

And as to such other Part of the said fourth Article, which charges the said Henry Sacheverell with charging her Majesty, and those in Authority under her, both in Church and State, with a general Male-Administration; the said Henry Sacheverell saith, That he abhors the Thoughts of bringing any Charge against her sacred Majesty, whom he never mentions, but in Terms of the profoundest Duty and Respect. Nor doth he tax those in Authority with a General, or with any Male-Administration; which is a Word he hath never used, nor (as far as he can find) any other Word or Words by which the Thing is imply'd. So far is the said Henry Sacheverell from making any undutiful Reflections upon her Majesty or her Administration, that in the several Writings that he has published, since her happy Accession to the Throne, particularly in one which is an avowed Defence of her Title to the Crown, and Justifica-

tion of her entering into a War with France and Spain, he hath expressed himself with the most hearty and loyal Zeal for her Majesty's Person, Government, and Administration.

And as to such other Part of the said fourth Article, whereby it is charged, *That the said Henry Sacheverell, as a publick Incendiary, persuades her Majesty's Subjects to keep up a Distinction of Factions and Parties*; the said Henry Sacheverell saith, That he is so far from being guilty of this Charge, that in his said Sermon he invites the Separatists to renounce their Schism, and come sincerely into the Church; and complains of those who have wil-lainously divided Us with the knavish Distinctions of High and Low Church-Men, and wishes we may be one Fold under one Shepherd; and that all those invidious Distinctions that now distract and confound Us, were lost, so that we might be terrible, like an Army with Banners, to our Enemies, who could never break in upon such an uniform and well compassed Body.

And to such other Part of the said fourth Article, as chargeth, *That the said Henry Sacheverell instills groundless Jealousies, and foment destructive Divisions among her Majesty's Subjects*; the said Henry Sacheverell saith, That in his said Sermon, he, on the contrary, rebukes and condemns those, who, by false Insinuations, and raising groundless Jealousies and Fears, embroil the Publick, and bring it into Confusion.

And as to such other Part of the fourth Article, whereby it is charged, *That the said Henry Sacheverell excites and stirs up her Majesty's Subjects to Arms and Violence*; the said Henry Sacheverell saith, God forbid that he should be guilty of so heinous a Crime, who asserts the utter Illegality of Resistance to the Supreme Power upon any Pretence whatsoever; which Assertion he conceives to be the chief, if not only Ground of the Charge exhibited against him in the first Article.

In Confutation of this Charge, he begs Leave to recite one Passage out of his Sermon preached at Derby in the following Words: *We may be Partakers of other Mens Sins, if we do not, to the utmost of our Power, endeavour to prevent or obstruct their Commission, when they manifestly endanger the Good of the Publick: As we are Members of any Government, or Society, we are all obliged in Point of Honour, Interest and Conscience, to maintain its Security, promote its Welfare, and guard it against factious Designs, or seditious Conspiracies, that may threaten its Constitution, discompose its Peace, or violate and subvert its Laws. God and Nature have invested every Subject from his Cradle, with a Commission to engage, discover and disappoint the Enemies of his Church and Country; and he that is either privy to, industriously conceals, or any way abets their schismatical, illegal or rebellious Enterprizes, both in the Eyes of human as well as divine Laws, is an Accomplice and Partaker in the Guilt, a Traytor to God and his Prince, a Patron and Protector of Injustice, and a common Adversary to himself as well as all Mankind*. And the said Henry Sacheverell hopes, what he hath said in the Dedication of the same Sermon, *That there are not wanting some to preach the Truth, and others to support it, at the Expence of their Lives and Fortunes*, will not be construed as exciting her Majesty's Subjects to Sedition and Rebellion; since that Truth which he commends some for preaching, and others for supporting, is by him opposed to the Attempts of those who betray and run down the Principles

and Interests of our Church and Constitution ; and since, he there deservedly commends the High Sheriff of that County, on the Account of his steady Loyalty and Zeal to serve her Majesty and the Government, for which he hath been so remarkably distinguished.

In the Sermon preached at *St. Paul's*, he doth indeed excite Christians to *put on the whole Armour of God, as wrestling, not only against Flesh and Blood, but against Principalities, against Powers, against the Rulers of the Darknes of this World, against spiritual Wickedness in high Places.* But he hath learned from the same *St. Paul*, That the Arms of Resistance taken up by the Subjects against the higher Powers, are no Part of the spiritual Armour ; and the Principalities and Powers by him mentioned, being plainly distinguished from Flesh and Blood, cannot, he thinks, be so far misinterpreted, as to be understood of earthly Potentates and Rulers.

And as to so much of the said fourth Article, whereby it is charged, that he the said *Henry Sacheverell* doth wickedly wrest and pervert divers Texts and Passages of Holy Scripture, that his said malicious and seditious Suggestions may make the stronger Impression upon the Minds of her Majesty's Subjects ; the said *Henry Sacheverell* says, That having no malicious or seditious Suggestions to imprint, he could not intend to wrest any Passages of the Holy Scripture to that wicked Purpose. Hard is the Lot of the Ministers of the Gospel, if when they cite the Word of God in their general Exhortations to Piety and Virtue, or in their Reproofs of Mens Transgressions, or where they are lamenting the Difficulties and Conflicts with which the Church of Christ, whilst Militant here on Earth, must always struggle, the several Texts and Passages by them cited, shall be said to have been by them meant of particular Persons and Things, and shall be construed in the most Criminal Sense, and be made by such Construction one Ground of an Impeachment for High Crimes and Misdemeanors.

And as to all other Matters and Things in the said Articles contained, and not herein before particularly answered unto, the said *Henry Sacheverell* saith, he is not Guilty of them, or any of them, in Manner and Form as the same are charged upon him in and by the said Articles ; and humbly submits himself to your Lordships Judgment.

HENRY SACHEVERELL.

The Commons Replication to the Answer of Doctor Henry Sacheverell.

THE Commons have considered the Answer of *Henry Sacheverell*, Doctor in Divinity, to the Articles of Impeachment exhibited against him by the Knights, Citizens, and Burgeses in Parliament assembled ; and observe, that there are many Things in it not warranted by the Course of Proceedings upon Impeachments, foreign to the Charge of the Commons, unbecoming a Person impeached, and plainly designed to reflect upon the Honour of the House of Commons in this Proceeding, for which they might demand your Lordships immediate Justice.

But the Commons being sensible that the Nature of the Crimes whereof he stands impeached, and the Necessity of bringing him to a speedy and exemplary Punishment, require that all Occasions of Delay should be avoided, and not doubting that

your Lordships will in due Time vindicate the Honour of the Commons, and the Justice of their Proceedings, the Commons do aver their Charge against the said *Henry Sacheverell* for High Crimes and Misdemeanors to be true, and that the said *Henry Sacheverell* is Guilty in such manner as he stands impeached, and that the Commons will be ready to prove their Charge against him at such convenient Time as shall be appointed for that Purpose.

Lord Chancellor. Gentlemen of the House of Commons, you may proceed with your Evidence.

Mr. Attorney Gen. MY Lords, by Command of Sir *J. Mountague*. THE Knights, Citizens, and Burgeses, in Parliament assembled, we appear in Behalf of all the Commons of *Great Britain*, to make good the Impeachment against the Prisoner at the Bar, Doctor *Henry Sacheverell*.

The Misdemeanors he stands accused of are specified in the Articles which have been just now read to your Lordships, and the Facts there charged, are laid to have been done with a wicked, malicious, seditious Intention, to undermine and subvert her Majesty's Government, and the Protestant Succession as by Law established ; to defame her Majesty's Administration ; to asperse the Memory of his late Majesty King *William* ; to traduce and condemn the late happy Revolution ; to contradict and arraign the Resolution of both Houses of Parliament ; to create Jealousies and Divisions among her Majesty's Subjects ; and to incite them to Sedition and Rebellion.

My Lords, if the Charge is made good (as I am apt to think it will) I may presume to say, no Words can either aggravate or alleviate the Offence.

My Lords, our Proofs in this Case will arise from Evidence which cannot be liable to the Imputation of being over-awed by the Weight of the Prosecutors, or corrupted or perverted ; for out of his own Mouth we shall charge him, and by his own Words and Sermons we shall convict him.

My Lords, I can with Truth say, That it is no small Trouble to the Commons of *Great Britain*, to have this Occasion of coming in this Manner before your Lordships : Could they have satisfied themselves that her Majesty's Honour, the Safety of her People, and the Protestant Succession as by Law established, were not highly concerned to bring this Man to speedy Justice, they could very willingly have spared your Lordships this Trouble.

But when they considered of what Import it was to the Nation, how much it concerned the very Being of our Constitution, to discountenance and put an End to such Sort of seditious Proceedings as the Doctor and some others of his Brethren have been lately practising in divers Parts of the Kingdom, they could not think otherwise than that it was a Matter fit for the Grand Inquest of the Nation to take Notice of : And finding it to be a Cause of so great Moment to the Publick, they judged it fit to be taken under their own Management, and not trust it to the Decision of any inferior Tribunal. And, my Lords, it must be agreed that your Lordships are the only proper Judges, when the whole Commons of *Great Britain* find it necessary to be the Prosecutors ; nor can Doctor *Sacheverell* have any just Cause to complain of this manner of Proceeding, when it gives him so publick an Opportunity of defending himself (if his Innocence can clear him) ; and what can he desire more, when he

lies

lies under so heavy an Accusation, than to have your Lordships for his Judges, who have already shewn your great Indulgence to him, by allowing him (as the noble Lord from the Woolpack just now observ'd) all the Advantages a Man under his Circumstances can ask, or desire to have?

My Lords, This Prosecution took its Rise from a Complaint that was made in the House of Commons the thirteenth of *December* last, of two Books which had been lately printed and published under the Name of Doctor *Henry Sacheverell*. The Books being delivered in, several Paragraphs were read; and by divers Passages, too many for me now to enumerate to your Lordships, it did plainly appear that both Books did contain very scandalous and seditious Matter, highly reflecting upon the Queen and Her Administration.

Hereupon the Doctor was ordered to attend; which he did accordingly the next Day, and at the Bar of the *Commons House* own'd and avow'd both Books to be his; That they were Sermons he himself had preached; and that he had caused them to be printed and published.

After such a Confession, Your Lordships may imagine Her Majesty's Dutiful *Commons* did express their just Repentments of the great Wrong and Injuries that were done to her Majesty, and all that were in Authority under Her; and immediately ordered this Impeachment.

Your Lordships will perceive, by Perusal of the Sermons and Epistles Dedicatory, that the Design and Drift of the same is to possess the People with strange Notions, and terrible Apprehensions of the Danger they are in, by a general Male-Administration of the Publick Affairs both in Church and State.

That both these Sermons were preached upon Publick Occasions; and had, since the Printing thereof, been handed about with more than ordinary Application.

One of these Books is intitled [*The Communication of Sin*,] being a Sermon preached at the Affizes held at *Derby* in *August* last: And because the Doctor thought he had not said enough against the Queen and Her Government in the Sermon, he affixes a Dedication to it, wherein he affirms, That the Principles of our Church and Constitution are shamefully betrayed and run down: That both are persecuted, on the one Side by rude and presumptuous Insults, and base undermining Treachery on the other; and that this Persecution is carried on by associated Maligants.

The other Sermon was preached at *St. Paul's London*, on the Fifth of *November*, which is a Day set apart for a general Day of Thanksgiving, for two very great Deliverances vouchsafed to this Nation, by the Discovery of the Gun-Powder Plot, and the Arrival of his late Majesty King *William*, to redeem us from Popish Tyranny and Arbitrary Power.

My Lords, When ye come to hear this Sermon read, I am confident, that it must appear very strange to find, that when there were two such memorable Occasions for the Doctor to have set forth his Eloquence in a Thanksgiving Sermon, he should in great Measure pass by both the Bu-
sinesses of the Day, and entertain his Audience with a long Harangue of the deplorable Condition the Church was in; not so much from Papists, (the avowed Enemies of the Church) as from her pretended Friends, as he calls them, the false Sons of the Church, who were crept into her Bowels, and shewn themselves to be perfidious Brethren, by de-

fending Toleration and Liberty of Conscience, and favouring the Dissenters.

And to shew his little Liking of the great Work which was begun to be wrought on that Day by the Arrival of His late Majesty, the chief Turn of his Discourse is to cry up Non-Resistance and Passive Obedience.

And to make it most evident, that what he said of Non-Resistance, was to cast black and odious Colours upon the Revolution; he lays down a General Position, *That it is not lawful, upon any Pretence whatsoever, to make Resistance to the Supreme Power*; which Supreme Power, by other Passages, he explains to be the Regal Power.

And being apprehensive that every one that heard him talking in that manner against Resistance, would see plainly he was censuring and condemning the Means that brought about the Revolution, and being desirous to cast as heavy Reflections as he could upon the Memory of King *William*, he asserts, *That the Prince of Orange, in his Declaration, utterly disclaimed all manner of Resistance.*

My Lords, Every Body knows, that knows any thing of the Revolution, That the Prince of Orange came over hither with an armed Force; and that in several Paragraphs of his Declaration, (the Doctor speaks of) *His late Majesty invites and requires all Peers of the Realm, both Spiritual and Temporal Lords, all Gentlemen, Citizens, and other Commoners, to come in and assist him, in order to the executing that Design he had then undertook, against all that should endeavour to oppose him.*

Therefore it must be accounted very ridiculous for the Doctor to advance such a Position, if he had no further Meaning in it, than to give an Account of the Prince of Orange's Design in coming over here into *England*.

And this will make it necessary for your Lordships to consider what is the true Meaning of this Assertion: Is it not plainly to make the Prince of Orange say one thing, and at the same time do directly another? And can this be done with any other Design, than to asperse the Memory of the late King *William*?

Then as to his Discourse concerning Passive Obedience and Non-resistance, in such Latitude as is there mention'd; what could it tend to, but to cast Reflections upon that Resistance, which was the Means which brought about the Revolution?

For was there any Occasion at that time to be so earnest to cry down Resistance, and preach up Passive Obedience?

Can any one pretend to say, there were any Symptoms of Discontent throughout the Nation, in any Parts thereof?

No: To our Comfort be it spoken, no Reign, no Age, no History, can give a better Account of the good Dispositions of the People to their Sovereign. Therefore since the Preaching these Doctrines was needless, it does favour of some wicked Design, to be talking so unseasonably of this Subject.

If what the Doctor very frequently asserts in this Sermon be true, *That all are false Sons of the Church, who assisted in bringing about the Revolution, or that joined in the Opposition that was made to the Encroachments which were begun by evil Ministers in the Reign of King James II. against our Religion and Liberties*; let the Doctor a little consider, how far his Character of a False Brother may be carried!

Every Body knows, that liv'd in those Days, that the Body of the Clergy of the Church of *England* made a noble Stand against the Encroachments which were then making, and appear'd as active as any of the Laity.

And was it not by their Writings, Preaching, and Example, that the Nobility and Gentry were animated to maintain and defend their Rights, Religion and Liberties? And as an undoubted Monument that this was the Sense of the whole Kingdom at the Time of the Revolution, it is enter'd in the Journal of the House of Commons, on the First of February, 1688.

That the unanimous Thanks of the House was given, Nemine Contradicente, to the Clergy of the Church of England, for the great Service they had done their Religion and Country, by the Opposition they had made to the Execution of the Ecclesiastical Commission, and their refusing to read the King's Declaration for a Toleration, which was then founded upon the dispensing Power.

And how did the Archbishops receive the Message that was sent them upon this Occasion, that they might communicate that Resolution to the Clergy in their respective Dioceses?

Our Journals tell us, That Mr. *Levison Gower* the next Day acquainted the House of Commons, that he had attended the two Archbishops, according to Order, with the Thanks of the House; and that Archbishop *Sancroft*, and the then Archbishop of *York*, returned their Thanks to the Commons for themselves, and in Behalf of all their Clergy, for their favourable Vote.

Your Lordships see, the Commons were then happy enough to be thought favourable to the Clergy of the Church of *England*; and yet those very Commons were the Men who passed the *Toleration-Act*, for exempting Protestant Dissenters from the Penalties of certain Laws, as one of the most necessary Acts for the Good of the Kingdom.

And were they not encouraged to go about that Charitable Work, by the Petition of the seven Bishops, presented to King *James*; wherein they acquainted him, *That it was not for want of a due Tenderneſs to Dissenters, which made them refuse reading his Declaration for Toleration to Dissenters; in relation to whom, they were willing to come to such a Temper as should be thought fit, when the same came to be considered in Parliament.*

But now the same hath been considered in Parliament, and the Toleration hath been settled and established by the Legislative Authority of the Kingdom, and hath been ratify'd and approv'd of in his Reign, by Her Majesty and both Houses of Parliament; Doctor *Sacheverell* belike disapproves of it, and is pleased to tell us in a most extraordinary Manner, *That a Man must be very weak, or something worse, that thinks or pretends the Dissenters are to be gained by any other Grants and Indulgences, than giving up our whole Constitution: And he that recedes the least Tittle from it, to satisfy and ingratiate with these clamorous, insatiable, Church-devouring Malignants, knows not what Spirit they are of.*

After such an ample Declaration of his Opinion, what fatal Consequences will attend the granting Indulgences to Dissenters; Can the Doctor imagine, that his saying, in his Answer to the Articles, *That he intends not to cast the least invidious Reflection upon that Indulgence the Government has condescended to give them*, will take off the hard Censures he hath pass'd upon Dissenters?

And, my Lords, if an Archbishop, who hath

been dead almost a hundred and twenty Years, cannot be permitted to rest quiet in his Grave, but must have foul Aspersions cast upon his Memory, *as being a false Son, and a perfidious Prelate of the Church*, for interceding (as Doctor *Sacheverell* says) with Queen *Elizabeth* for the Dissenters in those Days: What must the present Archbishops and Bishops of our Church expect from Doctor *Henry Sacheverell*, if they do not thunder out their Ecclesiastical Anathema's against Dissenters as often as the Doctor shall think there is Occasion for them?

My Lords, I perceive the Doctor hopes to save all he hath said against Toleration to Dissenters, by a nice Distinction he hath hit upon between an Indulgence and a Toleration.

Therefore he tells your Lordships, *That upon the most diligent Enquiry, he hath not been able to inform himself that a Toleration hath been granted by Law.*

Can the Doctor pretend to say, that this Word Toleration has never been made use of to express the Religious Liberty and Indulgence that is granted and allow'd to Dissenters? If we wanted Authorities to justify the Use of the Word, after the Doctor has made use of it in the same Sense over and over, in many Passages in his Sermons, as will be taken Notice of by the Gentlemen that are to make good the second Article, the Doctor might be put in Mind, that Her Majesty in Her Speech from the Throne, on the 17th of December 1705, hath been pleased to declare, *That she will inviolably maintain the Toleration.*

My Lords, As the Time was most unseasonable for the preaching such Doctrines as these, so the Place was very improper for a Lecture of Politicks: For your Lordships do perceive this latter Sermon, which was preached on the fifth of November last, was preach'd in the great Metropolis of this Kingdom, before the Lord Mayor, Aldermen, and Citizens of *London*; from whose steady Loyalty to Her Majesty, and firm Affections to the Revolution, such vast Sums have been contributed for carrying on this long War against *France*, which hath proved so fatal to the *French King*, and other Enemies of this Kingdom.

And what more likely to give a fatal Wound to the publick Credit at this Time, than such Doctrine, which tends to the Overthrow of all the Acts of Parliament which have been made in Support of this Constitution?

And how strange an Attempt was it for the Doctor to preach against the Revolution and this Government, before those Citizens who owe the Restoration of their Charters, and all their Franchises and Immunities to it?

But, to do Justice to the Doctor, he in his Answer denies he hath said any thing of the Means which brought about the Revolution.

And, if your Lordships can believe him, he says, *he has endeavour'd to vindicate the Revolution from the black and odious Colours the Enemies of the Revolution would throw both upon that and his late Majesty.*

To what End and Purpose then are these Doctrines preach'd with so much Vehemence at this Time, unless it be to reflect backwards upon what was done at the Time of the Revolution?

There is certainly no Occasion to preach Non-resistance to her Majesty's loyal and dutiful Subjects, who have never shewn the least Inclination to give Disturbances to this present Government.

Was there ever known a Time, in which there was so universal an Agreement in all Ranks and Degrees

Degrees amongst us? Does not every one almost strive to shew their Zeal and Affection for Her Majesty and Her Government? If there be any that are less quiet than their Neighbours, we shall find them amongst the Friends of Doctor *Sacheverell*, who are professedly no Friends to the Revolution. Nothing is more certain, than that all that are not satisfied with what was done at the Time of the Revolution, must be Enemies to the present Establishment: And 'tis from this Source, all these Declamations against Men of Character and Station, both in Church and State, do proceed.

But I would have the Doctor consider, that we have Laws to punish Spreaders of false News, and horrible Stories, of the great Men and great Officers of the Kingdom; and 'tis to put a Stop to these malicious Practices now on Foot, that this Delinquent is now brought to this Bar.

When we shall have read our several Proofs, which will justify every Particular charged on the Doctor in the Articles of Impeachment, the Commons will not doubt of your Lordships Judgment against this Defendant.

Mr. *Lechmere*. MY Lords, I am commanded to assist in stating to your Lordships the Grounds of the Charge of the Commons, and the Nature and Tendency of the Crimes now before you, in Judgment.

Your Lordships have had open'd to you an Impeachment of the Commons of *Great Britain*: The Subjects of both Nations had an equal Concern in that which is the Ground of it: They are happily united in this Prosecution; and the common Interest of your Lordships, and us all, is inseparable in its Event.

I need say no more to your Lordships of the greatness of this Cause; not for the Person of the Offender, but for the high Importance of those Matters which he has presumed to draw in Question.

The Commons, on their Part, have been exceedingly careful, in every Step of this Proceeding, that it should receive a Deliberation suitable to the *Weight of the Cause*, and the *Dignity of the Commons*; and they observe it to your Lordships, with great Satisfaction, That by your ready Concurrence, no Difficulties have arisen to delay or discourage their Impeachment. They ascribe this to a Desire in your Lordships, equally with themselves, to cultivate a good Correspondence on so important an Occasion, and to that due Regard your Lordships shew to the Course of Impeachments, *the ancient Right*, and *great Security* of the Commons.

In framing their Charge, the Commons have thought fit, by a Preamble to their Articles, to lay before you the Grounds of their Accusation, in Terms the most cogent and expressive; to the End your Lordships might have early and perfect Notice of the Points on which the Commons intended to proceed; that your Lordships, and the whole Kingdom, might know the unanimous and hearty Zeal of the Commons, to assert the Justice of the late happy Revolution, and the Foundations of Her Majesty's Government and Administration; and that the *Judgment* of the Commons, on this weighty Occasion, might stand *fully on the Records of Parliament*, and be *transmitted to all Posterity*.

Your Lordships will observe, in reading their Evidence, many Things excepted to by the Commons, precedent to the Ground of their first Arti-

cle; but you will soon perceive, that all Parts of the Design of the Prisoner center in that. They could not therefore have acquitted themselves, if they had not made that their Foundation: Being firmly convinced, they never can have the Honour and Justice of that glorious Work too much at Heart; nor be too jealous of those, who under any Pretences, *though never so specious, shall attempt* to lessen it. And when they consider the certain Dependence that the Justice of the late Revolution itself must have upon the Steps that led to it, they can have no doubt but your Lordships will think him equally Criminal, who condemns the Means by which it was effected.

My Lords, *The necessary Means*, (which is the Phrase used by the Commons in their first Article) are Words made choice of by them *with the greatest Caution*. Those Means are described (in the Preamble to their Charge) to be, That glorious Enterprize, which his late Majesty undertook with an arm'd Force, to deliver this Kingdom from Popery and arbitrary Power; the Concurrence of many Subjects of the Realm, who came over with him in that Enterprize, and of many others of all Ranks and Orders, who appeared in Arms in many Parts of the Kingdom, in Aid of that Enterprize.

These were the *Means* that brought about the Revolution, and which the Act that passed soon after, declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown, intends, when his late Majesty is therein called *the glorious Instrument of delivering the Kingdom*; and which the Commons, in the last Part of their first Article, express by the Word *Resistance*.

But the Commons, who will never be unmindful of the *Allegiance* of the Subjects to the *Crown* of this Realm, judg'd it highly incumbent upon them, out of regard to the Safety of Her Majesty's Person and Government, and the antient and legal Constitution of this Kingdom, to call that Resistance the *necessary Means*; thereby plainly founding that Power, of Right and Resistance, which was exercised by the People at the Time of the happy Revolution, and which the Duties of Self-preservation and Religion called them to, upon the Necessity of the Case; and at the same time effectually securing Her Majesty's Government, and the due Allegiance of all Her Subjects.

Your Lordships will find, That the Prisoner, in his Sermon preached at *St. Paul's*, has asserted a Doctrine in direct Defiance and Contradiction of that Resistance used to bring about the Revolution; when he affirms the utter Illegality of Resistance, on any Pretence whatsoever, to be a Fundamental of our Constitution: And, as your Lordships will hear it fully made out from the Proofs, by those Gentlemen to whom that Part is assigned, he has also plainly declared himself, that even that Resistance used at the Time of the late happy Revolution, is not to be excepted out of his fundamental Rule.

My Lords, when a Preacher of the Gospel, and a Minister of the Church of *England*, even under this happy Establishment, shall thus publicly condemn the Foundations on which it stands, in Defiance of her Majesty and the great Council of the Nation then sitting in Parliament; it becomes an indispensable Duty upon us, who appear in the Name and on the Behalf of all the Commons of *Great Britain*, not only to demand your Lordships Justice on such a Criminal, but clearly and openly to assert our Foundations.

I crave Leave to remind your Lordships of the Condition of Things in both Kingdoms, immediately preceding the late Revolution: The Case is stated and recorded, between the late King *James* and the Subjects of both Kingdoms, in the several Declarations of the Rights of both Nations made by them at that Time.

I shall forbear to aggravate the Miscarriages of that unhappy Prince, further than by saying, That it is declared in the Preamble to the Bill passed in *England*, *That by the Assistance of evil Counsellors, Judges and Ministers, employ'd by him, he did endeavour to subvert and extirpate the Protestant Religion, the Laws and Liberties of the Kingdom, in the several Instances there enumerated.* And in that passed in the Kingdom of *Scotland*, it stands declared, *That, by the Advice of evil Counsellors, he did invade the fundamental Constitution of that Kingdom, and alter'd it from a Legal limited Monarchy, to an arbitrary despotick Power.*

Your Lordships, on this Occasion, will again consider the antient legal Constitution of the Government of this Kingdom; from which it will evidently appear to your Lordships, That the Subjects of this Realm had not only a Power and Right in themselves to make that Resistance, but lay under an indispenfible Obligation to do it.

The Nature of our Constitution is that of a limited Monarchy, wherein the supreme Power is communicated and divided between Queen, Lords, and Commons, tho' the executive Power and Administration be wholly in the Crown. The Terms of such a Constitution do not only suppose, but express an original Contract, between the Crown and the People; by which that supreme Power was [by mutual Consent, and not by Accident] limited and lodged in more Hands than one: And the uniform Preservation of such a Constitution for so many Ages, without any fundamental Change, demonstrates to your Lordships the Continuance of the same Contract.

The Consequences of such a Frame of Government are obvious: That the Laws are the Rule to both, the common Measure of the Power of the Crown, and of the Obedience of the Subject; and if the executive Part endeavours the Subversion, and total Destruction of the Government, the original Contract is thereby broke, and the Right of Allegiance ceases: That part of the Government thus fundamentally injured, hath a Right to save or recover that Constitution, in which it had an original Interest.

Nay, the Nature of such an original Contract of Government proves, That there is not only a Power in the People, who have inherited its Freedom, to assert their own Title to it, but they are bound in Duty to transmit the same Constitution to their Posterity also.

'Tis mis-spending your Lordship's Time to illustrate this: 'Tis an eternal Truth, essential to the Government itself, and not to be defaced, or destroyed, by any Force or Device.

That the Rights of the Crown of *England* are legal Rights, and its Power stated and bounded by the Laws of the Kingdom; That the executive Power and Administration itself is under the strictest Guard, for the Security of the People; and that the Subjects have an Inheritance in their antient fundamental Constitutions, and the Laws of the Land, appears from every Branch of this Government. 'Tis the Tenor of all Antiquity; our Histories and Records afford innumerable Proofs of it: And when your Lordships look back on the

History of *Magna Charta* alone, you can't doubt of the Sense of our Ancestors, that they were Masters of Franchises that were truly their own, and which no earthly Power had Right to extort from them. Many others, of incontestable Authority, are those valuable Relicks, which our Popish Ancestors have left us, as Proofs of the Freedom of our Constitution, of the constant Claims they made, both in and out of Parliament, to their Inheritance in their Laws, against the Encroachment of arbitrary Power; and when the last Extremity call'd them to it, they never fail'd to vindicate them by the Arms of Resistance.

"Such was the Genius of a People, whose Government was built on that noble Foundation, not to be bound by Laws, to which they did not consent; that, muffled up in Darkness and Superstition, as our Ancestors were, yet that Notion seem'd engraven on their Minds, and the Impressions so strong, that nothing could impair them."

Upon the Reformation of Religion, when all foreign Power was abolished, and the Supremacy of the Crown was restor'd to its Height by many Acts of Parliament, your Lordships will always find Declarations at the same Time made of the Rights of the People; particularly that of the 25th of *H. VIII.* where 'tis said, *That the Realm of England is free from any Man's Laws, but such as have been devised, made and ordained within the same, for the Wealth of it; or such other, as the People of the Realm have taken at their free Will and Consent, and by long Use have bound themselves to, as the antient established Laws of the Realm, and none otherwise.*

Your Lordships will, I doubt not, consider those Laws made at that Time, to be fresh and remarkable Declarations, and Ratifications of the original Contract.

This excellent Constitution of our Government has been, thro' many Struggles, preserv'd from that Time to this, and the true Spirit of the *English* Nation still kept alive, down to the Times of the late happy Revolution; at which Time the Danger being imminent, not only to the Laws and Liberties of the Kingdom, but to the Protestant Religion, **THE ANTIENT VIRTUE OF THE ENGLISH NATION EXERTED ITSELF, AND SHONE OUT IN ITS FULL LUSTRE, IN THAT GLORIOUS WORK.**

The many Laws pass'd since, more particularly those for the Settlement of the Crown and Succession, are so many repeated Declarations of their late Majesties, and her Majesty now on the Throne, together with the representative Body of the Nation, in Confirmation of their antient Constitution. Nay, my Lords, we have higher Testimonies to appeal to; the many glorious Successes with which God Almighty has blessed the Arms of her most Sacred Majesty, employ'd in Defence of the Arms of Resistance, are so many Testimonies from Heaven in our Vindication.

Your Lordships take notice on what Grounds the Doctor continues to assert the same Position in his Answer. But is it not most Evident, that the general Exhortations to be met with in the Homilies of the Church of *England*, and such like Declarations in the Statutes of the Kingdom, are meant only as Rules for the Civil Obedience of the Subject to the legal Administration of the supreme Power in ordinary Cases? And it is equally absurd, to construe any Words in a Positive Law to authorize the Destruction of the whole, as to expect, that

that King, Lords, and Commons should, in express Terms of Law, declare such an ultimate Resort as the Right of Resistance, at a Time when the Case supposes that the Force of all Law is ceased.

But the Commons think he hath, by his Answer, highly aggravated his Crime, by charging so pernicious a Tenet, as that of absolute unlimited Non-Resistance, to be a fundamental Part of our Government, and by asserting this as the Doctrine of the Church of *England*.

It is a great Reproach to the Excellency of our Constitution, to impute such Principles to it as inevitably infer its Destruction; and an equal Dishonour to the Crown of this Realm, the great Glory of which is to be set over and govern a Nation of free-born Subjects, the meanest of which has an Inheritance in the Government and the Laws equal with the greatest.

They likewise esteem it an high Reflection on Religion itself, and the Church of *England*, to charge its purest Doctrines with such Constructions, by which all Irreligion and Oppression would be authorized.

The Commons must for ever consider themselves under the strongest Obligations of Gratitude to our great Deliverer, to assert the Honour and Justice of that Resistance by which he rescued an oppressed People from inevitable Destruction; and think they should not deserve the Name of Subjects of *Great Britain*, or the least Blessing of so good a Government, if at this Time before your Lordships, and for ever hereafter, they did not assert, in the most strenuous Manner, the Honour and Justice of that Resistance which brought about the late happy Revolution. And upon this Foundation it is, that they doubt not but your Lordships, will, in a Parliamentary Way, fasten a Brand of indelible Infamy on that enslaving Tenet by which it is condemned.

I shall take up less of your Lordships Time on the following Articles.

The Commons esteem the Toleration of Protestant Dissenters to be one of the earliest and happiest Effects of the late Revolution, wisely calculated for the Support and strengthening the Protestant Interest, the great End of the Revolution itself.

They remember, with the highest Gratitude to her Majesty, her Royal Resolution declared from the Throne, to preserve it inviolably; and they observe to your Lordships, that it appears to them, from a Report on their own Journals of a Conference between both Houses, on the Bill against *Occasional Conformity*, (not meant to enlarge the Liberties of Protestant Dissenters) That the Persecution of Protestants is, in the Preamble to that Bill, declared to be contrary to the Christian Religion, and the Doctrine of the Church of *England*, and that the Act of Toleration ought to be kept inviolably; and the Commons find no Exception then taken by your Lordships to that Declaration; but on the contrary, many Expressions from both Houses, highly extolling the Policy and good Effects of that Law.

Your Lordships will perceive, from the Evidence of the Commons, many plain Declarations of the Prisoner in Maintenance of this Article; but we offer it to your Lordships, as a further Evidence, that he most shamefully arraigns the Memory of a Prelate, eminent for his Zeal to the Protestant Religion, for his compassionate Intercessions with *Q. Elizabeth*, in Favour of Dissenting Protestants; a Reflection plainly meant by him to cast an Odium on the Act of Toleration, and on the present Fathers of the Church, so eminent for their Charity

and Moderation; and from the Applauses he gives to the Severities shown by that Queen, he illustrates the Calumny thrown by him on her present Majesty, and her Approbation of the Toleration: Your Lordships will duly consider the Malignity of Expressions meant to condemn so good a Law, now standing in its full Force, and to encourage the Unchristian Principles of Persecution.

The latter Part of the second Article is founded on the legal Supremacy of the Government in Matters Ecclesiastical, by which all Ecclesiastical Jurisdiction, by the antient undoubted Laws of the Kingdom, is made subject to the Civil Power.

The Prisoner, in Terms very unbecoming, has struck at this essential Part of our Constitution, in those Words; wherein, after having persuaded the superiour Pastors of the Church to thunder out their Anathema's against Protestant Dissenters, *He defies any earthly Power to reverse such Sentences.*

My Lords, the restoring the legal Supremacy of the Crown, was the Effect of the Reformation of Religion in this Kingdom; and the Abuse of that Power, to the apparent Danger and Destruction of the Church of *England*, in the Instance of the late illegal Ecclesiastical Commission, remains condemned by the Bill of Rights.

But the Commons crave Leave to observe, that the independent Power or Jurisdiction of the Church, or of Ecclesiastical Judges, which is the Doctrine advanced by the Prisoner, is no less dangerous. It stands in utter Defiance and Contradiction of *Magna Charta*, and the Laws of the Land; 'tis destructive of the legal Supremacy of the Crown and Legislature; a Violation of the Oath of Supremacy; contrary to the Principles of the Reformation, and the Doctrine and Interest of the Church of *England*, of which he is a Member.

The Commons are strengthened in their Concern for the legal Supremacy, when they call to Mind her Majesty's Letter to his Grace of *Canterbury*, of the 25th of *February* 1705, for proroguing the Convocation; wherein her Majesty is pleased to declare her constant Care and Endeavours to preserve the Constitution of the Church of *England* as by Law established, and her Resolution to preserve the Supremacy, as being a fundamental Part of it: And upon these Considerations, they have an absolute Assurance of an equal Regard on your Lordships Part, to a Matter of so great Importance.

Your Lordships will observe the third Article to be included within the general Charge of the fourth: But, the Commons being sensible, with how distinguished a Malice the Substance of this Charge is levelled by the Prisoner against the Honour of her Majesty and the two Houses of Parliament, they thought it their Duty to her Majesty to lay this before your Lordships in a distinct Article, for your particular Consideration and Judgment.

When your Lordships reflect on the late heavy Censure, which the Queen and both Houses so justly laid on the Authors of the like groundless Slander, you will think that the Prisoner has revived and avowed the same, from an inveterate Pride to signalize his Enmity to her Majesty and both Houses, and in the most publick Manner to insult the Honour of the Queen and Legislature, at the same time that he was endeavouring to subvert their Foundation.

The Commons will ever shew the utmost Jealousy for the Safety and Honour of her Majesty's Person, and must always esteem it their peculiar Concern to vindicate every Attempt that shall be made against it;

it; and assure your Lordships, they can't be forgetful of that signal Regard her Sacred Majesty shewed to the Church of *England*, at the Time of the late Revolution; of that constant uniform Zeal she has expressed for it from that Day to this; that perpetual Monument of her Royal Bounty to the Clergy of the Church of *England*, to the Diminution of her own Revenue; nor of her Royal Care for the perpetual Establishment of its Discipline and Worship, in making it a fundamental and essential Part of the Union of the two Kingdoms: These Things they esteem an absolute Security, that her Royal Protection and Affection for the Church of *England* can never fail.

The Commons doubt not of your Lordships particular Notice of the Parallel mentioned in this Article, by which your Lordships will collect the Inveteracy of the Design from the Odiousness of the Comparison.

In their fourth Article the Commons have laid before your Lordships many Charges; which, tho' of different Considerations, yet all conduce to the main Charge of the Commons, as tending to undermine her Majesty's Government, and to raise Sedition and Rebellion.

Your Lordships will find, from many and pregnant Proofs supporting this Article, That her Majesty's Administration, whereby she has justly gained the Affections of all her true Subjects, is represented by the Prisoner as deserving the utmost Odium and Contempt of her People.

That the Civil and Religious Rights of her Subjects, which her Majesty has protected with the Tenderness of a most indulgent Mother, are betrayed by those to whom she has committed the Care of them, and that they are now in a Condition more Calamitous than at that Time, when Superstition and Tyranny were ready to have swallowed them up.

Your Lordships will find him labouring to persuade the People, that the Condition of Peace and Prosperity, which the good Government of her Majesty has secured to her Kingdom, is a State of utter Distraction and Confusion, wherein all Irreligion and Disorder is not only unpunished, but encouraged.

Nor will your Lordships wonder to find a Person, who has thus set himself to weaken the Title of her Majesty to the Throne, representing her Administration like that of one who has no Title at all.

And from this ruinous and almost irretrievable Posture of Affairs, your Lordships will find him considering himself as a peculiar Messenger, appointed and called out to open the Eyes of the deluded People, and to undeceive a Nation thus abused. And this, my Lords, he has done, not in the Words of Meekness and Peace; not by exhorting them to the Exercise of the submissive Doctrines of Passive Obedience and Non-Resistance; but he assures them, that he does not come to preach Peace, but to sound a Trumpet; he endeavours to excite such true Sons of the Church as are of his Persuasion, to recover, defend, and maintain, with their Lives and Fortunes, their invaded Rights, and such Doctrines as he has thought fit to deliver to them.

My Lords, I take Liberty to acquaint your Lordships, that the Commons conceive, that the Laws and Statutes of the Realm, and the Order and Peace of Government, necessarily injoin it as a Duty upon all private Subjects, to represent their Sense of the Nation's Grievances in a Course of Law and

Justice, and not otherwise; and whenever the Oppressions become National or Publick, They claim it as the peculiar Right of their own Body, to pursue the evil Instruments of them, till publick Vengeance be done; and at the same time the Commons assure your Lordships, that they will account it their indispensable Duty to her Majesty and their Country, to assert the Justice and Wisdom of her Administration, against the Enemies of both.

I have thus stated to your Lordships the Nature of this Cause; wherein, I persuade myself, you perceive many Points of the highest Moment to the Peace and Welfare of the Kingdom.

The Tendency of the Crimes, of which the Prisoner stands accused, lies open and apparent: But I yet beg your Patience, to draw the Scene a little closer.

Your Lordships will consider the necessary Consequence of a Position, meant and expounded so as to persuade the World, that the glorious Work of the Revolution was the Fruit of Rebellion, and the Work of Traitors. Does it not declare the late Reign to be one continued Usurpation? And under what better Circumstances does it bring the present?

Is the Act of Toleration condemned with any other Tendency than to weaken so great a Support of the Revolution itself? And I intreat your Lordships to consider the certain fatal Effects of an universal Dissatisfaction of the People, in Things that concern them nearest, the Safety of the Church of *England*, and the Protestant Interest, and the Security of themselves and their Posterity.

It's true, my Lords, that, considered at a Distance, there seems a Repugnancy in this Gentleman's System. How comes it to pass, that absolute Non-Resistance and the Spirit of Rebellion stand so well together, and are made so suitable, in the same Discourse?

But, if your Lordships should discern, in any Part of his Sermon, any dark Hints, or disguised Opinions, of a *Sole Hereditary Right of Succession* to the Crown, that will shew your Lordships the true Consistency of the whole; your Lordships will find, that in his Opinion, the Duty of the absolute Non-Resistance is owing to him only that has the Divine Commission to govern; and from thence your Lordships cannot fail of knowing against what Queen, what Government, what Establishment, he encourages the taking up the Arms of Resistance.

I have thus endeavoured to discharge the Trust reposed in me by the Commons, and am not unsensible how far short I have fallen; but, my Lords, I assure myself that the Cause cannot suffer by it, its own Strength and Vigour will support it at this Time, and so long, I hope, as the Nation endures.

Your Lordships see plainly, that the Duty of the Commons, which they will always discharge, called upon them very loudly to make Inquisition on so remarkable an Offender as the Prisoner at the Bar.

Your Lordships see they had not acquitted themselves aright, if they had intrusted the Prosecution of this great Cause in any other Hands but their own, or suffered these Points to have been handled in any Place but in full Parliament; or before any other Judicature but that of your Lordships: And it is with the greatest Cheerfulness and Security, that they submit the Cause of the Queen, of the whole Nation, of the Protestant Religion, and Protestant Succession, to the Weight and Wisdom of your Lordships Judgment.

Mr. Attorney General. I did acquaint your Lordships that there were two Sermons delivered into the House of Commons, which I desire may be now delivered in, and read to your Lordships. We must desire Mr. Jodrell to give an Account where he had those Books in his Hands.

Then Mr. Jodrell was sworn.

Mr. Jodrell. These two Books were delivered in at the Table of the House of Commons, by one of the Members.

Mr. Att. Gen. Were they shewn to Dr. Sacheverell when he attended the House?

Mr. Jodrell. They were shewn to him at the Bar of the House.

Mr. Att. Gen. Did he own them to be his Books, or what did he own about them?

Mr. Jodrell. That which is the Sermon preached the fifth of November he owned to be his, and that he directed it to be printed.

Then that Book was delivered in.

Mr. Att. Gen. There is another Sermon which was preached at the Assizes at Derby, that was also shewn him at the Bar, and he owned it.

Lord Chancellor. What say you as to the Preface of the other Sermon?

Mr. Jodrell. He owned the Dedication of it to be agreeable with the Dedication of that Impression which he ordered to be printed.

Mr. Att. Gen. We pray the Dedication may be shewn to him; if he denies it, we are ready to prove it by the Printer.

Sir Simon Harcourt. My Lords, the Doctor did own the Sermon, and the Dedication of both the Sermons, before the House of Commons; and he will not give your Lordships the Trouble of hearing any Proof of them. He doth own them.

Mr. Att. Gen. Then we desire they may be read.

Clerk reads the Dedication of the Derby Sermon, and the Dedication and Sermon at St. Paul's.

The DEDICATION of a SERMON preached at the Assizes held at Derby, August 15, 1709, by Henry Sacheverell, D. D. Fellow of Magdalen College, Oxon, and Chaplain of St. Saviour's, Southwark.

To the Right Worshipful

GEORGE SACHEVERELL, Esq;

High Sheriff of the County of Derby;

AND TO

The Honourable GENTLEMEN of the
GRAND JURY,

Gilbert Thacker, Esq;	William Horton, Esq;
Robert Wilnot, Esq;	George Savill, Esq;
John Fitz-Herbert, Esq;	William Brown, Esq;
John Beresford, Esq;	Paul Balledon, Esq;
Henry Vernon, Esq;	James Cbetbam, Esq;
William Cook, Esq;	William Wolley, Esq;
William Cavendish, Esq;	George Turner, Gent.
Francis Pole, Esq;	

GENTLEMEN,

THE Peculiar Honour You were pleased to confer upon me after the Delivery of this plain Discourse, was so Signal, that nothing less than this Publick Acknowledgment can acquit Me of Ingratitude.

Now, when the Principles and Interests, of our Church, and Constitution, are so shamefully Betray'd, and Run down, it can be no little Comfort to all those who wish their Welfare and Security, to see, that notwithstanding the Secret Malice, and Open Violence they are Persecuted with, there are still to be found such Worthy Patrons of both, who dare Own and Defend them as well against the Rude and Presumptuous Insults of the One Side, as the Base, Undermining Treachery of the Other; and who Scorn to Sit silently by, and partake in the Sins of these Associated Malignants.

Though the Truth seems to be so much Forsaken at present, yet, God be thanked, they shall yet find, to our Honour, that we have still amongst Us those who have Courage to speak it, as well as those who have Lives and Fortunes to Maintain it: And tho' the Age is sunk into the Lowest Dregs of Corruption that it cannot endure Sound Doctrine, there are not wanting Some to Preach it, and Others to Support it, at the Expence of Both. May the Influence of your Good Examples, which as much Animates our Friends, as it Terrifies our Enemies, be as diffusively Prevailing, as 'tis nobly Conspicuous; and the Blessing of that Church attend you, which you so Eminently adorn and sustain!

And, as I am obliged by the Relation I have the Honour to bear your Family, may a double Portion of the Divine Favour rest on You, (Mr. High Sheriff) whose Commands I was very ready to execute in this Office, since you thought neither the Advancement of your Years, so generously expended for the Good of your Country, nor the great Trouble attending this Post, sufficient to exempt you from shewing that steady Loyalty and Zeal to serve Her Majesty and the Government, for which you have been so remarkably Distinguished.

I am, with all Regard,

GENTLEMEN,

Your very Humble Servant,

Henry Sacheverell.

The PERILS of FALSE BRETHREN,
both in Church and State:

Set forth in a

SERMON Preached before the Right Honourable the LORD MAYOR, Aldermen, and Citizens of London, at the Cathedral Church of St. Paul, on the Fifth of November 1709. By Henry Sacheverell, D. D. Fellow of Magdalen College, Oxon, and Chaplain of St. Saviour's Southwark.

To

To the Right Honourable

Sir SAMUEL GERRARD, Bart.

Lord Mayor of the City of London.

My LORD,

BY Your Lordship's Command, this Discourse ventures to appear in Publick, in Contempt of all those Scandalous Misrepresentations the Malicious Adversaries of our Church have traduced it with, and that Impartial Sentence it had the Honour to receive from some of those Acute and Wise Judges, who Condemned it, without Sight or Hearing. But it is no New Thing with some Men to Censure at Random what lies out of their Sphere; Examining a Cause may prove Dangerous, for fear of their own Conviction of its Merits. When Men are resolved to leap into a Gulph, the best Way is to shut their Eyes, for fear they should see their Danger, and Repent of their Folly. When they are thus abandoned and given up to Ruin, the Charitable Hand, that would hold out an unwelcome Light to prevent it, must expect to be treated with that ungrateful Insolence and Reproach, which usually attends the Generous Freedom of those who Dare speak Seasonable, and Necessary Truths. That Patient's Case doubtless is very Desperate, that sets himself against his Cure; and when Men are so stupidly hardened in their Errors as to resist the most glaring Evidence, there's no Room for Argument, or Gospel. Moses, and the Prophets, may with Christ, and his Apostles, be Banished our Synagogues, when Truth must be Oppressed by Number, and Noise, and Rebellious Appeals to the People, as the only Judges of Right, and Wrong, and the dernier Resort of Justice and Dominion. Are not these the Fashionable Methods now made use of to Overbear, and Silence our Church, to Affront and Revile our Legislature, in order to Break in upon the Prerogative of the Crown? By Threatening them with Imaginary Legions, and a popular Tribunal, where their Authority, and Establishment are to be Try'd and Determined? To put a Stop to which Dangerous and Encroaching Mischief, that now with Impunity walks up and down through this Distracted Kingdom, I thought it my Duty (being Summoned to this Office by your Lordship) to Discharge it in the BEST METHOD I could, to Preserve Us from these Malicious Designs, by endeavouring, if possible, to Open the Eyes of the Deluded People in this Our Great Metropolis; being Conscious of what Prodigious Importance it is to the Welfare of the whole Nation, to have its Rich and Powerful Inhabitants set right in their Notions of Government, both in Church and State; that they may not be Flatter'd into their Ruin, but seeing the Fatal Consequences of these Damnable false Doctrines, which some Seditious Impostors have laboured to Poison them with, may Forake and Detest them. I am confident, My Lord, that this Glorious and Renowned City can Boast of so many Excellent Examples of Unshaken Steadiness, Disinterested Probity and True Zeal, and Loyalty for Our Church, and Sovereign, that if they would act with the same Open, and Undaunted Resolution Your Lordship does, these Affrighting Phantoms must Vanish. But if Honest Gentlemen will sit still, and give up their Cause through want of Courage, or a Just Sense of the Dangerous Attempts of Our Enemies, without the Spirit of Prophecy, We may

foretel what will become of Our Constitution, when 'tis so Vigorously Attacked from Without, and so Lazily Defended from Within.

We are told by these Men, who would fain shut both our Eyes, and our Mouths, in order the more effectually to Undermine, and Destroy Us, that the Pulpit is not a Place for Politicks; and that 'tis the Business of a Clergyman to Preach Peace, and not Sound a Trumpet in Zion; so expressly contrary to the Command of God, to Cry aloud, and Spare not. My Lord, I was humbly of Opinion, that the Fifth Commandment was Genuine; the Fanaticks would do well to strike that Dangerous Precept out of the Decalogue, as the Papiests have the Second, that neither might Rise in Judgment against these United Friends, and Brethren. Now as This stands the First in the Second Table, is it not of the utmost Importance, to be rightly Understood, as containing the Principal Duty that we owe to God's Vicegerents, which has been so Scandalously, and Villanously Misinterpreted of late, to the Great Dishonour of Both? Certainly Our Church thought so Formerly, when it took such Care to Guard Our Obedience, with more Homilies concerning the Peril of Rebellion, than any other Sin. And when was more Reason for Enforcing their Doctrines than now, when We see these admirable Dissuatives against Faction and Sedition, maliciously Wrested to Countenance and Support it? If our Excellent Constitution apprehends no Hazard from these Licentious Proceedings, I am sure Those who would defend it from them, have Reason to do so, with Regard to their Own Persons: Our Pastors cannot do their Duty, without being Menaced for it, and Slandered by the Vile Amanuenses of the Mob, to expose us to their Fury, as Papiests, and Men Disaffected to Her Majesty's Government, whose Safety, Rights and Establishment, together with Those of the Church, We so earnestly contend for; which I solemnly here Declare (as I did before in this Discourse) to be my only Aim and Intention; and in a humble way to follow the Footsteps of your Lordship, who is so bright an Ornament, and Support of them. That this great City may flourish under your auspicious Conduct, and never want a Magistrate of your steady Principles to Guide and Govern it, is the hearty Prayer of,

My LORD,

Your LORDSHIP's

Most Humble Servant,

HENRY SACHEVERELL.

2 COR. xi. 26.

In Perils among false Brethren.

AMONG all the most dreadful Plots that ever threatened this Church, and Kingdom, the dismal Tragedy contrived as this Day to be executed on Both, may justly claim the horrible Precedence, and consequently the highest Expressions of our Gratitude for so astonishing and miraculous a Deliverance from it.

For

For whether we consider the *Black Depth* of its subtle *Contrivance*, the destructive *Extent*, and *sanguinary Consequences* of it, or its surprizing and unaccountable *Discovery*, we must confess, that nothing but the *All-Powerful* and *Gracious Hand of God*, interposing against the utter Subversion of Our Nation and Religion, could have prevented such a *Fatal Conspiracy*: A Conspiracy! so full of the most Unheard-of *Malice*, most Insatiable *Cruelty*, most Diabolical *Revenge*, as only could be hatch'd in the *Cabinet-Council of Hell*, and brought forth in a *Conclave of Romish Jesuits*! Now tho' the History of this unparalleled *Mystery of Iniquity* was *Designed* against Us at such a *Distance of Time*, and the *Fact* so evidently *Acknowledg'd*, that the *Papists* themselves are so far from *Denying*, that they *Extol* it with the *Highest Panegyrics*; so that there needs neither *Proof* of the one, nor *Repetition* of the other: Yet doubtless 'tis as much our *Duty*, as *Interest*, to keep up the *Annual Celebration* of this *Never-to-be-forgotten Festival*. For that the very *Face* and *Shadow* of our *Church and Constitution* is yet *Surviving*; That this *Good and Pious Relict* of the *Royal Family* Sits now *Happily* upon the *Throne of Her Great Ancestors*; That our *Hierarchy and Nobility* was not finally *Extirpated* and cut off; That our *Country* was not made an *Aceldama*, a *Field of Blood*, and a *Receptacle of Usurping Robbers*; That We yet, without *Slavery*, *Superstition*, or *Idolatry*, enjoy the *Benefit* of our *Excellent Laws*, and most *Holy Profession* Undeild: In a Word, That *God* has yet vouchsafed us *this Opportunity* of coming into his *Presence*, to *Acknowledge* these *Inestimable Blessings*, is owing to his *Mercy* so signally shewn to Us, in *Disappointing* the *Barbarous Massacre* intended *This Day*. A *Day!* which ought to stand for Ever in the *English Kalendar*, as an *Eternal Era*, at the *One End*, as the *Thirtieth Day of January* at the *Other*, for *Indelible Monuments* of the *Irreconcilable Rage*, and *Blood-Thirstiness* of both the *Papish*, and *Fanatick Enemies* of Our *Church*, and *Government*! For these are *equally* such *Treacherous FALSE BRETHREN*, from whom we must always expect the utmost *Perils*, and against whom we can never sufficiently *Arm* Our selves with the greatest *Caution* and *Security*. These *TWO DAYS* indeed, are but *One United Proof*, and *Visible Testimonial* of the same *Dangerous*, and *Rebellious Principles*, these *Confederates in Iniquity* maintain: And as the *One* is but a *Thanksgiving* for our *Deliverance* from what the *First Projected*; so is the *Other* an *Humiliation*, for what *God* permitted the *Latter*, by *Their Help and Direction*, to put in *Execution*. I think therefore the *Best way* of *Acknowledging* these *Great Mercies*, and *Judgments of God*, and *Acquitting Both Solemnities* in a *Proper way*, is by so justly *Considering* Our *Circumstances* with respect to *Each Side*, as to *Guard* against Their *Malicious and Factionous Designs* for the future; that we may never *Trust* *Either*, to need a *Second Deliverance* from those *Villainous Enterprizes*, they will never cease to put in *Practice*, whenever they see an *Opportunity* of *Doing it with Security*.

Now as *Persecution*, and *Affliction*, were the *distinguishing Badges* of the *Messiah*, who was a *Man of Sorrows*, and *Acquainted with Griefs*; so to convince his *Disciples*, that his *Kingdom* was *not of this World*, He *Bequeathed* the same *sad Legacy* to Them, to *share the Character*, as well as *imitate the Example*, of their *dying Lord*, and *Master*. With *unshaken Courage*, and *Resolution*,

to take up His *Bloody Cross*, and follow the *Great Leader of their Salvation*: To *March* with a *Cheerful Magnanimity* through all the *Powers of Darkness*, looking unto *Jesus the Author and Finisher of their Faith*, who for the *Joy* that was set before Him, *Endur'd the Cross*, despising the *Shame*, and is set down at the *Right-hand of the Throne of God*. Thus was His *Church* to expect no *Better Treatment* than Her *Great Founder* and *Original*, to pass through the same *Fiery Trial*, to be made *Perfect through Sufferings*, to be *Militant here*, in order to be *Triumphant hereafter*; and like Him, to be *Crown'd with Thorns* in this *World*, to Obtain a *Crown of Glory* in the *Next*. Not only to *Encounter the Open Fury* and *Violence* of Her *Profess'd* and *Inveterate Enemies*; but (which was the *Bitterest Part* of Her *Sufferings*) like Her *Saviour*, to be *Betray'd*, and *perfidiously Given up* by Her *Own False-hearted* and *Insidious Apostles*.

As the *Histories* of the *Church* in *All Ages* are as 'twere but *One Continued Ratification* of this *Melancholy Truth*, made up of so many *Mournful Narratives* of the *Unhappy Lives*, and *Disastrous Deaths* of *Saints*, *Martyrs*, and *Confessors*, who *Bravely seal'd the Faith with their Blood*; so it is *Exemplified* in no *One Instance* more than in that *Primitive*, and *Heroick Champion* of *Christianity*, the *Author* of this *Epistle*. Wherein, for the *Wonder*, and *Emulation* of *Posterity*, He has recorded a *Long and Frightful Catalogue* of those *Altonishing Calamities* He had underwent in the *Propagation* of the *Gospel*. Such *Ample Satisfaction* did the *Pious Labours* of the *Convent* make for the wicked *Persecution* of the *Jew*, when, by a *Miraculous Turn of Providence*, the *Greatest Sinner* was changed into the *Devotest Saint*, and the most *Zealous Bigot* against, into the most *Resolute Sufferer for*, *Religion*. Yet however this *Great Apostle* might have *Attain'd* so extraordinary a *Degree of Merit*, as to *Outshine* all that *Noble Army of Martyrs* which *Adorn* the *Bloody Kalendar* of the *Church*; nay, as He expresses it, *to come never a Whit short of the Greatest Apostles*, and as 'twere to *Vye Characters* with the very *Chosen of the Son of God*; Does it not seem a little to carry the *Air of Ostentation*, and *Vain-glory*, thus to claim the *Pre-eminence* and *Supremacy*, and to boast himself in that *Pompous Shew of Services* that He hath done for *God* and the *Church*? But We shall easily *Reconcile* the *Apostle* and the *Orator*, and find no *Imputation* upon his *Modesty*, if we consider the *Occasion* of it. He had (as He informs Us) with much *Pains* and *Expence*, *Planted Christianity* in *Corinth*, where he had no sooner, by a *Miraculous Ministry*, *Establish'd* it, but several *False Apostles* and *Seducers* were, in his *Absence*, *Crept* into the *Church*, to *Vitiate* and *Corrupt* his *New Profelytes*, under *Pretence* of *More Purity* and *Holiness*, (like our *Modern Sectarists*) to raise a *Schism* amongst them, and to draw them off from the *Opinion* they had of *St. Paul*; by *Ridiculing* Him for his *Person* and *Address*, as a *Little Unedifying, Ungifted Preacher*, of a *weak bodily Presence*, and *Contemptible Speech*; thus *Wounding the Ministry* through the *Sides* of the *Minister*. Such *Slights* and *Provocations* certainly were a *sufficient Ground* for the *Apostle* to insist upon his *Character*, lest the *Gospel* should suffer by it: And with *Authority* to *Rebuke* the *Ingratitude* of the *Corinthians*, and *Vindicate* his *Dignity*, and *Transcendent Excellencies*, against the *base Lies*, and *Calumnies*, cast upon Him by such

‘ false Apostles, deceitful Workers, transforming themselves into the Apostles of Christ, like their True Father the Devil, transforming himself into an Angel of Light. With what Justice then might He here stand upon the Comparison, when thus vilely Run down, by such Wretched, Empty, Hypocritical Sophisters? To appeal to his Spiritual Gifts, and Revelations, and Sufferings, in Competition with such Impudent, Boasting, Self-conceited Pretenders, was the Lowest Act of Humility, and Good-Nature; to Condescend to Dispute with such as ought to be Answered, not with Arguments, but Anathema’s! Yet behold the Singular Modesty of this Great Apostle! He cannot enter upon his own Justification, without much Reluctance, and a long Apology to introduce it. *I am become a Fool in Glorifying* (says he) *but you have compelled Me to it. I speak as concerning Reproach, as tho’ we had been Weak: Howbeit, wherein any is Bold, I speak foolishly, I am bold also. Are they Hebrews? so am I! Are they Israelites? so am I! Are they the Seed of Abraham? so am I! Are they Ministers of Christ? I speak as a Fool, I am more. In Labours more Abundant, in Stripes above Measure, in Prisons more Frequent, in Deaths often; of the Jews five Times received I forty Stripes, save one. Thrice was I beaten with Rods, Once was I ston’d, Thrice I suffered Shipwreck, a Night and a Day have I been in the Deep. In Journeyings often, in Perils of Waters, in Perils of Robbers, in Perils by my own Countrymen, in Perils by the Heathen, in Perils in the City, in Perils in the Wilderness, in Perils in the Sea, in Perils amongst FALSE BRETHREN.* In this Rhetorical Abridgment of the Sufferings, and Dangers of his Life, there’s a very Observable Gradation; the Apostle still Rises in his Calamities, and puts this Last as the Highest Perfection of his Misery, as that which made the deepest Impression upon his Passions, and what He bore with the greatest Resentment and Difficulty. The many severe Pains, and Tortures inflicted on his Body, were nothing to This; nay, the Good-Nature, and Mercy of Highwaymen, and Pagans, and even the Devouring Bosom of the Deep, were to be Preferr’d before, and sooner (it seems) to be Truſted to, than the more certainly Destructive, and Fallacious Bosom of a Treacherous, FALSE BROTHER.

‘ I shall take the Expression in its full Latitude, without confining it to the express Design of the Place; tho’ it were very obvious to draw a Parallel here, betwixt the sad Circumstances of the Church of Corinth formerly, and of the Church of England at present; wherein Her Holy Communion has been Rent, and Divided by Faction, and Schismatical Impostors; Her pure Doctrine has been Corrupted, and Defil’d; Her Primitive Worship, and Discipline Prophan’d, and Abus’d; Her Sacred Orders Deny’d and Villified; Her Priests and Professors (like St. Paul) Calumniated, Misrepresented, and Ridicul’d; Her Altars, and Sacraments Prostituted to Hypocrites, Deists, Socinians, and Atheists; and this done, I wish I could not say, without Discouragement, I am sure with Impunity, not only by our profess’d Enemies, but which is worse, by our pretended Friends, and FALSE BRETHREN. But to proceed to the Matter before us: In my Discourse upon these Words I shall endeavour,

I. First, To shew in what Sense, and upon what Accounts Men may be Denominated FALSE BRETHREN.

II. Secondly, I will lay before you the Great PE-

RIL, and Mischief of such, both in Church and State.

III. Thirdly, I will set forth the Heinous Malignity, Enormous Guilt, and Folly of this Prodigious Sin.

IV. Lastly, As a Consequence from the Whole, I will undertake to Evince what mighty Reason we have at all Times, and more especially at present, to stick firmly to the Principles both of our Church and Constitution; and how much it concerns Us to Beware of all those FALSE BRETHREN, that Desert, or Betray them.

‘ And First, I will shew you in what Sense, and upon what Accounts Men may be Denominated FALSE Brethren. In order to which it will be Necessary to State the full Extent of the Nature of FALSE BROTHERHOOD.

‘ This Term *ψευδὲς ἀδελφία* being of a Relative Signification, must respect Men as considered under all Social Cases, or as they are placed under such Regards and Circumstances, as, in Duty oblige them both to Think, Speak, and Act, with Truth, and Integrity, correspondent to their inward Principles, and outward Professions. And wherein they are found deviating wilfully from either, by an unreasonable Alteration of Judgment, by any tacit Mental Reserve, or Equivocation, upon any indirect Ends, or Designs, or guiding their Expressions and Actions contrary to these stated Rules, they are guilty of Falshood, both in Conscience and Practice, of a Breach of that Veracity, Justice, and Trust that they owe to God, themselves, and the World, and are properly what are styl’d in the Text FALSE BRETHREN. For whereas every Man that either believes, speaks, or acts Rationally, must be supposed to have some Standing-Ground, and Measure of Judgment, settled upon some Grand, Primitive Maxims of Truth, both Speculative and Practical, whether founded upon Revelation, Reason, or Honour, which are what we call any Man’s Principles either in Religion, Society, or Friendship: If these Fundamental Axioms have with true Deliberation been sifted, and weigh’d, not only as to their intrinsic Nature, and Goodness, but as to their outward Tendency, and Consequences, they must appear, tho’ not perhaps as infallible in themselves, yet with Respect to the Person so considering them, as demonstrative Truths, as the Light, and Oracles of God, and Reason, set up in his Breast; by which He is always oblig’d to Direct, and Govern his Thoughts, Resolutions, and Actions; and which if He swerves from, disowns, or betrays upon any sinister Motive whatsoever (tho’ after this nice Search they should prove Erroneous) involve the Man in a very heinous Sin, treacherously acting against his Judgment, and giving the Lye both to his Faith, his Reason and his Knowledge. This Matter being thus briefly Premis’d, it is evident, that with regard to the several Objects it is Conversant about, Men may in three Respects be term’d Guilty of FALSE BROTHERHOOD.

1. First, With Relation to God, the Church, or Religion, in which they hold Faith, or Communion.

2. Secondly, With Relation to the State, Government, or Society, of which they are Members.

3. Thirdly, With Relation to those Private Persons, with whom they have either Friendship, Correspondence, or Dealing.

1. And First, He is a FALSE BROTHER with Relation to God, Religion, or the Church, in which he holds Communion, that Believes, Maintains,

tains, or Propagates any False, or Heterodox Tenet, or Doctrine repugnant to the express Declarations of Scripture, and the Decrees, or Sense of the Church, and Antiquity thereupon. For as in the first alone are contain'd the Essential Points, and Articles of our most Holy Faith; so the Primitive Expositions, Decisions, and Practice of the antient Writers of the Pure, and uncorrupted Ages of Christianity, must certainly be acknowledg'd the best, and most Authentick Comments upon their Meaning. In Opposition to which, if any upstart Novelist, or self-conceited Enthusiast, out of Pride, as letting Himself above these Genuine Oracles of Truth; or out of Ignorance, as being unacquainted with the Learning, and Records of Antiquity; or out of Perverseness, scorning to submit his Understanding to the Dictates, or better Reason of others; or out of Ambition and Vain-glory, as affecting to be the Head, and Leader of some New Sect, or Party; (all, or either of which have, and will be found for ever the Parents of Heresy) and should break in upon this Sacred Depositum of the Church; and should attempt Blasphemously to Corrupt that inviolable Fountain of Truth, with erroneous Conjectures, and vain Philosophical Systems; to Prophane and Degrade the Holy Mysteries of Religion, by absurd Interpretations, and impudent Reasonings; should we stick to call such a Rebel to God, and Traytor to his Church, a FALSE BROTHER? If a Man should dare not only to Revive, but to Justify any Execrable Exploded Heresies, as those of Arius, and Nestorius, denying the Hypostatical Union, or the Eternity of the Son of God; or should affirm that He was God in Man, or that the Godbeard was only Locally in his Manhood, as God was in the Cloud; or that should presume to Evacuate the great Sanction of the Gospel, the Eternity of Hell-Torments; or Expound any of the Articles of Our Faith, in such a Loose and Vagrant way, as may suit 'em as well to a Mahometan's as a Christian's Creed; and to lay open all those Sacred Boundaries of the Church, to let in all Sectarists, and Schismatics, of whatsoever Wild, Romantic, or Enthusiastick Notions, so as to make the House of God, not only a Den of Thieves, but a Reception of Legions of Devils: Should we cover such a False Apostle under the Sacred Umbrage of a True Church-man? In short, whosoever presumes to Recede the least Tittle from the express Word of God, or to explain the great Credenda of our Faith in New-fang'd Terms of Modern Philosophy, must publish a new Gospel, Un-god his Saviour, and Destroy his Revelation; and by unsettling the Universal, Receiv'd Doctrine of the Church, give up Christianity into Scepticism, and Atheism; and to speak the best of his Character, is FALSE both to his God, and his Religion, and shall be called hereafter, The least in the Kingdom of Heaven, how Great soever he may be in the Kingdoms here below. And as a Man may thus Betray the Doctrine of his Church, so he is no less FALSE to its Interest, that gives up any Point, of her Discipline, and Worship. These are the Exterior Fences to Guard the Internals of Religion, without which they are left Naked, without Beauty, Order, or Defence. Should any Man, out of Ignorance, or Prejudice, to the antient Rights, and Essential Constitution, of the Catholick Church, Affirm, That the Divine Apostolical Institution of Episcopacy, is a Novel Doctrine, not sufficiently Warranted by Scripture, and that 'tis indifferent whether the Church is Govern'd by Bishops, or Pres-

byters; Is not such an one an Apostate from his own Orders? Let the Christian World be Judge, who best deserve the Name of Churchmen, those that strictly Defend, and Maintain the Catholick Doctrines, upon which the Church, as a Society, is Founded, or those who would Barter them for a Mungril-Union of all Sects? Those who Zealously support her Mission, which only can support her, or those who would destroy it, to take in Schismatical Presbyters without Episcopal Ordination, which would Un-Church the very Church, and Annihilate her Constitution? Is this the Spirit and Doctrine of our Holy Mother? To assert Separation from Her Communion, to be no Schism; or if it was, that Schism is no Damnable Sin; that Occasional Conformity is no Hypocrisy, but rather for the Benefit of the Church; that any one may be an Occasional Conformist with Schismatics, and yet not guilty of Schism; that a Christian may serve God in any Way or Congregation of Worship, as well by Extemporary Prayers, as by a Prescrib'd Form, and Liturgy; that Conformity to the Church, and Ecclesiastical Authority, are no Parts of Morality, and a Good Life, which are only necessary to Salvation: That the Orders and Ceremonies of the Church, are only Carnal, Arbitrary Obediences, to be Dispens'd with as Men please, both by Clergy and Laity; that the Censures and Excommunications of the Church, are mere Bruta Fulmina; Canonical Obedience, and Absolution, Spiritual Tyranny, and Usurpation; and in a Word, that the whole Body of the Worship, and Discipline of the Church of England, is nothing else but Priestcraft, and Popery in Masquerade. If upon all Occasions to comply with the Dissenters both in Publick and Private Affairs, as Persons of Tender Consciences and Piety, to promote their Interests in Elections, to sneak to 'em for Places and Preferment, to Defend Toleration, and Liberty of Conscience, and under the Pretence of Moderation, to excuse Their Separation, and lay the Fault upon the True Sons of the Church, for carrying Matters too high; if to Court the Fanatics in Private, and to hear 'em with Patience, if not Approbation, Rail at and Blaspheme the Church, and upon Occasion to Justify the King's Murder; If to Flatter both the Dead and the Living in their Vices, and to tell the World, that if they have Wit and Money enough, they need no Repentance, and that only Fools and Beggars can be Damn'd; If these, I say, are the Modish, and Fashionable Criteria of a True Church-man, God deliver Us all from such FALSE BRETHREN.

There is another Sort of them who are for a Neutrality in Religion, who really are of none, but are a secret Sort of Reserv'd Atheists, who always pretend to be of the Church, join in the Herd, and will sometimes frequent our Publick Communion, as long as the Government appears on our Side; but if any thing is to be got by it, can with as safe a Conscience slide privately into a Conventicle, and look as demure as the shyest Saint amongst 'em. They are equally of all, and of no Communion, they are the Gallio's that care for none of these Things; They tell us they are for the Religion Establish'd by Law, but no longer than 'tis so; they can see neither Sin nor Danger in that Ecclesiastical Bugbear, as they call Schism, yet talk very loud about Union, Comprehension and Moderation; by all which canting Expressions, they mean nothing but getting Money and Preferment, by holding in with Persons of all Parties and Characters, balting betwixt the Diversity of Opinions, and Reconciling God and

Belial for Gain. To these we may add those who either out of *Fear*, or *Complaisance*, can tamely, and without Vindication, hear their God and Religion Blasphem'd and Abus'd. But there is another sort of FALSE BRETHREN, who set up for a greater Perfection of Piety than their Neighbours, who, like their Originals, the *Pharisees* in the Gospel, are always pleading their Merits before God, and the World, with an Ostentation of Sanctity, in Comparison with their Profane Brethren, with a Stand off, for I am Holier than Thou! These are the Saints that under the Pretence of Conscience, shall commit the most abominable Impieties, and justify Murder, Sacrilege and Rebellion, by Texts of Scripture. There are yet another sort of FALSE BRETHREN, of a quite opposite Character to these, who wish well to the Church of England, and really believe her Constitution in Doctrine, Discipline and Worship, the best and purest in the Christian World; and when either their Tongues, Hands, or Purse are wanting in her Defence, are ready to Sacrifice their Persons, and Estates in her Vindication. These indeed are noble Qualifications, and 'tis Pity so good a Character should want any thing to Complete it. And to turn the Words of our Blessed Saviour to the rich Man, yet one thing thou lackest, thy Zeal is to be shewn in, as well as for, the Communion of the Church, in obeying her Precepts, as well as defending her Rights. In all these Cases there is a Serious and Deliberate Act of Treachery against Conscience and Conviction, a base Forfeiture of that Spiritual Allegiance we owe to God, and our Church, as a sacred Body, and Fraternity, that ought to preserve inviolable Unity, professing one Faith, one Baptism, one God, and Saviour of us all.

2. But Secondly, Men may be Denominated FALSE BRETHREN, with Relation to the State, Government, or Society of which they are Members. The Constitutions of most Governments differing according to their several Frames, and Laws, upon which they are built and Founded, it is impossible to lay down any one Universal Rule, as the Scheme and Measure of Obedience, that may square to every one of them. Only this Maxim in general, I presume, may be Establish'd for the Safety, Tranquility, and Support of all Governments, that no Innovation whatsoever should be allow'd in the Fundamental Constitution of any State, without a very pressing, nay, unavoidable Necessity for it; and whosoever singly or in a private Capacity should attempt it, is guilty of the Highest Misdemeanor, and is an Enemy to that Politick Body of which he is a Member. To apply this Maxim to our Government, in which the Truth of it will very evidently appear. Our Constitution both in Church and State, has been so admirably contriv'd, with that Wisdom, Weight and Sagacity, and the Temper and Genius of each so exactly Suited, and Modell'd to the mutual Support, and Assistance of one another, that 'tis hard to say whether the Doctrines of the Church of England contribute more to Authorise and Inforce our Civil Laws, or our Laws to Maintain and Defend the Doctrines of our Church. The Natures of both are so nicely Correspondent, and so happily Intermixt, that 'tis almost impossible to offer a Violation to the one, without Breaking in upon the Body of the other. So that in all those Cases before-mention'd, whosoever presumes to Innovate, Alter, or Misrepresent any Point in the Articles of the Faith of our Church, ought to be Arraign'd as a Traitor to our State; Hetero-

doxy in the Doctrines of the one, naturally producing, and almost necessarily inferring Rebellion, and High Treason, in the other; and consequently a Crime that concerns the Civil Magistrate, as much to Punish, and Restrain, as the Ecclesiastical. However this Assertion at first View may look like an High-flown Paradox, the Proof of it will fully appear in a few Instances. The Grand Security of our Government, and the very Pillar upon which it stands, is founded upon the steady Belief of the Subjects Obligation to an Absolute, and Unconditional Obedience to the Supreme Power, in all Things lawful, and the utter Illegality of Resistance upon any Pretence whatsoever. But this Fundamental Doctrine, notwithstanding its Divine Sanction in the Express Command of God in Scripture, and without which, it is impossible any Government of any Kind, or Denomination in the World should subsist with Safety, and which has been so long the Honourable and Distinguishing Characteristick of our Church, is now, it seems, quite Exploded, and Ridiculed out of Countenance, as an Unfashionable, Superannuated, nay (which is more wonderful) as a Dangerous Tenet, utterly Inconsistent with the Right, Liberty and Property, of the PEOPLE; who, as our New Preachers, and New Politicians teach us, (I suppose by a New and Unheard-of Gospel, as well as Laws) have, in Contradiction to both, the Power Invested in Them, the Fountain and Original of it, to Cancel their Allegiance at Pleasure, and call their Sovereign to account for High Treason against his supreme Subjects forsooth; nay to Dethrone and Murder Him for a Criminal, as they did the Royal Martyr by a justiciary Sentence. And, what is most incredible, presume to make their Court to their Prince, by maintaining such Antimonarchical Schemes. But, God be Thanked! neither the Constitution of our Church or State, is so far Alter'd, but that by the Laws of Both, (still in Force, and which I hope, for ever will be) these Damnable Positions, let them come either from Rome or Geneva, from the Pulpit, or the Press, are condemned for Rebellion, and High Treason. Our Adversaries think they effectually stop our Mouths, and have Us sure and unanswerable on this Point, when they urge the Revolution of this Day in their Defence. But certainly They are the Greatest Enemies of That, and his late Majesty, and the most Ungrateful for the Deliverance, who endeavour to cast such Black and Odious Colours upon Both. How often must they be told, that the King Himself solemnly Disclaim'd the least Imputation of Resistance in his Declaration; and that the Parliament declar'd, That they set the Crown on his Head, upon no other Title, but that of the Vacancy of the Throne? And did they not Unanimously condemn to the Flames (as it justly Deserv'd) that Infamous Libel, that would have pleaded the Title of Conquest, by which Resistance was suppos'd? So tender were they of the Regal Rights, and so averse to infringe the least Tittle of our Constitution! We see how ready these Incendiaries are to take the least Umbrage, to charge their own cursed Tenets on

* His Highness Declares, in Opposition to those who give out, That we do intend to CONQUER and ENSLAVE these NATIONS, that we have thought fit to add a few Words to our Declaration; "It is not to be imagined, that either those who have invited Us, or those who are already come to Assist Us, can join in a WICKED ATTEMPT OF CONQUEST, to make void their own Lawful Titles to their Honours, Estates, and Interests." See the Prince of Orange's Declaration. Dr. Kennet's History of the Four Last Reigns, p. 493.

the Church of England, to Derive their Guilt upon it, and Quit Scores with it for Their Iniquity! Thus do they endeavour to draw Comparisons, and to Justify the Horrid Actions and Principles of Forty One, which have been of late Years, to the Scandal of Our Church, and Nation, so publicly defended, not only by the Agents and Writers of the Republican Faction, but by some that have the Confidence to style themselves Sons, and Presbyters of the Church of England; who in open Defiance of the most peremptory Declarations of God in Scripture, (never to be evaded by any Shifts or Misrepresentations) and the Universal Doctrine, and Expositions of the Catholick Church upon it in all Ages, with the Express Testimony, and Concurrence of Our Church, from its Reformation down to the present Times, Corroborated with the Sense of Our Legislature, so unexceptionably confirm'd in Our Laws, Dare, in Despite and Contempt of all this Evidence, manifestly defend the Resistance of the Supreme Power, under a New-fangled Notion of Self-Defence; the only Instance they shew of Shame, that they dare not YET maintain Rebellion by its proper Name. Yet, if those silly Pretences, and weak Excuses for it alledg'd, carry any Strength, or Reason in them at all, they will equally serve to justify All the Rebellions that ever were or can be committed in the World. Now as the Republicans Copy after the Papists in most of their Doctrines and Practices, I would fain know in this where the Difference lies, betwixt the Power Granted to (as 'tis suppos'd Originally Invested, but from what Commission God knows, in) the People, to Judge and Dethrone their Sovereigns, for any Cause they think fit; or a no less Usurped Power of the Pope, to solve the People from their Allegiance, and dispose of Sceptres, and Diadems to his Favourites, whenever he thinks it his Interest to pluck them from his Enemies Heads. Comparisons are generally Odious; but a Learned Bishop of our Kingdom, whose Aversion to Popery, I hope, is not doubted, I mean the * Right Reverend the Lord Bishop of Sarum, has been bold Judiciously to determine, even on the Papists Side in this Case, That if such a Deposing Power is to be intrusted in Mortals Hands, less Inconveniencies will ensue in placing it in One, than in Many; tho' God forbid it ever should be Lodg'd in any other than that of God himself, the Original of all Power, from whom it proceeds, and to whom it must Return; the King of Kings, Lord of Lords, and ONLY Ruler of Princes. So that these Romantick wild Notions will carry Us into something worse (if 'tis possible) than Popery itself; more Fatal to the Rights and Interests of the Crown, and the Welfare and Tranquility of Our Constitution, which can never be Safe under such precarious Dependencies, and Despotick Imaginations. A Prince indeed in another Sense, will be the Breath of his Subjects Nostrils, to be blown in, or out, at their Caprice, and Pleasure, and a worse Vassal than even the meanest of his Guards. Such Villainous and Seditious Principles as these, Demand a Confutation from that Government they

* Less Disorder may be apprehended from the Pretensions of the Roman Bishops, than from these Maxims, that put the Power of Judging and Controlling the Magistracy in the PEOPLE's Hands, which opens a Door to Endless Confusions, and indeed, sets every private Person upon the Throne, and introduceth an Anarchy, which will never admit of Order and Remedy; whereas, Those who have but One PRETENDER over Them, could more easily deal with Him, and more Vigorously RESIST Him. [Vindication of the Church of Scotland. Printed at Glasgow 1673. p. 68, 6.

so insolently Threaten and Arraign, and which are only proper to be answer'd by that Sword they would make our Princes bear in Vain, by the So-long-call'd-for Censure of an Ecclesiastical Synod, and the Correction of a Provoked and Affronted Legislature; to whose strict Justice, and undeserved Mercy, I commit both them and Their Authors. Only give me Leave to dismiss 'em with a Remark of the pious and learned Bishop Andrews, upon some of their FALSE BRETHREN in his Time. † "What (says that Good Prelate) is now become of those Words of God, Touch not mine Anointed? Are we not fallen into Strange Times, that Men dare thus print and publish, yea, even preach and proclaim their Sins; even those sinful and shameless Positions, to the Eyes and Ears of the whole World? Whereby God's Anointed are Endanger'd, Mens Souls are Poison'd, Christian Religion is Blasphem'd as a Murderer of her own Kings; God in his Charge is openly Contradicted, and Men made Believe, they shall go to Heaven in breaking God's Commandments." What could have been spoken with a more Prophetical Spirit, of these filthy Dreamers, these Presumptuous and Self-will'd Men, Despisers of Dominion, and Government, who are not afraid to speak Evil of Dignities, who wrest the Word of God to their Own, and their deluded People's Perdition, and think to Consecrate even the worst of Sins, with what is almost Analogous to the Blasphemy against the Holy Ghost! These FALSE BRETHREN in Our Government, do not Singly, and in Private spread their Poison, but (what is lamentable to be spoken) are suffer'd to combine into Bodies and Seminaries, wherein Atheism, Deism, Tritheism, Socinianism, with all the Hellish Principles of Fanaticism, Regicide, and Anarchy, are openly Profess'd and Taught, to Corrupt and Debauch the Youth of the Nation, in all Parts of it, down to Posterity, to the Present Reproach, and Future Extermination of Our Laws and Religion. Certainly the Toleration was never intended to Indulge and Cherish such Monsters, and Vipers in our Bosom, that scatter Their Pestilence at Noon-day, and will Rend, Distract, and Confound, the firmest and Best-settled Constitution in the World. In short, as the English Government can never be Secure on any other Principles, but strictly Those of the Church of England, so I will be bold to say, where any Part of it is Trusted in Persons of any Other Notions, They must be False to Themselves, if They are True to their Trusts; or if they are True to their Opinions and Interests, must Betray that Government they are Enemies to upon Principle. Indeed, We must do 'em that Justice, to confess, that since the Sectarists have found out a Way (which their Forefathers, God knows, as wicked as they were, would have abhor'd) to swallow not only Oaths, but Sacraments, to Qualify themselves to get into Places and Preferments; these Sanctify'd Hypocrites can put on a Shew of Loyalty, and seem tolerably Easy in the Government, if they can Engross the Honours and Profits of it: But let her Majesty reach out her Little Finger to touch their Loins, and these sworn Adversaries to Passive Obedience, and the Royal Family, shall fret themselves, and Curse the Queen, and their God, and shall look upwards. And so much for Our Political FALSE BRETHREN, till I come to speak with them again by and by. I proceed,

† Sermon 3. on the Conspiracy of the GOWRIES, preach'd before the King at Holdenberg, Aug. 5. 1610. p. 803.

3. In the Third Place, to a more *Inferior Species* of them, that *Act in a lower Sphere*, namely, *Those who in their Private Capacities, are FALSE either in their Friendship, Correspondence, or Dealing*: But these *Sins of Unfaithfulness*, as the *Psalmist* calls them, being of so *Copious*, and *Extensive* a Nature, and respecting the *Private Concerns of Human Life*, I shall only trouble you with enumerating some of the *General Instances* of them: Such as are, *Betraying Our Friend in his Secrets*, *Deserting him in his Misfortunes*, in not *Defending his Reputation*, when *falsely Accus'd*, in an *Obsequious Compliance* with Him in any *Indirect, or Dishonourable Measures*, in a *Nauseous Flattery* of his *Follies*, or *Vices*, in *permitting him in any Error*, without *Admonition*, and in giving him *wrong Advice*, and not leading him out of it. Such are also, with regard to Our *Neighbour*, the *Concealing*, or *Misrepresenting any Truth* that he is *Concern'd to know*, *Playing upon his Faith* with *doubtful and ambiguous Insinuations*, with *Double Equivocations*, and *Diffimulatory Expressions*, an *Actual Breach of Word, Promise, or Profession*, *Clandestine Undermining*, by *Circumvention, Fraud*, or *Craft*, *Back-biting*, and *secretly Slandering*, *Propagating Scandal*, and *Bearing False Witness*, and *Partaking several Ways in his Sins*; which are all the *Characteristicks* of an *Insidious, Treacherous, and False-hearted Knave*. But these *Vices* being of a *Private Consideration*, I hasten to the next *General Head* propos'd, Namely,

II. Secondly, *To lay before you the Great Peril, and Mischiefs of these FALSE BRETHREN in Church and State*; which I shall endeavour to do, by *Proving that They Weaken, Undermine, and Betray in themselves, and Encourage, and put it in the Power of Our Profess'd Enemies, to Overturn, and Destroy the Constitution and Establishment of Both*.

1. And First, as to the *Church*. But here it is very *Necessary* to Premise, That by the *Church of England*, We are to understand the *True Genuine Notion* of it, as it stands *Contradistiguish'd* in its *Establish'd Doctrine, Discipline, and Worship*, from all Other *Churches*, and *Schismatics*, who would *Obtrude upon Us a Wild, Negative Idea* of a *NATIONAL CHURCH*, so as to *Incorporate themselves into the Body*, as *True Members of it*; Whereas 'tis evident that this *Latitudinarian, Heterogeneous Mixture* of all Persons of what *Different Faith* soever, *Uniting in Protestantism*, (which is but *One Single Note* of the *Church of England*) would render it the most *Absurd, Contradictory, and Self-Inconsistent Body* in the *World*. This *Spurious, and Villainous Notion*, which will take in *Jews, Quakers, Mahometans*, and any Thing as well as *Christians*, as *ridiculously incongruous* as 'tis, may be first *Observ'd*, as one of those *Prime, Popular Engines*, Our *FALSE BRETHREN* have made Use of to *Undermine the very Essential Constitution of Our Church*; which as it stands *Guarded with its Own sacred Fences*, with Her only *True Sons in Her Bosom*, may defy all the *Malice of the Devil*, and Her *Enemies*, to *prevail against Her*. But such is Her *hard Fortune*, Her *Worst Adversaries* must be let into Her *Bowels*, under the *holy Umbrage* of *Sons*, who neither *believe Her Faith*, *Own Her Mission*, submit to Her *Discipline*, or comply with Her *Liturgy*. And to admit this *Religious Tro-*

jan Horse, big with *Arms and Ruin*, into Our *Holy City*, the *Strait Gate* must be laid quite *Open*, Her *Walls*, and *Inlosures pull'd down*, and an *High Road* made in upon Her *Communion*, and this *pure Spouse of Christ* prostituted to more *Adulterers* than the *Scarlet Whore* in the *Revelations*. Her *Articles* must be *Taught* the *Confusion of all Senses, Nations, and Languages*, to render Her a *Babel*, and *Desolation*. This was indeed the *Ready Way to Fill the House of God*, but with what? With *Pagan Beasts*, instead of *Christian Sacrifices*, with such *Unbellow'd, Loathsome*, and detestable *Guests*, as would have driven out the *Holy Spirit of God* with *Indignation*. This *Pious Design* of making Our *House of Prayer a Den of Thieves*, of reforming Our *Church into a Chaos*, is well known, to have been *Attempted several Times in This Kingdom*, and lately *within our Memory*, When all Things seem'd to *Favour it*, but that *Good Providence*, which so happily interpos'd, against the *Ruin of Our Church*, and *Blasted the Long projected Scheme* of these *Ecclesiastical Achitophels*. A Scheme so *Monstrous, so Romantic, and Absurd*, that 'tis hard to say, whether it had more of *Villainy*, or *Folly* in it, and which even the *Selfish* of all Sorts (who will not be satisfied with any Thing less than *Sovereignty*) *Exploded*, and *Laugh'd at*, as *Ridiculous, and Impracticable*. It was doubtless a *Wise Way* to *Exemplify Our Brotherly Love, and Charity for the Souls of Men*, to put both *Them, and Ourselves* into a *Gulph of Perdition*, by throwing up the *Essentials of Our Faith*, and the *Uniformity of our Worship*. But since this *Model of an Universal Liberty, and Coalition* fail'd, and these *FALSE BRETHREN* could not carry the *Conventicle* into the *Church*, they are now resolved to bring the *Church* into the *Conventicle*, which will more *plausibly, and slyly* Effect Her *Ruin*. What could not be gain'd by *Comprehension, and Toleration*, must be brought about by *Moderation, and Occasional Conformity*; that is, what they could not do by *Open Violence*, they will not fail by *secret Treachery to Accomplish*. If the *Church* can't be *pull'd down*, it may be *blown up*; and no Matter with these Men How 'tis *Destroy'd*, so that it is *Destroy'd*. Now let Us, I beseech You in the Name of God, fairly consider what must be the *Consequence* of this *Scandalous Fluctuation, and Trimming* betwixt the *Church and Dissenters*, both in *Conscience, and Prudence*. Does not this *Innovating in, Giving up, or Receding from, any One Point, or Article* in our *Faith, Violate, and Affect the whole Frame, and Body of it*? Can we either *Add to, or Diminish from, the least jot of our Religion*? Are we to take its *Constitution* as our *Saviour*, and his *Apostles deliver'd it down to Us*; or have we *Authority to Curtail, Mangle, or Alter it, to Suit it to the Pride, Humours, Caprice, and Quab-sick Stomachs, of Obstinate, Moody, Wayward, and Self-conceited Hypocrites, and Enthusiasts*? Will not such a *Base, and Time-serving Compliance* give the *Enemies of our Church* an *Occasion of Blaspheming Her as Weak, and Inconstant*? Will it not argue the *Illegality of Her Ordinances, and Laws*, or that they were too *Rigid*, and wanted an *Abatement*? Will not this *Harden, Encourage, nay Justify the Dissenters* in their *Opinion of their Separation*, when they see such large *Allowances, and Concessions* made in its *Favour*? What *Dishonourable, and Unworthy Opinions* must they entertain of the *Priests of that Church*, who

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can Sacrifice their most Solemn Declarations, and Oaths to Complaisance, and Preferment? What would be the End of All this, but to Establish Herefy, and Erastianism upon the Ruins of our Faith, and Discipline? Would not this Spiritual Legerdemain, this Fallacious Tricking, and Double-dealing, eradicate all the Principles of Truth, and Honesty, or Piety out of Men's Minds, make 'em Unconcerned, whether there is Any, or No Religion, Run 'em into an Universal Scepticism, and Infidelity, and make 'em All Atheists, or Pagists? For when they had Turn'd about, and about, and were grown Giddy with Change, they would either Give up Themselves to the Disbelief of all Things, or Rest their weary'd Judgments in the Authority of that Church alone, that can Delude 'em with the Specious Pretences of an Infallible Guide. Thus our FALSE BRETHREN, as the Jews did our Blessed Saviour, crucify his Church betwixt Thieves; and as they committed that Execrable Villainy under a Pretended Fear lest the ROMANS should come and take away their Place, and Nation, which by that very Fact They brought upon Themselves: So these Men, out of a Fictitious Fear lest the Modern ROMANS should come, and Destroy Our Church, are Working that Ruin they pretend to Avoid, and under a False Zeal of Keeping out Popery, are Themselves infallibly Bringing in That very POPERY into Our Kingdom, with which they so Falsly and ungratefully endeavour to Attaint the Church of England, the Greatest Bulwark, and only Safe-guard against Popery in the whole World! Tho' it were highly to be wish'd that those Excellent Laws made for Her Defence and Security, were at present put strictly into Execution; for the Roman-Catholick Agents, and Missionaries that swarm about this Great City, as it were in Defiance and Contempt of them, were never more Busy in making Profelytes to their Superstition, and Idolatry, and Perverting and Debauching Her Majesty's Subjects in every Corner of our Streets.

2. Thus we see how Dangerous these FALSE BRETHREN are to our Church, which is so Great and Considerable a Branch of our Civil Constitution, that the Support of Our Government depends upon its Welfare, and what Affects That must strike at the Foundation of Our State; Innovations in Either tending to the Subversion of their Laws, and the Unsettling the Establishment, and consequently to Anarchy, and Confusion. But to draw this Argument more home to the Point; I will endeavour to prove, that our FALSE BRETHREN are as Destructive of our Civil, as Ecclesiastical Rights. For first, it cannot be deny'd, that tho' They do submit to the Government, their Obedience is Forc'd, and Constrain'd, and therefore so Treacherous, and Uncertain, as never to be Trusted, because proceeding upon no Principle, but meer Interest and Ambition; and whenever That changes, their Allegiance must follow it; and therefore (to use their Own Expression) are as much Occasional Loyalists to the State, as They are Occasional Conformists to the Church; that is, They will Betray either, whenever it is in their Power, and They think it for their Advantage. FALSHOOD always implies Treachery; and whether That is a Qualification for any One to be Trusted, especially with the Guardianship of our Church, or Crown, let our Governors consider. And certainly nothing but the most Sottish Infatuation, can so

far blind both our Eyes, and our Judgments, as to make us believe, that the same Causes should not produce the same Effects, and that the same Latitudinarian, and Republican Notions should not bring forth the same Rebellious and Pernicious Consequences. They are pleas'd now to soften their Lewd Principles, and cover their Dangerous Tenets with the Name of Speculative Opinions; but what Fatal Practices they have created, and whether these Seditious Thoughts will not again Exemplify themselves in the same Bloody Actions, We shall be Convinc'd, to our Sorrow, if We don't Apprehend. That the Old Leaven of their Forefathers is still Working in their Present Generation, and that this Traditional Poyson still remains in this Brood of Vipers, to Sting Us to Death, is sufficiently Visible, from the Dangerous Encroachments They now make upon our Government, and the Treasonable Reflections They have Publish'd on Her Majesty, God bless Her! Whose Hereditary Right to the Throne, They have had the Impudence to Deny, and Cancel, to make Her a Creature of their own Power; and that by the same Principles They plac'd a Crown upon Her, They tell Us, They (that is, the Mob) may re-assume it at their Pleasure. Nay, now They have advanc'd themselves from the Religious Liberty Our Gracious Sovereign has Indulg'd them, to Claim a Civil Right, as they Term it, and to Justle the Church out of Her Establishment, by Hoisting their Toleration into its Place; and to convince Us what alone will satisfy 'em, insolently Demand the Repeal of the Corporation and Test Acts, as an Ecclesiastical Usurpation, which indeed under Her Majesty (whom God long preserve for its Comfort and Support!) is the only Security the Church has to Depend upon. And which they have so far Eluded by their Abominable Hypocrisy, as to have Undermin'd Her Foundation, and Endanger the Government, by filling it with its Profess'd Enemies. These Charges are so Flagrant, and Undeniable, that a Man must be very Weak, or something worse, that thinks, or pretends, that Dissenters are to be Gain'd, or won over by any other Grants, and Indulgences, than giving up our Whole Constitution: And He that recedes the least Tittle from it, to satisfy, or Ingratiate with these Clamorous, Insatiable and Church Devouring Malignants, knows not what Spirit They are of, or He ought to shew who is a True Member of Our Church. Have They not ever since their first Unhappy Plantation in this Kingdom, by the Intercession of that False Son of the Church, Bishop Grindall, always Improv'd, and Rise upon their Demands in the Permission of the Government? Infomuch that Queen Elizabeth, that was Deluded by that Perfidious Prelate to the Toleration of the Genevian Discipline, found it such an Headstrong, and Encroaching Monster, that in Eight Years, She foresaw it would Endanger the Monarchy, as well as the Hierarchy: And like a Queen of True Resolution, and Pious Zeal for Both, pronounc'd, That such were the Restless Spirits of that FACTIOUS People, that no Quiet was to be Expected from them, till they were utterly Suppress'd: Which like a Prudent Princess, She did by Wholesome Severities, that the Crown for many Years sat Easy, and Flourishing on Her Head. And had Her Successor, King James, but follow'd Her Wise Politicks, his Son had never fallen a Martyr to their Fury, nor any of his Unhappy Offspring suffer'd those Disastrous Calamities,

mities, which made the *Royal Family* one continu'd Sacrifice to their Malice. And what better could have been expected from Miscreants, Begot in Rebellion, Born in Sedition, and Nurs'd up in Faction? I would not here be misunderstood, as if I intended to cast the least Invidious Reflection upon that Indulgence the Government has condescended to give 'em, which I am sure all those that wish well to our Church are very ready to Grant to Consciences truly Scrupulous; let Them Enjoy it in the full Limits the Law has Prescrib'd. But let them also move within their Proper Sphere, and not grow Eccentrick, and like Comets that Burst their Orb, Threaten the Ruin and Downfall of Our Church, and State. Indeed they tell us they have Relinquish'd the Principles, as well as the Sins of their Fore-Fathers: If so, why do they not Renounce their Schism, and come Sincerely into Our Church? Why do they Pelt Her with more Blasphemous Libels, and Scurrilous Lampoons, than were ever Publish'd in Oliver's Usurpation? Have they not lately Villainously Divided us with Knavish Distinctions of High and Low-Church Men; Are not the Best Characters they can give Us, those of Papists, Jacobites, and Conspirators? And what do they mean by all this Insidious Cant, but by False Insinuations, and raising Groundless Jealousies, and Fears, to Imbroil the Publick, and to bring it into that Confusion, they are Suggesting upon Us? Whether these Men are not Contriving, and Plotting our utter Ruin, and whether all those FALSE BRETHREN, that fall in with these Measures, and Designs, do not contribute basely to it, I leave every Impartial Man that wishes the Welfare of Our Constitution to Determine; And if we find this true in Fact, what Reason have we to think, but that the National Sins are Ripen'd up to a full Maturity, to call down Vengeance from Providence on a Church and Kingdom, thus Debauch'd in its Principles, and Corrupted in its Manners, and instead of the True Faith, Discipline, and Worship, given over to all Licentiousness, both in Opinion, and Practice, to all Sensuality, Hypocrisy, Lewdness, and Atheism? And now are we under no Danger in these Deploable Circumstances? Must we Lull Ourselves under this sad Repose, and in such a Stupid, Lethargick Security, Embrace our Ruin? When Elisha the Great Prophet of God, was Surrounded with an Host of Enemies, that fought for his Life, his Blind Servant beheld not the Peril his Master was in, till his Eyes were open'd by Miracle, and he found himself in the midst of Horses and Chariots of Fire. I pray God We may be out of Danger! but we may remember the King's Person was Voted to be so, at the same Time that his Murderers were Conspiring his Death. What I have thus freely spoken, I hope is as much without Offence, as it proceeds from a good Intention, and a Tender Concern for Her Majesty's Person, and Government, and an hearty Zeal for the Honour and Safety of our Excellent Church, and Constitution. I intreat Your Patience,

III. Briefly to set forth the Heinous Malignity, Enormous Guilt, and Folly of this Prodigious Sin of FALSE BROTHERHOOD.

1. And First, With Regard to God and Religion. It is a most Perfidious Apostacy from, and Reproach upon Both. It is no less than Renouncing Our Allegiance to our Almighty Sovereign, an Open Denial, and Prostitution of Our most Holy Faith, and Church, upon which Crime God has Entail'd so many Dreadful Threats, and Anathemas. It

is Betraying Our most Solemn Oaths, proving False to Our Sacred Trust, and Commission, Admistring to, and Indulging Men in the most Mortal Sins, Endangering both our Own, and the Salvation of that Dear Flock, for which Christ Dy'd, by Exposing it to the Corruptions of Heresy and Schism, the Impostures of False Apostles, and the Deceit, and Malice of Wolves in Sheep's Cloathing. It is Deriving the highest Blasphemy, and Dishonour upon the Holy Spirit of God, thus to Prevaricate with his Immutable Oracles of Truth, in Wrestling 'em to maintain the most Diabolical Falshoods, and Errors, and making Veracity itself the Author and Patronizer of Lyes. It is Forsaking Our Baptismal Covenant, Basely Deserting the Glorious Colours we are Listed under, turning Refugees from our Saviour, and Adherents to his most Abjur'd Enemies. In a Word, to accomplish any wretched Secular Design, to Gratify their Pride, or Ambition, to Feed their Lust, or Avarice, to wreak their Spleen, or Revenge, out of Envy, or Disappointment, for a Little, Poultry Honour, Money, or Preferment: These FALSE BRETHREN will Renounce their Creed, and Read the Decalogue backward, be the very Reverse of Our Blessed Saviour (whom like their Primitive Pattern, they first sell, and then betray) Fall down and Worship the very Devil himself for the Riches and Honours of this World.

2. Secondly, In Regard to the World. What a vast Scandal, and Offence must it give to all Persons of Piety, and Integrity, to see Men of Character, and Stations, thus Shift and Prevaricate with their Principles, and Starting from their Religion upon any Occasion of Difficulty, or Trial, and like the Disciples, flying from, and forsaking our Saviour, when his Life Lay at Stake? To see Mens Opinions sit as loose about 'em as their Garments, to be put on, or off, for Convenience? What can Unwary Persons conclude from such Tergiversation, and Hypocrisy, but that all Religion is State-Craft, and Imposture? That all Godliness is Gain; and that the Doctrines of the Church lie not so much in Her Articles, as Her Honours, and Revenues? Without doubt, this Modern Latitude, and Infamous Double-Dealing, as it can proceed from nothing but the rankest Atheism, so it must Propagate it wheresoever it goes; and 'tis not to be Questioned, but that the Wonderful Increase, and Impudent Appearance of all Sects and Heresies in this Kingdom at present, beyond what was ever known in Former Ages, is chiefly to be attributed to it. But this Crime is as Pernicious to Human Society, as Religion; for it Destroys all Common Honesty, Faith, and Credit in the World, and in the Place of it sets up an Universal Trade of Cousenage, Sharping, Disimulation, and downright Knavery. For, what Dependence can there be upon a Man of no Principles? What Trust in Equivocations, Evasions, and Lyes? Nor indeed could any one be suppos'd so Sottish, as to place the least Confidence in these Men, did they not Bait their Hook, and Cover their Treachery with the Sacred and Plausible Pretences of FRIENDSHIP, whereby they are capable of doing much more Mischiefe, than a barefac'd and profess'd Enemy. In what moving and Lively Colours does the Holy Psalmist paint out the Crafty Insidiousness of such wilely Volpones? Wick-edness (says he) is therein, Deceit and Guile go not out of their Streets. For it is not an Open Enemy that has done me this Dishonour, for then I could have born it: Neither was it mine Adversary, that

that did Magnify himself against me, for then peradventure I would have bid my self from him. But, it was even Thou! my Companion, my Guide, and mine own Familiar Friend. We took sweet Counsel together, and walked in the House of God as Friends. There is no Faithfulness in their Mouths, their inward Parts are very Wickedness; Their Throats are Open Sepulchres, and their Words are smother than Oil, yet be they very Swords. Like Joab, they pretend to speak Peaceably, and smite us Mortally under the fifth Rib.

3. Thirdly, With Regard to a Man's Self, it is hard to distinguish whether our FALSE BRETHREN prove themselves Guilty of more excessive Knavery, or Folly. For whatever these Cunning, Temporizing Politicians may think, they will find, after all their Shuffling, and Compliance, that the Plain Road of Truth, Honesty, and Integrity, is both the most Prudent, as well as the Safest Way they can follow, and that the Wisdom of this World is as much Foolishness with Men, as 'tis with God. For certainly there is no Sin that so much Disappoints its Own Ends as This does. Perhaps the Man may Obtain the Present Advantage, He has in Prospect, by relinquishing his Old Friends and Principles; but is ever such a Mercenary Convert receiv'd heartily into the Bosom of his Former Enemies? Or are They ever found so Credulous and Good-natur'd, as to Forgive, and Believe such an Apostate Cordial and Sincere, and fit to be Trusted in any Matter of Weight or Importance, who has Betray'd his Own Party for the Little, Sordid Lucre of a Place, or Preferment? And is again ready to be Retrograde, whenever the Wind shall Change and Veer about? Such a FALSE BROTHER may serve the Present Turn of his Adversaries, who may seem, whilst they want the TOOL, to Flatter and Caress him; but let such a Turn-Coat rest assured, He shall meet with Hypocrisy for Hypocrisy; and since he is got upon the Stage, shall Act his Part, and be His'd off when He has done? Such a Wise Game do our Projectors Play, they Barter, and Betray their Friends, only to sell themselves Slaves into the Hands of their Enemies, who shall Treat them with more Insolence, Disdain, and Tyranny, than Honest Men do with Scorn and Contempt, if they don't go the whole Lengths of their Party, stick at Nothing, tho' never so Impious, and Absurd, and run from one Extream to a quite contrary. Thus Little, thus Base, thus Odious, thus Contemptible, thus Servile, nay thus Execrable is the Traytor, and Double-Dealer, in the Sight, not only of all Honest Men, but the most Profess'd Knaves, and Hypocrites? Who cannot but have a Tacit Regard, and Veneration for a Man of Steadiness and Probity, that upon All Occasions is True to Himself, and his Cause, is above the Threats, as well as Flatteries of this World, still Trusting in his God, and his own Integrity, and Justice, Despising his Interest, or Success, and is under all Circumstances like that God, and Religion He Believes and Serves, without Variableness, or Shadow of Change, but is the same, to day, to morrow, and for ever? Farther, these FALSE BRETHREN cannot be more Odious to God and Man, than they are to Themselves, who are always a Self-contradiction, full of Confusion and Perplexity, perpetually Haunting themselves, the Worst of Demons, maintaining an irreconcilable War betwixt the Outward and Inward Man, Conformists in Profession, Half-Conformists in Practice, and Non-Conformists in Judgment. Such as Mixture of Inconsistency and

Nonsense, that any one that has the least Spark of Conscience or Reason, must Renounce and Detest. But this dismal Effect has such a State of habitual Hypocrisy, that it quite Damps, and Extinguishes Both, Quenches the Holy Spirit of God, and Crucifies his Son afresh; and as it finds a Man void of Shame, generally without a miraculous Conversion leaves him incapable of Repentance, and both Damns him here, and hereafter; and as He Chooseth it in This World, Appoints him in the Next, his Portion with Hypocrites and Unbelievers, with all Lyars that have their Part in the Lake which burns with Fire and Brimstone, with the Grand Father of Falshood, the Devil and his Angels. And so here we leave our FALSE BRETHREN, in the Company they always keep Correspondence with.

IV. Now what should be the Result of this Long Discourse, but that if We bear any True Concern for the Interest, Honour, and Safety of Our Church and Government, We ought stedfastly to Adhere to those Fundamental Principles, upon which Both are Founded, and upon which their Security, under God, alone, depends; and consequently that it highly Beboves Us, Cautionally to watch against, to Mark, and Avoid All those that thus Treacherously Desert them. And indeed it would be both for Our Advantage, as well as Their Credit, if such Men would throw off the Mask, entirely Quit Our Church, of which they are no True Members, and not fraudulently Eat her Bread, and lay wait for Her Ruin, Purloin Her Revenues, and ungratefully lift up their Heels against Her. For then We should be One Fold under One Shepherd, all those Invidious Distinctions that now Distract, and Confound Us Lost, and We should be Terrible like an Army of Banners to our Enemies, who would never break in upon such an Uniform, and Well-compacted Body. This indeed would be a True Peace, and Solid Union, when we should All with one Mind, and one Mouth, Glorify God, and not with a Confus'd Diversity of Contradictory Opinions, and inconsistent Jargon of Worship, which the God of Peace, Purity and Order cannot but Abhor. As it is a Maxim in Politicks, that All Governments are best supported by the same Methods, and Counsels upon which they are Founded; so it will appear undeniably True in its Application to our Constitution, which can be Maintain'd by no Other Principles, but Those on which it is Built, and like their Basis, the Gospel, if there's any Violation, or Breach made in any Branch of it, it shakes and endangers the whole Frame and Body. These Things, however Little they may be Represented by Our Adversaries, will be found of the most Considerable Consequence. Let Us therefore, as We are unhappily Sharers of St. Paul's Misfortune, to have our Church in Perils among FALSE BRETHREN, follow his Example and Conduct in a Parallel Case. He tells us in his Epistle to the Galatians, c. ii. That he was Obstructed, and Peffer'd in his Preaching the Gospel, by FALSE BRETHREN, unawares brought in, who came privily to spy out his Liberty, which he had in Christ Jesus, that they might bring him into Bondage. To whom he gave place by Subjection, not for an Hour, that the Truth of the Gospel might continue with the Church. Doubtless this brave, and bold Resolution did the Apostle take by the peculiar Command, and Inspiration of the Holy Ghost; and yet if our Dissenters had Lived in those Times, they would have branded him

as an *Intemperate, Hot, Furious Zealot*, that wanted to be Sweeten'd, by the Gentle Spirit of *Charity, and Moderation, forsooth! Schism and Faction*, are Things of *Impudent and Incredulous Natures*; they *Thrive upon Concessions*, take *Permission for Power*, and advance a *Toleration* immediately into an *Establishment*; and are therefore to be treated like *Growing Mischiefs, or Infectious Plagues*, kept at a Distance, lest their *Deadly Contagion* spread. Let us therefore have no Fellowship with these *Works of Darknes*, but rather reprove them. Let our Superior Pastors do their Duty in *Thundering out their Ecclesiastical Anathema's*, and let any *Power on Earth Dare Reverse a Sentence Ratify'd in Heaven*. Let them Discourage all these *Seditious, Lukewarm, Almost-Christians*, and Promote Men of *Probity, Conscience, and Courage*. I say *Conscience, and Courage*, for the One without the Other is like *Faith without Works, Dead, and Insignificant*. A *Christian, and a Coward*, are such *Contradictions*, as were never found in the *Church Militant*; Men of *Timorous and Dastardly Spirits*, who are *asham'd to Own, or afraid to defend their Principles*, lest they should lose, or suffer by it, will prove very *Poor Disciples of the Cross*! Such Men (as an *Ingenious Prelate* Wittily expresses it) are only *Honest by Chance*. Let us Despise the *sneaking, shuffling Compliances* of such as Consult their *Safety*, and not their *Innocence*, and dare to be *True in the worst of Times*, with this *All-sustaining Cordial Comfort*, that whatever *Enemies We gain, or Friends We lose*, We carry *One within Us*, that can *Confront, Vanquish, and Counter-Balance All*. Woe unto them that have a *Fearful Heart, and to the Faint Hands, and to the Sinner that goeth two manner of ways*! says the Wise Man, *Eccles. ii. 12*. And agreeable to Him the *Apostle in very Sarcastic Expressions, Jude 11, 12, 13*. Woe unto them that have gone in the *Way of Cain, and ran greedily after the Error of Balaam for Reward, and Perish'd in the Gain-saying of Corah*! These are *Spots in your Feasts of Charity, Clouds without Water, carry'd about of Winds, Trees whose Fruits are wither'd, without Fruit, Twice Dead, pluck'd up by the Roots: Raging Waves of the Sea, foaming out their Own Shame; Wandring Stars, to whom is reserv'd the Blackness of Darknes for ever*. Let Us therefore, being well assur'd how much Our *Cause Deserves*, and how much at present it Requires Our *bravest Resolutions*, hold fast our *Integrity, and Religion, without Wavering*, and earnestly contend for the *Faith, which was once deliver'd unto the Saints*. My Brethren, be strong in the Lord, and in the *Power of his Might*. Put on the whole *Armour of God, that Ye may be able to stand against the Wiles of the Devil*. For we *Wrestle not only against Flesh and Blood, but against Principalities, against Powers, against the Rulers of the Darknes of this World, against Spiritual Wickednesses in High Places*. Wherefore take unto you the whole *Armour of God, that ye may be able to withstand in the Evil Day, and having done All, to stand*, *Eph. vi. 10. &c.* Not doubting, but that if We shew the same *Courage, and Indefatigable Zeal, and Labour, to Defend*, as Our *Adversaries to Reproach, Divide, and Ruin our Church, neither their united Malice, nor Power, nor all the Plots, and Machinations of Rome, nor the very Gates of Hell, itself, shall ever be able to Prevail against Her*. And let us Trust in that *Gracious Providence*, which so Miraculously deliver'd

Her on this Day, that tho' She lies *Bleeding of the Wounds she has receiv'd in the House of Her Friends*, *Lam. ii. 2, 4*. tho' the ways of *Zion may Mourn for a Time, and Her Gates be Desolate, her Priests Sigh, and she in Bitterness, because Her Adversaries are Chief, and Her Enemies at present Prosper; tho' among all her Lovers she has few to comfort Her, and many of her Friends have dealt Treacherously with Her, and are become her Enemies*, *Zech. xiii. 6*. Tho' there are few to Guide Her among all the Sons whom she hath brought forth; neither are there many that take Her by the hand, of all the Sons that she hath brought up, *Isa. li. 18*. Tho' her Enemies cry, *Down with her, Down with her, even to the Ground*; Yet there is a God that can, and will Raise Her up, if We Forsake Her not. Let us not therefore ungratefully contribute to Her Destruction; but let us continue *Stedfast, Immoveable, always abounding in the Work of the Lord, soasmuch as We know that our Labour will not be in vain in the Lord*, *1 Cor. xv. 58*. Now the God of all Grace, who hath called Us into his *Eternal Glory by Christ Jesus, after that ye have suffer'd a while, make you Perfect, Stablish, Strengthen, Settle You*. *1 Pet. v. 10, 11*. To Him be *Glory, and Dominion, for ever and ever*. Amen.

“ Let Us conclude all in that Excellent Collect of Our Church;

O Lord, We beseech thee, let thy continual Pity Cleanse, and Defend thy Church; and because it cannot continue in Safety, without thy Succour, Preserve it evermore by thy Help, and Goodness, through Jesus Christ, Our Lord.

After which the Lords Adjourn'd to the House of LORDS.

Tuesday, Feb. 28. The Second Day.

THE Lords coming down into Westminster Hall, and being seated in the manner before-mentioned, Proclamation was made by the Serjeant at Arms as follows:

Our Sovereign Lady the Queen doth strictly Charge and Command all manner of Persons to keep Silence, upon Pain of Imprisonment.

Then another Proclamation was made: Henry Sacheverell, Doctor in Divinity, come forth, save thee and thy Bail, else thou forfeitest thy Recognizance.

The Doctor appearing at the Bar accordingly, with his Counsel as before.

Lord Chancellor. Gentlemen of the House of Commons, you may proceed in your Evidence.

Sir Joseph Jekyll. MY Lords, Yesterday your Lordships heard the Articles against Doctor Sacheverell, his Answer, and the Commons Replication, read; and the Charge being open'd, your Lordships likewise heard the Doctor's Sermon preached at St. Paul's, and the Dedication of his Derby Sermon; so that the Case is now fully before your Lordships.

That Part which is assigned to me, and some other Gentlemen, is to maintain the First Article of the Commons Charge. The Method I shall take will be, first, to shew the Importance of this Article;

Article; Secondly, To clear up and vindicate the Justice of the *Revolution*; and, Thirdly, To state the Evidence or Proof of this Article, which charges the Doctor with traducing and condemning the Revolution.

My Lords, I must premise, that the Commons cannot but think it hard, that in this Assembly of the *British* Nation, they should now after more than Twenty Years Enjoyment of the Benefits arising by the Revolution, they can't but think it hard, I say, that in this Place, and at this Time, they should be forced to plead in Vindication of the Justice of that Revolution. But since we must give up our Right to the Laws and Liberties of the Kingdom, or (which is all one) be precarious in the Enjoyment of them, and hold them only during Pleasure, if this Doctrine of unlimited Non-resistance prevails, the Commons have been content to undertake this Prosecution; and they who share in the Legislature with your Lordships, have put themselves into the Condition of Suiters for Justice against this Offender, in whom your Lordships will find the Reverse of a true *British* Subject: For such an one is dutiful and submissive to his Prince, and true to the Liberty of his Country; but in this Criminal your Lordships will find virulent Faction, and slavish Submission.

As to the Importance of this Article, your Lordships were rightly told Yesterday, that the whole Charge centers in this Article. If the Justice of the Revolution be establish'd, the Toleration will be rejoiced in by some, and be acquiesced in by all; the Resolutions of the Two Houses of Parliament will have a just Regard shewn to them; Her Majesty's Administration will be no longer defamed, nor will that unhappy Distinction of Parties be capable of being heightened amongst us. But if the Justice of the Revolution (which is our Foundation) be question'd, every Thing that is built on it is in some Degree shaken, and Occasion is given for Disputes and Factions, never to be ended but by a total Subversion of our Constitution.

My Lords, As it is self-evident that the Honour of Her Majesty's Government stands upon the Justice of the Revolution, so doth the Peace and Tranquility of it depend upon that also. The Commons may appeal to your Lordships, and the whole Nation, in this Matter: From what Quarter is it, that all that Opposition and Obstruction to the Administration of the late King, and Her present Majesty have come? Has it not been from those who have question'd the Lawfulness of the Resistance made use of in the Revolution? Whose Pursuit after Power is indefatigable, and to obtain which they would make a willing Sacrifice of the Common Liberty; whilst others who have a contrary Principle, and are convinced of the Justice of that Proceeding, have acted a quite contrary Part. Have they not contributed every thing in their Power to strengthen the Government in her present Majesty's Hands, as well as the late King's; and that with a Zeal and Constancy thro' several Changes, which nothing but a Principle could inspire? How much is owing to this Zeal in promoting the Settlement of the Protestant Succession, and how little to the contrary Principle, every one that remembers the State of Things at the End of the late King's Reign can tell. Upon the present Question therefore, my Lords, depend our present Happiness, and future Hopes. Hath not this Principle of unlimited Non-resistance been revived by the professed and undisguised Friends of the Pretender? Hath it not been prosecuted with an unusual

Warmth, since his Attempt upon Her Majesty's Crown? Can the Pretender have any Hopes, but from the keeping alive such Notions? Or can the Queen's Title receive any Advantage from them? Or can it be seasonable to preach this Doctrine in the Reign of the best of Princes, which can be of no Use to any but the worst?

In clearing up and vindicating the Justice of the Revolution, which was the Second Thing proposed, it is far from the Intent of the Commons to state the Limits and Bounds of the Subject's Submission to the Sovereign. That which the Law hath been wisely silent in, the Commons desire to be silent in too; nor will they put any Case of a justifiable Resistance, but that of the Revolution only; and they persuade themselves that the doing Right to that Resistance, will be so far from promoting popular Licence or Confusion, that it will have a contrary Effect, and be a Means of settling Mens Minds in the Love of, and Veneration for the Laws; to rescue and secure which, was the only Aim and Intention of those concerned in that Resistance.

To make out the Justice of the Revolution, it may be laid down, That as the Law is the only Measure of the Prince's Authority, and the Peoples Subjection, so the Law derives its Being and Efficacy from common Consent: And to place it on any other Foundation than common Consent, is to take away the Obligation this Notion of common Consent puts both Prince and People under to observe the Laws. And upon this solid and rational Foundation, the Lawyers, in all Ages, have placed that Obligation, as appears by all our Law-Books. But instead of this, of later Times, Patriarchal and other Fantastical Schemes have been framed, to rest the Authority of the Law upon; and so Questions of Divinity have been blended with Questions of Law; when it is plain, that Religion hath nothing to do to extend the Authority of the Prince, or the Submission of the Subject, but only to secure the legal Authority of the one, and enforce the due Submission of the other, from the Consideration of higher Rewards, and heavier Punishments. And if this Distinction were attended to, it might serve to bury the useless Labours (to say no worse of them) of several Divines, and others, on these Subjects, in utter Oblivion.

My Lords, Nothing is plainer than that the People have a Right to the Laws and the Constitution. This Right the Nation hath asserted, and recover'd out of the Hands of those who had dispossest them of it at several Times. There are of this two famous Instances in the Knowledge of the present Age; I mean that of the Restoration, and that of the Revolution; in both these great Events were the regal Power, and the Rights of the People recover'd. And it is hard to say, in which the People have the greatest Interest; for the Commons are sensible, that there is not one legal Power belonging to the Crown, but they have an Interest in it; and I doubt not, but they will always be as careful to support the Rights of the Crown, as their own Privileges.

My Lords, That the Constitution was wholly lost before, and recover'd by the Restoration, is known to all; and before the Revolution, it is known how Popery and absolute Power had invaded the Constitution. The regal Supremacy, of such absolute Necessity to preserve the Peace of the Kingdom, was disclaimed, and the Papal Supremacy, by a solemn Embassy to Rome, owned and acknowledged, and no Footsteps left of the regal

Supremacy but that which was worse than nought, an illegal High-Commission Court: And at that Time the popular Rights, in almost all the Species of them, were invaded, That great Privilege of the People, on which all others depend, that of giving their Consent to the making new, or repealing old Laws, was invaded; and a dispensing Power, such as rendred all our Laws precarious, and at the Will of the Prince, was exercised. These, and a great many other Acts of absolute Power, are mentioned in that Act of Parliament, called *The Bill of Rights*. It would be to mispend your Lordships Time, to mention all the Instances there given: For, my Lords, the whole Tenor of the Administration then in Being, was agreed by all to be a total Departure from the Constitution; the Nation was at that Time united in that Opinion, all but the Criminal Part of it. And as the Nation joined in the Judgment of their Disease, so they did in the Remedy. They saw there was no Remedy left, but the last; and when that Remedy took Place, the whole Frame of the Government was restor'd intire and unhurt. This shewed the excellent Temper the Nation was in at that Time, that after such Provocations from an Abuse of the regal Power, and such a Convulsion, no one Part of the Constitution was alter'd, or suffer'd the least Damage; but on the contrary, the whole received new Life and Vigour.

My Lords, As that Doctrine of unlimited Non-resistance was implicitly renounced by the whole Nation in the Revolution, so divers Acts of Parliament afterwards pass'd, expressing that Renunciation. I beg leave to read a few Passages out of the Laws that were then made. In the First of King William and Queen Mary, was the Act for Abrogating the Oaths of Supremacy and Allegiance, and appointing other Oaths. By that Act, the Declaration injoin'd to be taken by several Acts in the Time of King Charles II. to this Purpose, *That it is not lawful, on any Pretence whatsoever, to take up Arms against the King*, was taken away. Then in the second Session of that Parliament, was the Act for declaring the Rights and Liberties of the Subject: In that Act Notice is taken, that the late King James did endeavour to subvert and extirpate the Protestant Religion, and the Laws and Liberties of the Kingdom; and the particular Instances of Malè Administration are set forth: Then it declares, that that unhappy Prince had abdicated the Government, and the Throne was thereby vacant; and that it had pleas'd Almighty God to make the Prince of Orange the Glorious Instrument of delivering the Kingdom from Popery and Arbitrary Power. And if the Instrument, who brought about that Deliverance, be stiled Glorious, surely the Means us'd by him is (in Consequence) approved and applauded; and his late Majesty is mention'd as the same Glorious Instrument, in the Act for paying the *States General* the Charges of his Expedition. And surely this is an Approbation of the Means us'd by him, when that Act charges the People with Six hundred thousand Pounds for those Means, *viz.* the Force he brought along with him. But if it should be thought these Words are too general, and do not particularly approve the Resistance at the Revolution; there came a memorable Occasion, when the Parliament had that Particular under their Consideration; and that was, when they were considering whether they should meddle with so tender a Thing, as the taking away the Benefit of the Law from a great many of the Subjects of the Kingdom; which was done by an

Act in the same second Session of that Parliament, intituled, *An Act for preventing vexatious Suits, against such as acted in order to the bringing in their Majesties, or for their Service*. There they take notice, that at the Time of his Majesty's glorious Enterprize, for delivering this Kingdom from Popery and arbitrary Power, and in Aid and Pursuance of the same, divers Lords, Gentlemen, and other good People well affected to their Country, did act as Lieutenants, Deputy-Lieutenants, Justices of the Peace, or other Officers, Civil or Military, tho' not sufficiently authoris'd thereunto; and did apprehend and put in Custody several crimineous and suspected Persons; and did seise and use divers Horses, Arms, and other Things; and did enter into the Houses and Possessions of several Persons, and did Quarter, and cause to be Quartered, Soldiers and others there; which Proceedings, in Times of Peace and common Safety, would not have been warrantable: Yet that Act declares they were necessary, in regard of the Exigence of publick Affairs, and ought to be justified; and provides an Indemnity for those who acted in that Resistance, from the Actions that might be brought by their Fellow-Subjects.

My Lords, I shall conclude this Head with taking notice of the Form of Prayer, appointed by Royal Authority, for the Fifth of November, now doubly memorable: There is in that Form not only Thanks offered to Almighty God for the Revolution, but for the Success given to those Means that were us'd to bring about that wonderful Deliverance: What else is the Meaning of thanking God, for giving his late Majesty a safe Arrival here, and making all Opposition fall before him, till he became our King and Governour?

But, my Lords, notwithstanding the Justice of those Steps that were taken to bring about the Revolution, notwithstanding the Temper and Prudence that was shewn in the Settlement of it, and the Sanction since given to it, not only by the Royal, but the whole Legislative Authority, Dr. Sacheverell hath condemn'd the Resistance, (which was the Principal, if not the only Means) by which that Deliverance was wrought; which was the last Thing I propos'd to shew to your Lordships.

My Lords, This Article is divided into three Branches: First, The general Charge, that he suggests and maintains, that the necessary Means us'd to bring about the Revolution, were odious and unjustifiable. The second and third Branches are Particulars of that General; *viz.* That his late Majesty disclaimed the least Imputation of Resistance; and that to impute Resistance to the Revolution, is to cast black and odious Colours upon his late Majesty and the said Revolution.

To maintain this Article, I will not repeat the particular Words of the Sermon, in order to the Application of them; that is a Province which is assigned to another Gentleman, who will speak after me: But I shall offer to your Lordships what I apprehend to be the clear Sense and Meaning of those Passages in the Sermon, which maintain this Article. In the eleventh Page of the *Quarto* Edition, he lays down a general Position, of the utter Illegality of Resistance, upon any Pretence whatsoever. He says, there are some who deny this Position, who are new Preachers, and new Politicians, who teach divers Antimonarchical and pernicious Doctrines. He goes on, and says, They do not only deny this Position, but urge the Revolution in Defence of their Denial; that is, by producing that as an Instance of a justifiable Resistance.

Then he exclaims against these Men, as endeavouring to cast black and odious Colours on the late King and the Revolution; whereas he says, the King disclaimed the least Imputation of Resistance by his Declaration; and the Parliament disowned it, because they declare they only fill'd a vacant Throne, without taking Notice how it became so; and they burnt a Book which alledged Conquest, because it had that Ingredient of Resistance in it.

This Extract out of the Sermon makes out the first Article, which is, his condemning the Resistance, which the Commons call the necessary Means used to bring about the Revolution. For, first, that general Position of his condemns Resistance in any Case whatsoever. Secondly, he introduces some as denying this Position, and fastens a vile and odious Character upon them. Thirdly, he makes those that deny this Doctrine object to it an Authority or President of a lawful Resistance, *viz.* that at the Revolution; but, my Lords, this he does only to give up the Lawfulness of that Resistance, and condemn that as well as any other. For, Fourthly, he answers this Objection, by denying there was any Resistance in that Case, a Fact as clear as the Sun at Noon-day, and which all the Nation saw and rejoiced at. He brings the late King and the Parliament to witness against any Resistance in the Revolution; and yet he has shewn by two Quotations out of the Prince of Orange's Declaration, one in his Answer, and the other in the printed Sermon, that his late Majesty was so far from disclaiming Resistance, that he avowed it, and invited the Subjects of this Kingdom to join in that Resistance; for in his Answer, he cites that Passage in his Declaration; wherein his Majesty takes Notice, that he carried a Force with him, sufficient, by the Blessing of God, to defend him from the Violence of Evil Counsellors; and that he designed that Expedition to oblige King James to call a Free Parliament: And by his Quotation of another Passage in the Prince of Orange's Declaration, it appears his late Majesty was, by divers Subjects of King James's, invited to and assisted in that Expedition; which being an Expedition by Force, to oblige that King to call a Free Parliament, doth it not carry in it a plain and manifest avowing of Resistance? My Lords, as to what he says in Relation to the Parliament's disowning any Resistance at the Revolution, by asserting, that they set the Crown on the King's Head on no other Title than that of the Vacancy of the Throne, that appears to be directly otherwise from the several Passages in divers Acts of Parliament which I have before-mentioned: To which I only add, that in the Conference between the two Houses, previous to the settling the Crown on the King's Head, the Word *Abdicated* was insisted upon and carried; for that it included in it the Male-Administration of King James, which the Word *Deserted* (desired to be used instead of it) did not: And this appears by the Journal. He therefore knowing that there was Resistance at the Revolution, and that the late King and the Parliament avowed that Resistance; and he pretending to defend it only by denying those Facts, hath (by a necessary Implication) asserted, That that Resistance was not an Exception to his general Rule, but stands condemned by it.

My Lords, I shall not enter upon the Consideration of the Doctor's Answer to this Article, because I don't know whether his Counsel will think fit to abide by it; nor would I meddle with any Thing that is proper for the Reply.

The Sum of the whole Proof is this: The

Doctor lays down a Doctrine, condemning Resistance in all Cases whatsoever: He makes those who deny this Doctrine, Asserters of Antimonarchical Principles: He takes Notice of the Revolution, only to give it up: He admits, that if there were Resistance in that Case, that it was as unlawful as any other Resistance. He asserts that to be true, which every one knows to be false: He says, the late King disclaimed the least Imputation of Resistance; the Parliament disowned it; and they who say there was any Resistance in it, cast black and odious Colours on the late King and the Revolution; and consequently, he condemns the Resistance used to bring about the Revolution, which is the Matter of the first Article.

This, my Lords, is what the Commons rely upon, to maintain and make out the first Article of their Charge against the Criminal at the Bar; and they refer the Consideration of it to your Lordships Wisdom and Justice.

Mr. *Sol. Gen.* **M**Y Lords, It falls to my Share, *Sir Rob. Eyre.* to state to your Lordships the several Passages in the Sermon preached at St. Paul's, which the Commons rely upon as a Proof of the first Article; and to shew the particular Weakness and Insufficiency of the Answer given to this Charge.

The Charge is, That the Gentleman at the Bar doth suggest and maintain, That the necessary Means used to bring about the late happy Revolution, were odious and unjustifiable; That his late Majesty, in his Declaration, disclaim'd the least Imputation of Resistance; and, That to impute Resistance to the Revolution, is to cast black and odious Colours upon his late Majesty and the said Revolution.

The Passages upon which the first Article is founded, are in the eleventh and twelfth Pages of this Sermon; where Dr. *Sacheverell* having first asserted, "That the grand Security of our Government, and the very Pillar upon which it stands, is founded upon the steady Belief of the Subjects Obligation to an absolute and unconditional Obedience to the supreme Power in all Things lawful, and the utter Illegality of Resistance upon any Pretence whatsoever, *which*, He says, "has been lately exploded and ridiculed, goes on in these Words:

"Our Adversaries think they effectually stop our Mouths, and have us sure and unanswerable on this Point, when they urge the Revolution of this Day in their Defence; but certainly they are the greatest Enemies of that, and his late Majesty, and the most ungrateful for the Deliverance, who endeavour to cast such black and odious Colours upon both. How often must they be told, that the King himself solemnly disclaim'd the least Imputation of Resistance, in his Declaration? And that the Parliament declared, that they set the Crown on his Head upon no other Title but that of the Vacancy of the Throne? And did they not unanimously condemn to the Flames that infamous Libel, that would have pleaded the Title of Conquest, by which Resistance was suppos'd?

These Words the Commons apprehend to be a full Proof of the Assertions charg'd in the first Article, for Resistance was the necessary Means used to bring about the Revolution.

And the Doctor expressly affirms in this Place, that the King disclaim'd the least Imputation of Resistance; he asserts it as a thing notorious, which

no Body could be a Stranger to : He says, the King disclaim'd it solemnly ; he disclaim'd it in his Declaration.

And he as plainly affirms, That to impute Resistance to the Revolution, is to cast black and odious Colours upon his late Majesty and the Revolution ; for he first lays down the utter Illegality of Resistance upon any Pretence whatsoever, as a fundamental Doctrine ; and then acquaints his Auditory, that his Adversaries thought they could effectually stop his Mouth, and had him sure and unanswerable *on this Point*, when they urged the Revolution in their Defence ; but that they were the greatest Enemies to the King and to the Revolution, who endeavour'd to cast such *black and odious Colours upon both*.

Now *this Point*, which he says his Adversaries thought they had him sure and unanswerably upon, is plainly the Point of Resistance, which he had asserted to be illegal upon any Pretence whatsoever ; and others, he says, had denied, and had urg'd the Revolution in their Defence.

And the urging of the Revolution in that Case, as an Instance of the Legality of Resistance, in Opposition to his general Doctrine, is what he calls casting black and odious Colours upon the King and the Revolution ; for his Argument runs thus. All Resistance is utterly illegal ; the King disclaimed the least Imputation of Resistance ; the Parliament set the Crown upon his Head upon no other Title than that of the Vacancy of the Throne ; and burnt a Book because it asserted a Title by which Resistance was supposed ; and therefore to impute Resistance to the Revolution, is to cast *black and odious Colours* upon his late Majesty and the Revolution.

This, my Lords, is the Force of his Reasoning, and the plain and obvious Sense of this Part of the Paragraph ; and therefore fully makes out the Charge of his asserting and maintaining, that to impute Resistance to the Revolution, is to cast black and odious Colours upon his late Majesty and the said Revolution.

I come now to consider the Answer he makes to this Article, which he divides into three Parts.

“ And first, he denies that he doth suggest and maintain, that the necessary Means used to bring about the happy Revolution were odious and unjustifiable ; and says, that he doth not affirm in any Part of that Sermon any thing concerning the necessary Means used to bring about the happy Revolution ; the said *Henry Sacheverell* is so far from reflecting on his late Majesty or the happy Revolution, that he endeavours in that Sermon to clear the Revolution, and his late Majesty, from the black and odious Colours which their greatest Enemies had cast upon both.

Now the material Part of the Answer to this Branch of the Article is, “ That he denies his maintaining that the necessary Means used to bring about the Revolution were odious and unjustifiable, and his affirming any thing concerning those necessary Means. But this is no more than saying that he has affirmed nothing by the Words *Necessary Means* ; and 'tis very true, that the Words *Necessary Means* are not used in any Part of the Sermon.

But no Body will say, that 'tis requisite to charge the Assertion in the very Words.

And therefore if Resistance was necessary, and the Means used, in that extraordinary Case of the Revolution, he has asserted the Means to be odious and unjustifiable, tho' he has done it in other Terms, and by Words more particular and express.

“ And as to that Part of the Article whereby he is charged with suggesting and maintaining, “ That his late Majesty in his Declaration disclaimed the least Imputation of Resistance :

“ He acknowledges himself to have made this Suggestion ; but says, that he made it not in Dishonour, but in Vindication of his Majesty ; the Resistance he represents the King to have disclaimed, being such a Resistance as tended to the Conquest of this Realm ; for which he refers to that Part of the Declaration which is printed at the Bottom of the eleventh Page in the Sermon ; and upon this Ground he observes, that there are these other Passages in the Declaration — “ We have thought fit to go over to England, and to carry over with us a Force sufficient, by the Blessing of God, to defend ourselves from the Violence of evil Counsellors. — We think fit to declare, that this our Expedition is intended for no other Design than to have a free and lawful Parliament assembled.

Now in this Part of his Answer Doctor *Sacheverell* admits, that he made the Suggestion charged upon him, in the same Words that are used in the Article ; but defends himself by alledging, that the Commons have mistaken his Meaning. — He meant only, that the King disclaimed a Resistance which tended to Conquest.

But 'tis clear and plain, that the Words have no such limited or restrained Sense, and that the Meaning he would now put upon them is a mere Shift and Evasion ; for the Proposition is general, The King disclaim'd the least Imputation of Resistance : And the Use he makes of it shews, that his Meaning was as general as his Words ; for he is replying upon those who urge the Revolution in Answer to his general Position, That Resistance is utterly illegal upon any Pretence whatsoever ; and how does he answer the Case of the Revolution, or is it possible to be answered, but by saying, that there was no Resistance at all in the Revolution ; the King, who was principally concerned in it, disclaim'd the least Imputation of Resistance ?

The Question is stated upon Resistance in general ; Whether Resistance in any Case, or upon any Occasion, be lawful ?

And therefore, if the Lawfulness of Resistance in any Case be allowed, 'tis impossible that his general Assertion should stand ; and 'tis equally impossible to get clear of the Objection, without denying the Resistance.

Doctor *Sacheverell* was aware of this, and therefore denies that there was any Resistance at all in the Revolution, and says, That the least Imputation of it was solemnly disclaim'd and disavow'd.

For had he said, in express Terms, that the King disclaim'd all Imputation of Resistance that tended to Conquest, this would have been no Answer to the Objection : For if there was any Resistance, tho' not the particular Resistance which the King disclaim'd ; and if that Resistance which was us'd be agreed to be lawful, his fundamental Doctrine must certainly be shaken. And therefore if your Lordships suppose him to make any Use at all of this Assertion, his Words plainly spoke his Meaning, and represent the King to have disclaim'd all Resistance whatsoever.

But he excuses the making of this Suggestion, by declaring, “ That he made it not in Dishonour, “ but in Vindication of his Majesty ; and therefore “ whether he was mistaken or not in expressing “ himself, as if the late King had disclaimed all “ Imputation

" Imputation of Resistance, when he meant thereby, that the late King disclaim'd the Imputation of a Design of Conquest, he humbly conceives such a Suggestion, plainly design'd for the Honour of the late King, cannot in any reasonable Construction be thought a Reflection upon his said late Majesty, or deem'd any high Crime or Misdemeanor.

My Lords, had these Words been spoken in Vindication of his late Majesty, or great and glorious Deliverer, the Commons, who have so much at Heart the Honour of the late King, and the Justice of the Revolution, had never charg'd them upon this Gentleman as a Crime.

But they carry with them the highest Reflection upon the Honour and Justice of his Majesty; for they suppose that he denied the Lawfulness of Resistance when he was actually engaged in it, and disclaimed the least Imputation of Resistance when he brought over an Army on purpose to maintain that Resistance, to which all the People of *England* were invited and encouraged by his Declaration.

And this Assertion, of the King's disclaiming all Resistance, could never be meant in Vindication of his Majesty from any Imputation of a Design of Conquest; for there was no Occasion for vindicating the King upon this Point, the Subject-Matter of the Discourse did not lead him to it; for the Business of the Sermon, or of this particular Paragraph is not to vindicate the Honour of the King from any such Aspersions, or to maintain the Liberties of *England*, by asserting, That the Constitution of Government still remains, and was not broken and dissolv'd by Conquest at the Revolution: Had that been his Ground, his Mistake had been more excusable; for then it had been proper to have urg'd that there was no Step taken towards the Revolution, which look'd like a Design of Conquest; and that the armed Force which was used in it, and had the Appearance of such a Design, was not intended to conquer; for the King, who commanded it, disclaim'd all Imputation of Resistance that tended to Conquest. Upon such a Question these things had been very properly urg'd, and there might have been some Indulgence to a general Expression, that in any Propriety of Speech could have received such a Meaning.

But when the Question is not, Whether the Revolution was brought about by Conquest, or what would be the Consequence of such an Assertion, either in regard to the Honour of the King, or the Condition of the People, there can be no Colour for saying that he meant by this general Expression, which carries no such Meaning in it self, that the King disclaimed Conquest, or a Resistance which tended to Conquest only.

Especially, my Lords, when the Subject-Matter of his Discourse naturally led him to assert this Proposition in the common and ordinary Sense which the Words import: For he is asserting the Doctrine of absolute Non-Resistance; and shewing, that the Lawfulness of the Revolution was no Argument against it; and why? Because the King disclaim'd the least Imputation of Resistance; there was no such wicked Ingredient as Resistance in it; no other Answer would have serv'd him; and therefore it can never be suppos'd that he meant to clear the King from any Design of Conquest, or intended to say any thing in Vindication of his Majesty upon that Head.

And, in Truth, it is an apparent Scandal upon the Memory of the late King, to say there was any Occasion to clear him from this Imputation; his Actions spoke the Justice and Sincerity of his In-

tentions; his Business was not to conquer and enslave us, but to deliver us from Popery and Slavery, the most dreadful Calamities that could befall us, and to settle and establish our Constitution both in Church and State. This was the Ground of the glorious Enterprize he undertook, and the general Aim and Design of all his Labours through the whole Course of his Reign.

'Tis therefore plain, that what Doctor *Sacheverell* says in his Answer, in Excuse of his Assertion, relating to the King's disclaiming all Imputation of Resistance, was rather made to the Dishonour, than in Vindication of his Majesty; for there was no Colour to suggest that he needed any such Vindication or Defence.

And that the King did not disclaim all Imputation of Resistance, is evident, even from that Part of his Declaration which is cited in the Answer, whereby " He declares to the People (to encourage them to join with him) that he had brought over a sufficient Force to defend himself from the Violence of evil Counsellors. — And that this Expedition was designed to have a free and lawful Parliament assembled, which was a plain Force upon the executive Power that was directed by those evil Counsellors, who, by subverting the Liberties of Corporations, and practising upon the Freedom of Elections, never intended that any such free or lawful Parliament should be assembled.

This is plain Resistance in the Sense that Doctor *Sacheverell* takes the Word; and is so far from a Justification, that there is no Colour to say, that his Majesty disclaimed the least Imputation of Resistance.

As to the last Branch of the Article, whereby he is charged that he suggests and maintains, " That to impute Resistance to the Revolution, is to cast black and odious Colours upon his late Majesty and the said Revolution; he denies that he suggests or maintains any such Position.

But this Negative is fully answer'd by what has been offer'd to your Lordships upon the first Head of this Article, his asserting, That the necessary Means used to bring about the Revolution were odious and unjustifiable; for if Resistance be utterly illegal upon any Pretence whatsoever, and there was Resistance in the Revolution, it necessarily follows, that to impute Resistance to the Revolution, is to cast black and odious Colours upon it. And this is expressly asserted by his stating the Case of the Revolution, in which there was Resistance, as an Objection to his general Doctrine of Non-Resistance upon any Pretence whatsoever; and then answering this Objection, by saying, That the urging of the Revolution, as an Instance of the Legality of Resistance, was casting black and odious Colours upon his late Majesty and the late Revolution: For there could be no black or odious Colours cast, but from the shaking that fundamental Doctrine of absolute Non-Resistance; the Belief of which he asserts to be the Pillar upon which the Government of *England* stands.

And therefore the imputing of Resistance to the Revolution, must, according to the Principles he lays down, cast black and odious Colours upon the Revolution, and upon the great and glorious Instrument of it, his late Majesty, by whom it was happily brought about.

And Doctor *Sacheverell* himself, by the subsequent Part of his Answer, seems to think that this Assertion is fairly and plainly inferred from the Tenor of his Discourse.

For he is pleased to excuse it, by saying, "That he intended to apply it not to such Persons who impute Resistance to the Revolution, of whom he affirms nothing; but to those new Preachers, and new Politicians, who teach in Contradiction both to the Gospel and the Laws, that the People have the Power invested in them, the Fountain and Original of it, to cancel their Allegiance at their Pleasure, and call their Sovereign to Account for High Treason against his Subjects, and who urge the Revolution in Defence of such Principles; and that, unless those who impute Resistance to the Revolution be the same with those new Preachers and new Politicians, he affirms nothing concerning them.

But, my Lords, this Part of his Answer is far from excusing or extenuating his Crime; for if a Proposition be true, it will lose nothing of its Weight and Force, though the vilest Man upon Earth should make use of it; and it can be no Argument against a true Principle, that it has been made use of to ill Purposes, and to maintain Positions which are not warranted by it. 'Tis rather an Aggravation of his Crime, and a high Reflection upon the Commons, and the Justice of this Proceeding, to suppose that any such wicked Consequences as he mentions, can possibly be infer'd from defending the Resistance at the Revolution: And the Question is, Whether Doctor *Sacheverell* himself asserts, that to impute Resistance to the Revolution, be to cast black and odious Colours upon it; and not, OF WHOM he affirms the casting such black and odious Colours?

I go on to the last Part of his Answer to this Article, where he says, "That upon the strictest Search into his said Sermon preach'd at *St. Paul's*, he doth not find that he hath given the least colourable Pretence for the Accusation exhibited against him in this first Article, but barely by his asserting the utter Illegality of Resistance to the supreme Power upon any Pretence whatsoever; for which he conceives he has the Authority of the Church of *England*, which has taught and inculcated this Doctrine in her Homilies—And he doth further insist, That this Assertion is agreeable to, and warranted by the Common Law of *England*, and divers Acts of Parliament now remaining in full Force.

Now it must be agreed, that there is no colourable Pretence to charge him with suggesting and maintaining, that the Resistance used at the Revolution was odious and unjustifiable, if the Doctrine of the utter Illegality of Resistance upon any Pretence whatsoever be true; for upon this Principle his Censure is just, and it must necessarily follow, that the Resistance used in bringing about the Revolution is not to be maintain'd.

And therefore the Commons should think themselves ungrateful for the Deliverance, if they did not vindicate the Honour of the late King, and of those illustrious Persons, who, upon his Invitation, defended the Constitution at that time by Resistance, and declare that this Resistance was lawful, honourable and just.

They had Reason to hope, that after so many Years had passed in a happy Enjoyment of all the Advantages of a Free-born People, and at a Time when the Subjects of this Kingdom are in the full Possession of their Rights and Liberties under her Majesty's gracious Protection, and the wisest and happiest Administration that *England* ever saw, that no Body could have been so wicked as to cast an Odium upon the necessary Means whereby these

Blessings were obtain'd, and are continued to us. But since, notwithstanding our blessed Deliverance from Popery and Arbitrary Power, and the Benefits we enjoy by restoring the Constitution both in Church and State; and above all, by her Majesty's happy Administration, which has improved the Lustre of the Crown to the Honour of the Nation, and the common Benefit of every particular Subject; yet there are Men of restless and turbulent Spirits, Enemies to the Revolution, who are continually urging the Resistance then used as a fundamental Error, fatal to every thing that has been built upon it: This, my Lords, strikes so directly at the present Establishment, that the Commons think it their indispensable Duty to demand your Lordships Judgment upon this important Subject.

And they think it the more necessary at this time, because 'tis plain and obvious to every one's Observation, that since the late Attempt made by the Pretender, this Principle of the utter Illegality of Resistance upon any Pretence whatsoever, has been espoused and maintained with more than ordinary Warmth and Zeal; and the Commons apprehend, that it can have no other Aim or Tendency than to blacken the Revolution, and thereby to shake the Foundation of our present happy Settlement.

Your Lordships will therefore, in your great Wisdom, consider the Consequences of this Assertion, in regard to her Majesty, the Protestant Succession, and the future Happiness of this Kingdom.

The Commons must always resent, with the utmost Detestation and Abhorrence, every Position that may shake the Authority of that Act of Parliament, whereby the Crown is settled upon her Majesty, and whereby the Lords Spiritual and Temporal, and Commons, do, in the Name of all the People of *England*, most humbly and faithfully submit themselves, their Heirs and Posterities, to her Majesty, which this general Principle of absolute Non-resistance must certainly shake.

For, if the Resistance at the Revolution was illegal, the Revolution settled in Usurpation, and this Act can have no greater Force and Authority than an Act pass'd under a Usurper.

And the Commons take leave to observe, that the Authority of this Parliamentary Settlement is a Matter of the greatest Consequence to maintain, in a Case where the hereditary Right to the Crown is contested; for her Majesty's most bitter and implacable Enemies, the Friends of the Pretender, (who all assert the utter Illegality of the Resistance used at the Revolution) can advance his Title to the Crown, and call him King, upon no other Ground than the Pretence of an hereditary Right.

The Commons therefore, out of the most profound Duty and Allegiance which they owe, and shall ever pay to her Majesty, and to maintain the Security of her Government, and guard her Throne against every Insinuation that may promote or favour the Interest of the Pretender, think themselves obliged to take Notice of this Assertion, as tending to weaken the Authority of this Act of Parliament, whereby her Majesty's Title is declared.

Your Lordships will likewise consider of what Consequence the Dishonouring of the Revolution may be to Posterity, and the future Happiness of this Kingdom in a Protestant Succession to the Crown. For by the same Act, all Persons who shall hold Communion with the See of *Rome*, or shall marry Papists, are declared incapable to Inherit, Possess, or enjoy the Crown. And 'tis enacted, That the Crown and Government shall from time to time descend to, and be enjoyed by such Persons, being Protestants

Protestants, that should have inherited and enjoyed the same, in case such Popish Prince were naturally dead.

And the immediate Protestant Succession in the illustrious House of *Hanover*, is likewise settled by an Act of the same Reign.

This shews of what Importance it is, to the present and future Happiness of this Kingdom, to clear his late Majesty and the Revolution from those black and odious Colours which this Gentleman has cast upon both.

But, my Lords, he makes it part of his Defence, that his Assertion is agreeable to the Common Law of *England*, and divers Acts of Parliament now remaining in Force.

The Gentleman that spoke before me, has shewn how far that Assertion is a direct Contradiction to several Acts of Parliament; and therefore I shall only say, that it can never be supposed that the Laws were made to set up a despotick Power to destroy themselves, and to warrant the Subversion of a Constitution of Government which they were designed to establish and defend.

This would be a strange, absurd, and contradictory Imagination, and was thought so at the Revolution by the wisest Men of that Time, by the best Friends to the Monarchy, and Men the most eminent for their Sufferings in the Cause of the Church.

And it appears, by the several Instances mention'd in the Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown, that at the Time of the Revolution there was a total Subversion of the Constitution of Government both in Church and State, which is a Case that the Laws of *England* could never suppose, provide for, or have in View.

And the same Answer may with equal Reason be applied to the general Doctrine of the Church, express'd in her Homilies.

This, my Lords, is what I have to offer to your Lordships in Maintenance of the first Article; I am sensible how defective I have been, but what I have fail'd in, will be abundantly supplied by the Gentlemen who are appointed to assist in maintaining this Article.

Sir John Holland. **M**Y Lords, the present Consideration is of the greatest Importance; no less, than whether so many of your Lordships, and the Commons of *Great Britain*, who took up Arms at the Revolution, and were then thought Patriots of your Country, were really Rebels; whether our late Deliverer was an Usurper; and whether the Protestant Succession is legal and valid.

All these Considerations depend upon the Lawfulness of the Resistance at the Revolution. That there was a Resistance, is most plain, if taking up Arms in *Yorkshire*, *Nottinghamshire*, *Cheshire*, and almost all the Counties of *England*; if the Desertion of a Prince's own Troops to an invading Prince, and turning their Arms against their Sovereign, be Resistance. But if Subjects be obliged to *Absolute and Unconditional Obedience*, the Convention of the States, the Settlement and Entail of the Crown by them, and the further Settlement in the Protestant Succession under that Settlement, must, from that Resistance, be unlawful and void.

The Criminal was aware of this just Objection to his general Doctrine, when applied to the Revolution; as appears from his endeavouring, upon second Thoughts, to conceal it by his marginal Note, to hint, that by *Resistance* he meant *Conquest*. And

no wonder he endeavour'd to colour so bold a Stroke, which he could not but expect to hear of with the utmost Repentment from the Government.

But it so falls out, my Lords, that what he trusted to for a Screen, aggravates the Heinousness of his Crime; for it shews, that he instils into his Auditors those Notions from the Pulpit, which he dares not own in Print. Nothing can be more manifest, than that he could not by *Resistance* mean *Conquest*, even from his own Expressions: For in the very next Period, he says, *And did they not, i. e. the Parliament, unanimously condemn to the Flames (as it justly deserved) that infamous Libel, that would have pleaded the Title of Conquest, by which Resistance was supposed?* So that he knew them to be distinct Notions; and indeed so they must be, because one may be without the other.

It is an unaccountable Presumption, that he could suppose so weak a Pretence could pass upon the World; but much more surprizing it is, that he could apprehend so mean a Subterfuge could prevent your Lordships Justice. But from hence the Commons observe, that he is a concealed Man, and of a dangerous Spirit: And as such we have brought him hither to reform him, and to be an Example to others.

My Lords, The Commons would not be understood, as if they were pleading for a licentious Resistance; as if Subjects were left to their Good-will and Pleasure, when they are to *Obey*, and when to *Resist*. No, my Lords, they know they are obliged by all the Ties of social Creatures, and Christians, for Wrath and Conscience-sake to submit to their Sovereign. The Commons do not abet humour-some factious Arms: They aver them to be *Rebels*. But yet they maintain, that that Resistance at the Revolution, which was so necessary, was lawful and just from that Necessity.

We do agree, that the Laws concerning Obedience, both human and divine, are very express and positive; and no Wonder that the *Homilies and Fathers, dead and living*, follow the same way of expressing our Duty in general Terms. We readily grant this, but it does not follow that there can be no Exceptions from these general Rules in Conscience.

There is no Law more positive and express than that which enjoins the Observation of the Sabbath, for therein we are commanded to *do no manner of Work*. But yet we know, that Necessity makes an allowed Exception to that general Law. And the Reason why that Necessity is allowed as a just Exception to that positive Law, will guide us to know, what Laws will admit of Exceptions from Necessity, and what not. The Reason our divine Law-giver assigns is, because *the Sabbath was made for Man, and not Man for the Sabbath*; from whence plainly follows this Corollary; That where there is a positive Law, and that Law respects not some principal End for which Man was made, there Necessity may make a justifiable Exception, how express soever that Law is.

Now, my Lords, whether Government was made for Man, or Man for Government, will easily appear from this short Observation, that Man was made in a State of Perfection; and the Rectitude of that State supposes the Absence of all those Crimes, which are the Objects of Government, and which Government is to reform. And therefore Government could not be one End of Man's Creation; and these general Rules of Obedience may, upon a real Necessity, admit a lawful Exception; and such a necessary Exception we assert the Revolution to be.

'Tis with this View of Necessity, only absolute Necessity of preserving our Laws, Liberties and Religion; 'tis with this Limitation that we desire to be understood, when any of us speak of Resistance in general. The Necessity of the Resistance at the Revolution was at that Time obvious to every Man. Every one, who either was not, or did not find his easy Mind, prepar'd to be a Tool to Popery and Slavery, dreaded the Instances of that Necessity. The cancelling all the Security from Laws by a dispensing Power; the erecting Commissions to deprive Subjects of their Property, not according to Law, but Humour; the making the whole Government depend upon the arbitrary Pleasure of the then Prince, cannot but be a Justification of that Necessity before God and Man.

And thus, my Lords, it was thought, at the Time this Resistance was on Foot. For then, when the Time was most proper for Admonitions of this Nature, the Clergy were so far from averring the *Unlawfulness of Resistance upon any Pretence whatsoever*, that the *true distinguishing Characteristick of a Church-of-England-Man* then was, wishing that Resistance good Luck, and rejoicing at its Success. And yet the Gentleman at the Bar makes this Exception the Instance of an unjust Resistance, by an ironical Assertion of *the late King's solemnly disclaiming the least Imputation of Resistance in his Declaration*; for ironical it must be, when every Body must believe that he himself knew the contrary; a Figure of Speech very well understood, and known to be the most biting Sarcasm.

My Lords, So much depends upon the Revolution, that the Commons are highly Jealous of the Honour of it. It is, indeed, twenty Years since the Revolution was settled; but it is within much less than twenty Years that a Pretender has attempted to invade our Country, to set this Revolution aside. That Person, even with his own good Opinion of his Right, knows, he can have no Pretence to the Crown, unless the Prisoner's Political Divinity be true, which we aver it is not. But lest this Pretender should apprehend that his Friends are much increased, when he hears that the Revolution is publicly branded in Sermons as *black and odious*; the Commons have impeached this Preacher, that he might not be guilty of this high Crime and Misdemeanor *without Discouragement*, and have brought him to your Lordships Bar for Justice, that he may not do it *with Impunity*.

Mr. Walpole. **M**Y Lords, The Commons are now making good their Charge against Doctor *Henry Sacheverell* contain'd in the first Article, wherein he is accused for suggesting and maintaining, that the necessary Means used to bring about the happy Revolution, were odious and unjustifiable, and that to impute Resistance to the Revolution, is to cast *black and odious Colours* on his late Majesty and the Revolution.

By what has been already offer'd to your Lordships, I make no doubt but you are fully convinced, how injurious these Positions must be to the Peace and Quiet of the Kingdom, and how highly they deserve, and loudly call for your Lordships speedy and exemplary Justice.

The great Licentiousness of the Press, in censuring and reflecting upon all Parts of the Government, has of late given too just Cause of Offence; but when only Pamphlets and common Libels are Matters of Complaint; when none but Mercenary Scriblers, and the Hackney Pens of a discontented Party, are employ'd to vent their Malice, 'tis fit to leave them

to the common Course of the Law, and to the ordinary Proceeding of the Courts below. But, my Lords, when the Trumpet is sounded in *Sion*; when the Pulpit takes up the Cudgels; when the Cause of the Enemies of our Government is call'd the Cause of God, and of the Church; when this bitter and poisonous Pill is gilded over with the specious Name of Loyalty, and the People are taught for their Souls and Consciences Sake to swallow these pernicious Doctrines; when instead of sound Religion, Divinity, and Morality, factious and seditious Discourses are become the constant Entertainments of some Congregations; the Commons cannot but think it high time to put a Stop to this growing Evil, and for the Authority of a Parliament to interpose, and exert itself, in Defence of the Revolution, the present Government, and the Protestant Succession. All which the Commons think so materially concern'd in this Question, that if the Doctrines advanced by Doctor *Sacheverell*, are not Criminal in the highest Degree, it will follow, that the necessary Means used to bring about the Revolution were illegal, and consequently, that the present Establishment, and Protestant Succession, founded upon that Revolution, are void and of no Effect.

The Commons cannot but apprehend that the just Resentment and Indignation they have shewn upon this Occasion, will meet with the general Applause of all that are heartily and sincerely well affected to her Majesty, and her Government; but for all those, whose Principles and Practices render them most justly suspected to have other Views, they are not at all surpris'd to find them alarm'd, and under the greatest Concern, at this Trial.

I am very sensible, my Lords, of the Difficulty and Nicety that attends the speaking to this Point, and that whilst a loyal Subject and faithful Servant of the best of Queens, is speaking in Defence of the necessary and commendable Resistance used at the Revolution, his Arguments may be misconstrued, and misrepresented, as maintaining Antimonarchical Schemes.

But surely, my Lords, to plead for Resistance, that Resistance, I mean, which alone can be concern'd in this Debate, is to assert and maintain the very Being of our present Government and Constitution; and to assert Non-resistance in that boundless and unlimited Sense in which Doctor *Sacheverell* presumes to assert it, is to sap and undermine the very Foundations of our Government, to remove the natural Basis and fundamental Strength of our Constitution, and to leave it under set with imaginary Props and Buttresses, which do, at best, but ill support a shaken Foundation: And 'tis a most surprizing Assurance in the Enemies of our Government, that whilst they are striking at the Root, and digging up the Foundations, upon which our present and future Settlement is built, that they should hope to pass upon the World as Friends to either. But so irreconcilable are the Professions and Practices of some Men, so awkwardly do they speak well of what they do not in their Hearts approve, that in Vindication of his late Majesty (for that's a Part that sometimes they think useful to Act) they declare his most glorious Enterprize to save a sinking Nation, utterly illegal: To recommend themselves to the Queen, they condemn that Revolution, without which she never had been Queen, and we a most unhappy People: To testify their Zeal and Affection for the Protestant Succession, they invalidate all the Laws that have been made for securing that Blessing to Posterity: And lastly, to manifest their

Aversion,

Aversion, and for ever to blast all Hopes of the Pretender, they advance and maintain the Hereditary Right, as the only true Right to the Crown. But what Interest these Opinions may at one time or other be produced to support, and in favour of whose Pretensions these Insinuations are easily understood to be, and in favour of what Settlement they can hardly be constr'd, I submit to your Lordships Consideration.

The utter Illegality of Resistance, upon any Pretence whatsoever, is the general Position laid down in the Sermon, which, if it be strictly, and in the most extensive Manner true, the assuming and exercising a Power of dispensing with, and suspending the Laws; the Commitment and Prosecution of the Bishops; the erecting a Court of Commissioners for Ecclesiastical Causes; the levying Money by Pretence of Prerogative; the raising and keeping a Standing Army without Consent of Parliament; the violating the Freedom of Elections of Members to serve in Parliament; and all the Grievances enumerated in the Bill of Rights, were all meer Pretences, and not sufficient to warrant and justify what was then done, in Defence of the true, ancient, and indubitable Rights and Liberties of the People of this Kingdom; which are now again enacted, ratified and confirmed, and enjoined to be firmly and strictly holden and observed. By what Evasions, or Distinctions, the Doctor will explain himself off upon this Head, cannot easily foresee; unless he will be so ingenuous as now to confess, what there is too much Reason to believe will be his Opinion, if ever a proper Time shall serve for declaring, That the Acts of Parliament made upon, and since the Revolution, are only the Effects of a happy Usurpation, and no Part of the true Law of the Land.

Resistance is no where enacted to be legal, but subjected, by all the Laws now in Being, to the greatest Penalties; 'tis what is not, cannot, nor ought ever to be describ'd, or affirm'd, in any positive Law, to be excusable: When, and upon what never-to-be-expected Occasions, it may be exercised, no Man can foresee, and ought never to be thought of, but when an utter Subversion of the Laws of the Realm threatens the whole Frame of a Constitution, and no Redress can otherwise be hoped for: It therefore does, and ought for ever to stand, in the Eye and Letter of the Law, as the highest Offence. But because any Man, or Party of Men, may not, out of Folly or Wantonness, commit Treason, or make their own Discontents, ill Principles, or disguised Affections to another Interest, a Pretence to resist the Supreme Power, will it follow from thence that the utmost Necessity ought not to engage a Nation in its own Defence for the Preservation of the Whole? Or, on the other Side, because the greatest and most inexplicable Emergencies did sufficiently justify and warrant the Resistance of the Revolution, will it be a Consequence that therefore, upon every slight Pretence or common Occasion, the Laws that fence against Treason will be of no Effect? No, my Lords, I hope your just Judgment in this Case will convince the World, that every *seditions, discontented, hot-headed, ungifted, unedifying Preacher*, (the Doctor will pardon me for borrowing one String of Epithets from him, and for once using a little of his own Language) who had no Hopes of distinguishing himself in the World, but by a matchless Indiscretion, may not advance, with Impunity, Doctrines destructive of the Peace and Quiet of her Majesty's Government, and the Protestant Succession,

and prepare the Minds of the People for an Alteration, by giving them ill Impressions of the present Establishment and its Administration.

The Doctrine of unlimited, unconditional passive Obedience, was first invented to support arbitrary and despotick Power, and was never promoted or countenanced by any Government that had not Designs some time or other of making use of it: What then can be the Design of preaching this Doctrine now, unask'd, unfought for, in her Majesty's Reign, where the Law is the only Rule and Measure of the Power of the Crown, and of the Obedience of the People? If then this Doctrine can neither be an Advantage or Security to her Majesty, who neither wants nor desires it, to what End and Purpose must every thinking Man conclude 'tis now set on Foot, but to unhinge the present Government, by setting aside all that has been done in Opposition to that Doctrine; and when, by these Means the way is made clear to another's Title, the People are ready instructed to submit to whatever shall be imposed upon them.

It may be expected, after I have said thus much in general, that I should proceed to shew in what Parts of the Sermon these Aspersions are contain'd: But, my Lords, that Part has been so fully and distinctly spoke to, by those learned Gentlemen who are more proper, and a great deal more able, to manage that Province, that I will not mispend your Lordships Time, by repeating what has been already so fully and justly made out; but so much I will venture to say, That if we remove the Rubbage, with which the Doctor has an excellent Talent at puzzling Common Sense, and bring together the several Sentences, that can only be relative to one another, 'tis impossible for the Art of Man to make any Inferences or Constructions, so close and strong, as the plain and genuine Sense of the whole Scope of his Sermon must, at first View, suggest to every Man's Understanding. And all that the Doctor alleges in his Defence is, that in the Revolution there was no Resistance at all; and that the King did utterly disclaim any such Imputation. But surely, my Lords, it cannot be now necessary to prove Resistance in the Revolution; I should as well expect that your Lordships would desire me, for Form's sake, to prove the Sun shines at Noon-day. If then there was most undoubtedly Resistance used to bring about the Revolution, it will follow that all the Censures, which are so freely bestowed upon Resistance in general, must attend, and will be imputed to the Revolution: And if *Resistance be utterly illegal, upon any Pretence whatsoever*; if it is a Sin, which unrepented of, by the Doctrine of the Church of England, carries sure and certain Damnation; if, upon Repentance, there is no Remission of Sins without a steadfast Purpose to amend the Evil we have done, and to make all possible Restitution, or at least to do our utmost Endeavours for that Purpose; I beg your Lordships to consider what a Duty is here pressed, upon the Peril of Damnation, upon every Man's Conscience, that knows or believes that there was Resistance in the Revolution, and is conscious to himself of being any ways assisting, or even consenting to this damnable Sin; and what must be the Consequence if these Doctrines, without any Reserve or Exception, are with Impunity preach'd throughout the Kingdom. All which, my Lords, I hope is sufficient to satisfy your Lordships, that Doctor Sacheverell is guilty of the Charge exhibited against him in the first Article; and that he is an Offender of that Nature and Malignity, that this Court only could be the proper Judges of such

High Crimes; and from your Lordships Justice, the Commons hope, That his Punishment will be adequate to the Heinousness of his Offence.

Sir John Hawles. **M**Y Lords, I am commanded by the Commons of *Great*

Britain to be assisting to the Gentlemen that spoke before me, for the proving the Prisoner at the Bar guilty of the Crime charged in the first Article of his Impeachment; which is, That he did suggest and maintain, in his Sermon preached at *St. Paul's*, That the necessary Means used to bring about the happy Revolution were odious and unjustifiable; and that his late Majesty in his Declaration disclaimed the least Imputation of Resistance; and that to impute Resistance to the said Revolution, is to cast black and odious Colours on his late Majesty. In making good which Article against the Doctor, I hope the Gentlemen that have spoke before me will excuse me, if I make use of another Method than what they have done; which I shall do, not misliking the Course they have taken, nor that I think the Method I shall take is better than theirs, but only because I would not repeat what's said by them, which I am sure would come with a worse Grace from me, than it did from them; and because I am sure what was said is very well remembered by your Lordships. What I shall offer is, I think, somewhat to the Purpose, and was not mentioned by the Gentlemen before. As to the Passages taken out of the Sermon to prove the Doctor guilty of the Fact of this first Article, they have been so fully opened, and so very well applied, that I have very little to add to what has been said; I shall therefore only say, that the Clause of his Sermon, wherein he asserts, that "The grand Security of our Government, and the very Pillar on which it stands, is founded upon the steady Belief of the Subjects Obligation to an absolute and unconditional Obedience to the Supreme Power in all things lawful, and the utter Illegality of Resistance upon any Pretence whatsoever", he lays down not as a Doctrine he would teach his Congregation; but in order to draw an Argument from thence for some other Purpose; and what that is, appears plainly afterwards. For having alledg'd some Things not proper for the Occasion for which the Day upon which he preach'd was solemniz'd, he adds, "Our Adversaries think they effectually stop our Mouths, and have us sure and unanswerable on this Point, when they urge the Revolution of this Day in their Defence; but certainly they are the greatest Enemies of that, and his late Majesty, and the most ungrateful for their Deliverance, who endeavour to cast such black and odious Colours upon both. How often must they be told, that the late King himself solemnly disclaimed the least Imputation of Resistance?" By which 'tis plain, that the Position of the Subjects Obligation to an absolute and unconditional Obedience to the Supreme Power laid down, was only to shock and lay odious Colours upon the Revolution, or the Means whereby it was brought about; he knowing that the Means whereby the Revolution was brought about was by Force, and he knew it was so declared by the Act of Parliament made in the first Year of King *William* and Queen *Mary*, for preventing vexatious Suits against such as acted in order to the bringing in the late King and Queen. And tho' he would insinuate that the same was not done by Force, I must own he does not assert that either it was or was not done by Force; but he strongly insinuates it was not done by Force,

when he asserts, tho' untruly, that the late King disclaimed any Resistance upon his coming. I'll say nothing more as to that Matter; and nothing as to that other, that has been largely open'd, relating to the Subjects Obligation to an absolute and unconditional Obedience to the Supreme Power; the rather, because, if it was doubtful, the Acts of Parliament mentioned in the Preface to the Articles, whereby the Revolution has been declared to be a glorious Enterprize, and the Means whereby it was brought about justified, have determin'd that Matter; and because your Lordships, as I think, will not suffer the Doctor, or his Counsel, to say any thing against the Revolution, or the Means whereby it was brought about.

The Commons of *Great Britain* own your Lordships to be the Supreme Court of Judicature in this Government, but yet they think that Acts of Parliament, whereof your Lordships are in part the Makers, are as binding upon your Lordships, as a Court of Judicature, as they are upon any Court of *Westminster-Hall*, where Matters determin'd by Act of Parliament are never suffer'd to be disputed afterwards; but I own, what is practis'd in *Westminster-Hall* is not a Rule whereby your Lordships ought to be govern'd, and therefore I rely only upon the Reason of what I assert; for altho' your Lordships are the Supreme Court, and from whom no Appeal lies to any other Court of Judicature, yet your Lordships, as you are Part of the Legislature, are greater than you are in your Judicial Capacity, in which you are subject to the Law; tho' in your Legislative Capacity, in Concurrence with two other Powers, you are above the Law. It is therefore incongruous, that a Court of Persons of less Power should judge otherwise than the Court of greater Power had determined; but this I submit to your Lordships, and am sure the Gentlemen of Counsel with the Doctor know their Duty so well in this Matter, that they will not give your Lordships the Trouble of an Admonition upon this Occasion. I won't add more upon this Subject, but proceed, with your Lordships Permission, to prove the Doctor Guilty of what he is charged with in this first Article, by the Doctrine by himself laid down in his Sermon, and admit for Argument-sake the same to be true; tho' this I must assert, that he carries the Doctrine somewhat farther than the Apostles did in some Respects, but in other Respects seems to restrain it more than they did. In the restraining Part he seems to confine the absolute and unconditional Obedience to Things lawful; which Restraint looks like something, but in Truth, upon Examination, is nothing; for suppose the Supreme Power commands the Subject to do something which it thinks is Lawful, but the Subject not willing to obey, pretending the thing to be Unlawful, the true Reasons being that they are chargeable, troublesome, hazardous, or the like; in this Case who is to be Judge, the Supreme Power, or the Subject? In the Reason of the thing, neither of them are proper Judges; for the Supreme Power will be byass'd, by Reason of the Command given by them at first, and will be ashamed to own what they commanded was Unlawful, and therefore will give Judgment on their own Side, to justify themselves in what they have commanded; and the Subject will be as much byass'd for the same Reason that he was at first dissatisfied with the Command. And there being no higher Power or Authority to appeal to than the Supreme Power, that must needs be the Judge, from whom there can be no Appeal. But perhaps the Doctor and I differ

differ in the Persons in whom the Supreme Power is lodg'd; for the Doctor has not mention'd that Matter, either in his Sermon, or in his Answer to the Articles; but I hope, in the Answer he is to give to what's now objected against him, he will tell us in whom that Power is lodg'd. I'll tell him in whom I think it is lodg'd; I think it is lodg'd in the Queen's Majesty, the Lords Spiritual and Temporal, and Commons in Parliament assembled; And I think when the Acts mentioned in the Impeachment did pass (except the Act for declaring the Rights and Liberties of the Subject) the Supreme Power was lodg'd in the late King *William* and Queen *Mary*, and the Lords Spiritual and Temporal and Commons in Parliament assembled. But as the Doctor seems to have restrain'd his Doctrine of Non-resistance, he has as much enlarged his Doctrine of absolute Obedience; for, as I think, what hitherto written or asserted, upon the Occasion of that Matter, went no farther than Passive Obedience and Non-resistance; but the Prisoner's Doctrine extends to Active Obedience as well as Passive; because, as I think, the Words of the Apostles, from whom this Doctrine is taken, seems to restrain it only to Passive Obedience and Non-resistance; and the Reasons why the Apostles inculcated no other Obedience, as I believe, was, because that was sufficient to secure the Government under which the Apostles liv'd, which was the *Roman* Government, and which stood in Fear of no Foreign Force, and which Government was said and believ'd could not be ruin'd but by its own Subjects, which afterwards prov'd to be true. That that their Doctrine was the Doctrine of Christianity, and truly so called, I'll readily agree to the Prisoner; but I do not think that Christianity introduc'd that Doctrine into the World; for I think, as the Doctor does, that it was as antient as Government, because it was impossible that Government could subsist, unless supported by its Subjects; but how antient that Doctrine was, can't be asserted, without knowing how Government came to be introduc'd into the World. If it was Patriarchal, as some have asserted, it was as ancient as *Adam*; if it was introduc'd by Conquest, then its Date was no higher than *Nimrod*; if it was by Compact, then I can't say when it began; but this is certain, that it was as antient as the *Roman* people, which was above seven hundred Years before the coming of our Saviour; but how long before the *Roman* Name was known, I can't take upon me to say. But tho' this Doctrine was not introduced by Christianity, yet I think it may well and properly be call'd the Christian Doctrine; for tho' amongst the Heathens it was a political Law, and oblig'd (as other Laws did) for fear of Punishment; yet Christianity first press'd this Doctrine upon the Conscience of the Subject, which no other Religion did, and that was sufficient to intitle it to the Name of Christian. But the Doctor, as I said, has carry'd it farther than the Words of the Apostles did, extending it to an Active Obedience, which the Words of the Apostles do not warrant, in the Strictness of the Expressions. But yet I won't contest with the Doctor in that Matter; for if the Doctrine, as preach'd by the Apostles, was sufficient to secure the Government they liv'd under, as it was, and that Doctrine is not sufficient to secure the Government we now live under, as it is not; the Doctor might very well think, that what he now asserts, by the Equity, as we call it (that is) the Reason of the Doctrine preach'd by the Apostles, was well warranted.

Having thus stated the Matter of the Subjects Obedience to the Supreme Powers, in which I have agreed with the Doctrine set forth in the Sermon, I can't imagine how the Doctor can justify himself in declaring against the Revolution, as he has done; when he knows, as well as any, that the Revolution has been justified by the Supreme Power, in the Acts of Parliament mentioned: For certainly it must be granted, that the Doctrine that commands Obedience to the Supreme Power, tho' in Things contrary to Nature, even to suffer Death, which is the highest Injustice that can be done a Man, rather than make an Opposition to the supreme Power; because the Death of one, or some few private persons, is a less Evil than disturbing the whole Government; that Law must needs be understood to forbid the doing, or saying any Thing to disturb the Government, the rather, because the obeying that Law cannot be pretended to be against Nature: And the Doctor's refusing to obey that implicit Law, is the Reason for which he is now prosecuted; tho' he would have it believ'd, that the Reason he is now prosecuted, was for the Doctrine he asserted of Obedience to the Supreme Power; which he might have preach'd as long as he had pleas'd, and the Commons would have taken no Offence at it, if he had stopt there, and not have taken upon him, on that Pretence or Occasion, to have cast odious Colours upon the Revolution. If he is of the Opinion he pretends, I can't imagine how it comes to pass, that he that pays that Deference to the Supreme Power, has preach'd so directly contrary to the Determinations of the Supreme Power in this Government; he very well knowing that the Lawfulness of the Revolution, and of the Means whereby it was brought about, has already been determin'd by the aforesaid Acts of Parliament; and do it in the worst manner that he could invent. For questioning the Right to the Crown here in *England*, has procur'd the shedding of more Blood, and caus'd more Slaughter, than all the other Matters tending to Disturbances in the Government put together. If therefore the Doctrine, which the Apostles had laid down, was only to continue the Peace of the World, as thinking the Death of some few particular Persons better to be born with than a Civil War; sure it is the highest Breach of that Law, to question the first Principles of this Government.

It is not forgotten how much Blood was spilt upon the Account of the Title between the Houses of *York* and *Lancaster*, in which the Learned in the Law did differ; and the setting on Foot that Question of the Title of the present Government, which was above twenty Years ago determin'd, and that Determination acquiesc'd in from that Time till now, in all Probability, if not suppress'd, would tend to as great Mischief as that War intail'd on the Nation. But yet the Doctor, who preaches up the Subjects Submission to the Supreme Power, even to Death itself, thinks he hath not only a License, but a Command from God, to inquire into the late King and Queen's Right to the Crown; and to blow a Trumpet, to set his Fellow-Subjects to cut one another's Throats upon that Account. This surely is the absurdest Construction of a Text that ever was made; and yet this I'll say is the Case, if you'll compare the Prisoner's Practice with his Doctrine.

Methinks the Doctor ought to have consider'd what our Saviour and his Apostles did in their Time: We don't find that any of them ever question'd the Title of the Emperors under whose Government

vernment they liv'd ; or ever said any Thing relating to their Titles, or that Power they exercis'd ; and yet if they had thought it lawful or expedient, they had just Occasions to have done it. St. *John*, the Survivor of the Apostles, liv'd (as 'tis said) to the Time of *Trajan* ; so that by that Account he liv'd under thirteen Emperors, including *Augustus* and *Trajan* ; and yet neither of them had so much as a Pretence of Right to the Empire, according to the Opinion we have of that Right now. The first and last of those Emperors were the very best the *Romans* had, except perhaps *Titus Vespasian* ; and yet *Augustus* came to the Empire by the worst Means of any of them, for he waded thro' a Sea of Blood, and was guilty of a great many Acts of Treachery and Cruelty : But after the World had reap'd so many Benefits by his Excellent Government, it forgot the Iniquity of the Means whereby the Empire was obtain'd. And the best Means of obtaining the Empire, by the following Emperors, till the Time of *Titus Vespasian*, were by Force, and most of them by treacherous Murders ; and yet we don't find, that either our Saviour, or his Apostles, reproach'd any of those Emperors with the Injustice of the Means whereby they became so. And Methinks it would have become the Doctor to have follow'd those good Examples. But the Doctor is of another Opinion, and thinks the aforesaid Words of *Isaiab*, to Cry aloud, &c. do well warrant that his Opinion ; not considering that that Prophet had that express Command from God, for reproving the Hypocrisy of the *Jews* : And if the Doctor had the like Command for Preaching as he has done, I think he has quoted a good Authority for so doing ; but he must give us a better Proof of such Command than hitherto he hath done.

If he thinks the Command given to *Isaiab* extends to him ; how came it to pass that the Apostles did not think that the same Command extended to them ? Did not they live nearer the Time of *Isaiab* ? Were not they acquainted with the Writings of *Isaiab*, as well or better than the Doctor, and so might have known the Authority given to that Prophet better than the Doctor ? but yet forbore to do as the Doctor has done : And their having forbore so to do, cannot proceed from any other Reason, than that they thought those Words did not extend to the Apostles ; or that they thought it was not lawful or expedient for them to question the Title of those Princes, or the Justice or Means whereby they obtain'd it.

I'll only add to this Matter, That if the Doctor had been contented with the Liberty he took of preaching up the Duty of Passive Obedience in the most extensive Manner he had thought fit, and would have stopp'd there, your Lordships would not have had the trouble, in relation to him, that you now have ; but it is plain, that he preached up his absolute and unconditional Obedience, not to continue the Peace and Tranquility of this Nation, but to set the Subjects at Strife, and to raise a War in the Bowels of this Nation ; and it is for this that he is now prosecuted ; tho' he would fain have it believed, that the Prosecution was for preaching the peaceable Doctrine of absolute Obedience.

I can't but take Notice of the Scandal the Doctor charges upon the late King, as if when he landed here, he had disclaimed all Manner of Imputation of Resistance ; than which nothing is more untrue, even by his own Confession in his Answer, and the Words of the Declaration mentioned in the Print of the Sermon, tho' no Part of the Sermon ; where-by he pretends to explain himself, by saying, he

intended a Disclaimer of Resistance in order to a Conquest ; than which nothing could be more absurd : For never was a Conquest made, or ever will be made, by bare Resistance ; nor ever was there a weaker Thing charged upon a Prince, than to make him disclaim all Resistance, at a Time when he was actually making War : For his bringing an armed Force of that Number he did into this Kingdom, with a great Train of Artillery with him, was making War by the Law of Nations, and then and now by the Law of *Great Britain* : And he hath charged the Prince of *Orange* with an Act of the highest Treachery, in pretending Peace, when he actually made War.

The last Matter I shall take Notice of, are the Words in the nineteenth Page of the Doctor's Sermon ; viz. *That old Leaven of their Forefathers is still working in the present Generation ; that this traditional Poison still remains in this Brood of Vipers, to sting us to Death, is sufficiently visible, as to the dangerous Encroachment they now make upon our Government, and the treasonable Reflection they have published upon her Majesty, God bless her ! whose Hereditary Right to the Throne they have had the Impudence to deny and cancel, to make her a Creature of their own Power ; and that by the same Principles they placed a Crown upon her, they tell us, they (that is, the Mob) may re-assume it at their Pleasure.* Now I think it cannot be doubted who it is the Doctor means by the Word *Mob*, which is the People of *England* : For tho' the Word *Mob* is a Cant Word amongst a Sort of People call'd Gypsies, and with them signifies the Meanest, or the Scum or Dregs of the People, yet as the Doctor has used it in this Place, it can signify nothing else than the Body of the People of *England* ; of whom, I think, your Lordships do not think it beneath you to be thought a Part, and the chiefest Part : For he asserts, They say, that they placed a Crown upon her Majesty ; and from thence makes an Inference, that they may re-assume it at their Pleasure ; which can be intended nothing else than what was done in respect of her Majesty by the Bill of Rights ; wherein 'tis said, " That the " Lords Spiritual and Temporal, and Commons in " Parliament assembled, did declare her Majesty, " after the Death of the late King and late Queen, " without Heirs of her Body, was lawful and " rightful Queen of this Realm. Now, tho' her Majesty hath an Hereditary Right and Title to the Crown, and so she is not so much concerned in the Declaration by the said Act, as the last King and Queen, in what that Act conferred upon them, which was done only by the People of *England*, under the Denomination of Lords Spiritual and Temporal, and Commons in Parliament assembled : And if that did not confer a Title to the Crown on the late King and Queen, they, who were in their Lives Time thought to be lawful and rightful King and Queen of these Realms, by the Doctor's Reasoning, were no better than the Usurpers of another's Right. And tho' that Bill of Rights was afterwards confirmed by an Act in the second Year of their Reign, yet that will not at all mend the Matter ; for if they did not obtain a Right, by the Bill of Rights, to the Crown of these Realms, they were no more King and Queen of these Realms, than they were before the said Bill of Rights. But the Truth is, that when a Government is brought out of Frame, by the extraordinary Steps of a Prince, 'tis a vain Thing to hope that it ever can be set right by regular Steps ; this never was done, nor ever will be done : But those Methods which were necessary to set

set the Government in a right Frame again, have been always taken to be legal, tho' by the Nicety of Law it could not be well justified. Upon the Change of Government from *Richard* the Second to *Henry* the Fourth, the Parliament called in the Time of *Richard* the Second, and by his Authority, continued to sit in the Time of *Henry* the Fourth, and passed several Acts in the Time of *Henry* the Fourth; which was never practised before, nor warranted by any Laws that we know of; yet what was done, was allowed to be legal. To the same Purpose was that which was done in the Time of *Henry* the Seventh: For he and those of his Friends being attainted of High Treason, which, according to the Rules of Law at that Time, prevented the Descent of the Crown on him; and his Friends being mostly attainted, were incapable of Sitting in Parliament till those Attainders were reversed, which could not be done but by Act of Parliament, or the Court of *King's Bench*; and he did not care to have a Parliament, till his Friends were capable of sitting there; nor could he make Judges, till he was King; which Difficulty seemed to be insuperable: But the Judges made a Resolution according to the Exigence of the Thing, and declared that Sir *William Stanley's* placing the Crown upon the Earl of *Richmond's* Head, purged his Attainder, and he thereby became from thenceforwards King of *England*, and the King thereby enabled to constitute Judges, and the Judges to reverse the Attainder of all the King's Friends. 'Tis true, *Henry* the Seventh married the Heiress of the House of *York*, and was thereby (as we now think) King in Right of his Queen; but he never would own her Title to the Crown, nor ever suffered her to join with him in any Act of Government, nor ever declared by what Title he possess'd the Crown; but yet none of the Acts passed in his Time, nor any Thing then transacted, was afterwards question'd upon the Account of his Title to the Crown. 'Tis true, there was an Act passed in his Time, that indemnified such as should obey, or assist the King that was in Being, whether he had Right to the Crown or no: But if he had not been allowed to be King before the passing of that Act, the Acts of Parliament that passed in his Time would have been of no more Validity, than the Acts passed in the Time of *Cromwell*, or any other Usurper. Whereby 'tis plain, that the Doctor now, and the Persons who had the best Knowledge of Matters of this Kind in those Days, disagreed in Opinion. And I can't but take Notice, that the Doctor, notwithstanding his little Knowledge in the Matters he discourses of, makes the Declaration by Parliament of the Queen's Title to the Crown, to be the cancelling of her Title by Descent; and therefore he seems to advise her Majesty, to quit that Title she claims from her People, and to rely upon her Title by Inheritance. Whereas, if the Doctor had but known what our Laws allow, or if he had read any Thing of this Matter, he would have known that those Titles did by no Means disagree, but were consistent with one another; and that Princes that sometimes have claimed by several Titles, would not make their Choice of which they relied on. *Henry* the Eighth, who was Heir of the House of *York* and *Lancaster*, never declared on which Title he relied. *Queen Elizabeth*, after the Death of her Brother and Sister, claimed as Heir to *Henry* the Eighth, and was likewise Devisee of the Government of *England* by the Will of her Father, who was (by Act of Parliament) enabled to give it by his Will to whom he pleased: But notwithstanding that, she desired to

have an Act of Parliament, which she had, declaring her to be *Queen of England*, &c. Which Act of Parliament was to the same Purpose, as was the Bill of Rights in respect of her Majesty's Title to the Crown. I'll trouble your Lordships with no more, to prove the Prisoner guilty of the Crimes charged upon him by the first Article of the Impeachment; but I cannot but observe some aggravating Circumstances of the Prisoner's Crime. As first, That the Doctrine in the Impeachment was preach'd by a Divine of the Church of *England* as by Law establish'd: For a Divine of the Church of *England* is a Person of that Credit, that the People are ready to assent to what he says, without considering what the same is, or how made out. In the next place, 'Twas preach'd in the Cathedral Church of the Metropolis of this Kingdom: Had it been preach'd in some obscure Country Town, 'twould have hardly been taken Notice of. In the third place, 'Twas preach'd before the Lord Mayor and Court of Aldermen of the City of *London*, and so far approv'd of by them, or some of them, as to be commanded to be printed; for which Reason, what he preach'd hath done more Mischief than otherwise 'twould have done; there having been about forty thousand printed, to vilify the Revolution, on which depend the Security of the Protestant Religion both at Home and Abroad, and the Succession of the Crown in the Protestant Line, the Union of the two Kingdoms, the Queen's Bounty to the poor Clergy, and several other Benefits we enjoy by the Revolution, and amongst others, that her Majesty was and is so peaceably possess'd of the Crown. For if the Force before the Revolution, which suppress'd her Majesty's Hereditary Right to the Crown, had not been removed by the Revolution, as 'twas, that her Majesty's Title would never have been able to have exerted itself: And if ever the Doctor, or any of his Accomplices, should ever be able so to shock the Revolution, as to remove what is built upon it, I doubt that Force which the Revolution removed, will return again, and oppress the Queen's Title to the Crown, as it did before.

I can't pass by the Doctor's Answer to the Articles, without taking Notice of one Passage in the same, viz. *Hard is the Lot of the Ministers of the Gospel, if when they cite the Word of God in their general Exhortations to Piety and Virtue, the several Texts by them cited, should be said to be by them meant of particular Persons and Things.* Now I must submit to your Lordships Judgment the Unreasonableness of this Complaint; and whether the several Texts and Passages cited by him in his Sermon, can bear any other Construction than what has been made; and whether it be not the Duty of the Preacher to deliver himself so in the Pulpit, that his Meaning should not be doubtful to his Congregation. The Commons of *Great Britain* don't go about to make him assent or swear to what the Supreme Power hath determin'd, tho' the Doctor in his Sermon has thought fit to impose Matters of that Kind upon other Persons, so as to make them swear to them: No, the Commons of *Great Britain* would only have him restrain'd from publishing any Thing, and especially in the Pulpit, which reflects upon the Supreme Power; or what they have or shall determine, which even the nicest Conscience never yet boggled at. I can add more Aggravations of the Doctor's Crimes, but will forbear to do it, rather following the Example of the Commons of *Great Britain*; who have, indeed, demanded Judgment against this Person of your Lordships, but they have done it in Mercy; for they might

might have charg'd these Matters against the Doctor as High Treason, and so it has been done in Indictments against some Divines, in a Reign known to your Lordships, for Matters in their Sermons less Heinous than those for which he is impeach'd; yet the Commons have called the Matters of this Impeachment only High Crimes and Misdemeanors; and it is a Rule in our Law, that the Court in which a Prosecution is had, cannot call the Crimes greater than what the Prosecutor thought fit to charge them, and cannot adjudge a greater Punishment to the Crimes than usual; but in some Cases may lessen the Punishment for such Crimes; and whatsoever Censure your Lordships shall pass upon this Criminal, the Commons of *England* will acquiesce, and be well satisfied with the same.

Major-General Stanhope. MY Lords, The Gentlemen who spoke before me to this Article, have said so much to it, that they have left little to me, who am last in it. I shall therefore particularly apply myself to make out to your Lordships, that as the Prisoner at the Bar is guilty of the Matter charged in this first Article, so he has done it (as the Preamble of the Article sets forth) with a wicked and malicious Intention to undermine and subvert her Majesty's Government, and the Protestant Succession, as by Law establish'd; to defame her Majesty's Administration; to asperse the Memory of his late Majesty, and to traduce and condemn the late happy Revolution; as in the same Preamble to the Articles it is charged against him.

My Lords, if it be Truth, (as your Lordships have been told by most of the Gentlemen who went before me) that Non-resistance, asserted in general Terms, does destroy the Foundation of the Revolution, the present Establishment, and her Majesty's Title to the Crown, and the Settlement of the Protestant Succession; If that be true, it is as true, that the Doctor, who has advanced that Doctrine in general Terms, is guilty of that Charge of intending to subvert the Government: And then your Lordships ought to proceed against him, as an Enemy to the Government.

What has been said by the Gentlemen that spoke before me, concerning the Doctrine of Non-resistance, has been said with so much regard to Truth, to her Majesty and her Government, that I am persuaded, nothing that has been said on that Subject can justly be misconstrued. But on the contrary, to assert in general Terms the absolute Illegality of Resistance, on any Pretence whatsoever, (as this Doctor, and all the profess'd Enemies of the Government avowedly do) must be understood, by all impartial and thinking People, to overthrow her Majesty's Title and Government; since at the same Time that they screen themselves under the specious Notion of professing Absolute and Passive Obedience to the Supreme Powers, they cannot conceal their true Meaning; That the true and real Object of their darling Doctrines, such as *Jus Divinum, Non-resistance, the Undefeasible, Unalienable, Hereditary Right*, that (I say) the true Object of these Doctrines, is a Prince on the other Side the Water. They could not otherways be consistent with themselves. For in the same Breath, in the same Discourse, to preach Passive Unlimited Obedience to Magistrates, and to revile and defame the Magistrates; to preach Non-resistance on any Pretence whatsoever, and to encourage Sedition, by inveighing in the strongest Manner against the Administra-

tion; these are such Contradictions, as can no otherways be reconcil'd, no otherways than by concluding, what is very plain from their Conduct, that however they are pleased to colour and disguise their Discourses, their true End is only to disengage and alienate the Peoples Affections from their present Governors; to insinuate to them, that the Foundation of the Revolution was wrong; that the Revolution itself was an Usurpation; that whatever has been built upon that Foundation, can have no Weight; and to misrepresent those who had a Hand in it, as Rebels and Traitors.

As to the Doctrine itself of absolute Non-resistance, it should seem needless to prove by Arguments, that it is inconsistent with the Law of Reason, with the Law of Nature, and with the Practice of all Ages and Countries. Nor is it very material, what the Opinions of some particular Divines, or even the Doctrine generally preach'd in some particular Reigns, may have been concerning it. It is sufficient for us to know what the Practice of the Church of *England* has been, when it found itself oppressed. And indeed, one may appeal to the Practice of all Churches, of all States, and of all Nations in the World, how they behav'd themselves when they found their Civil and Religious Constitutions invaded and oppressed by Tyranny: I believe one may further venture to say, that there is not, at this Day, subsisting any Nation or Government in the World, whose first Original did not receive its Foundation either from Resistance or Compact: And as to our Purpose, it is equal, if the latter be admitted. For where-ever Compact is admitted, there must be admitted likewise a Right to defend the Rights accruing by such Compact. To argue the municipal Laws of a Country in this Case, is idle. Those Laws were only made for the common Course of Things; and can never be understood to have been designed to defeat the End of all Laws whatsoever; which would be the Consequence of a Nation's tamely submitting to a Violation of all their Divine and Human Rights.

That there is a Latitude left to the Subjects in such a Case, is allowed by the most strenuous Advocates of Passive Obedience: And I shall, on this Occasion, quote to your Lordships, the Sermon of a Reverend Divine, who, I am sure, is not thought to be a Favourer of Antimonarchical Principles, nor to deserve any of those pretty Epithets, which the Doctor so liberally bestows on those who differ from him in Opinion. 'Tis the *Latin* Sermon of Doctor *Atterbury*, preached to the Convocation. The Scope and Drift of that Discourse, my Lords, was to preach up absolute Obedience; yet such is the invincible Force of Truth, and such the Nature of this Argument, that the Doctor, not to betray his own Conscience, after having well thought upon it, is obliged to express himself in the following Words, which your Lordships will give me Leave to read to you out of his Sermon, which I have here in my Hand: *Quando autem, quibusq; de causis Magistratum imperia detestare, Nosmetipsos in libertatem vindicare liceat, ne verbulo quidem indicant: nisi cum aliquid ab hominibus forte imperatum fuerit, latis à Deo legibus contrarium. Id ubi acciderit, quid agendum sit, Petri vox illa declarat, Obedire oportet Deo magis quam Hominibus.*

The Sense of this Passage, my Lords, if I mistake not, is this: "But when, and upon what Causes it may be lawful to oppose the Power of the Prince, and assert our Liberties, the Scriptures do not say; unless in Cases when Men shall command

" command Things contrary to the Laws of God.
 " When that shall happen, St. Peter tells us what
 " we must do, *We must obey God before Men.*

To apply this, my Lords, to our present Argument; I appeal to the Memory of your Lordships, whether King James did not command Things contrary to the Laws of God; whether his Commands to the Reverend Fathers of our Church were consonant to the Law of God; whether his Commands to execute a dispensing Power; whether his Commands to all such of both Houses, as he could influence to vote for a dispensing Power, contrary to their own Consciences, were agreeable to the Law of God; or, in short, whether the whole Course of his Reign was not a Series of illegal Commands, calculated to destroy our Holy Religion, and to violate all our Religious and Civil Rights. Your Lordships thought so (my Lords); the Commons thought so; and the Nation thought so; and in Consequence of this Doctrine, preach'd by St. Peter, they chose to obey God before Men.

But to return to Dr. Atterbury's Sermon, he goes on thus, my Lords: *Petenda sunt ista (si quidem peti necesse sit) à Jurisconsultis, à Theſium Politicarum tractatoribus; è legibus, è Rerumpublicarum Formis, cuiq; Genti propriis, tanquam è fonte suo, sunt haurienda.*

In English thus:

" But in such Cases, you must advise with the
 " Lawyers, and those learned in Politicks; and
 " have Recourse to the Laws and Constitutions
 " peculiar to each Country, as to the Springs and
 " Fountains of this Knowledge.

My Lords, in Compliance to what is recommended by this Reverend Dean, I have endeavoured to follow his Advice, to consult with those learned in the Laws of Nations and Politicks. I have heard that Grotius is of as good Authority on those Subjects as any that have wrote about them; that he has ever been reckoned a Favourer of Monarchy, and held in great Repute amongst the Divines of our Church. I shall beg Leave, out of the many Passages to be found in his excellent Treatise *de Jure Belli & Pacis*, which support this Argument, to quote only one, for the saving of your Lordships Time. 'Tis in his first Book, the 4th Chapter, and 13th Section. *Si Rex partem habeat summi Imperii, partem alteram Populus, aut Senatus, Regi in partem non suam involanti vis justa opponi poterit, quia eatenus imperium non habet: quod locum habere cenſeo, etiamſi dictum ſit, Belli poteſtatem penes Regem fore; id enim de bello externo intelligendum eſt, cum alioquin quique Imperii summi partem habeat, non poſſit non jus habere eam partem tuendi.*

The Sense of this Passage I conceive to be this,
 " If the King had one Part of the Supreme Power,
 " and that the other Part is in the Senate, or People,
 " when such a King shall invade that Part that
 " doth not belong to him, it shall be lawful to
 " oppose a just Force to him, because his Power doth
 " not extend so far. Which Position I hold to be
 " true, even tho' the Power of making War should
 " be vested only in the King; which must be understood to relate only to foreign War: For as
 " for Home, it is impossible for any to have a Share
 " of the Supreme Power, and not to have likewise
 " a Right to defend that Share.

This Passage, my Lords, is exactly adapted to the Constitution of England; and the latter Part of it is perfectly agreeable to what I have always heard quoted as a Maxim of our Law, *That where-ever there is a Right, there is a Remedy.* That your Lordships have Rights, no Body will presume to

deny; that the Commons have Rights, no Body will deny; that every Subject of Britain has Rights, no Body will deny. Now to say that, when a Prince shall invade all these Rights at once; to say that the whole collective Body of the Nation has no way to vindicate those Rights, is so inconsistent, so contrary to Reason, that 'tis to be wonder'd it could ever enter into the Mind of Man.

If I did not fear to tire your Lordships, I might, from many Passages out of *Fortescue**, and Mr. *Hooker*†, evince beyond Contradiction, that the Constitution of England is founded upon Compact; and that the Subjects of this Kingdom have, in their several publick and private Capacities, as legal a Title to what are their Rights by Law, as a Prince to the Possession of his Crown.

Your Lordships, and most that hear me, are Witnesses, and must remember the Necessities of those Times which brought about the Revolution: That no other Remedy was left to preserve our Religion and Liberties; that Resistance was necessary, and consequently just. It was then by no good Man thought a black and odious Crime to take up Arms for the Defence of his Country. Many of your Lordships were Actors in that Resistance. The greatest Part of the Nation did either actually resist, or countenance, abet, and support those who set them the glorious Example. I hope we have all so much Gratitude to the best and greatest of Queens, as to retain for ever a grateful Memory, how great a Share her Majesty had in promoting that Revolution. When these Facts are so fresh in our Memories; What must we say to those who give the injurious Names and Epithets of *Republicans*, of *Enemies and Traytors to Church and State*, to those who were concerned in that Resistance which brought about the Revolution? Sure it might have become them to consider *who* were concern'd, and *who* had a Share in it. It is not only traducing the late King and Queen, our glorious Deliverers; it goes yet further: But I shall out of Respect forbear to mention what they not only think, but have frequently the Insolence to own.

My Lords, If it be true that this Doctrine of Non-resistance, asserted in so unlimited a Sense, as not to except the Revolution, does certainly sap the Foundation of the said Revolution, and the present Establishment which is built upon it; If it be true that to arraign as guilty of black and odious Crimes, all such as were concerned in the Resistance at the Revolution, doth involve the greatest Part of this Nation in the Guilt of Rebellion and Treason; If it necessarily follows, from the same Positions, that our Allegiance is not due to the present Government; I think we may as necessarily conclude, that this Sermon of the Doctor's before your Lordships, does tend, as is set forth in the Preamble of the Impeachment, to undermine and subvert her Majesty's Government, and the Protestant Succession, which stands on the same Foundation.

My Lords, If the Doctor had in this Sermon only preach'd up Obedience to the Supreme Power, as a Christian Duty, without meddling with Politicks, he might have been allow'd perhaps to plead for Excuse, that he was ignorant of the Consequences that might be deduced from such general Propositions; that his only Aim was Charity, Peace, and Submission to the Magistrates in Being. We must therefore pray your Lordships to compare one Part of his Sermon with the other; and your Lordships

* *Fortescue de laudibus legis Angliæ*, Cap. 10, 11, 12, 13.

† *Ec. Polity*, Pag. 86, 444, 446, 470.

will then, I am persuaded be of Opinion with us, not only that the Conclusion we have drawn from his Positions, does necessarily flow from them, but that the Doctor himself must have been conscious of it; and consequently that what he has done, must have been, as we set forth in our Charge, *with a wicked and malicious Intention.*

Had the Doctor, my Lords, in the remaining Part of his Sermon, preach'd up Peace, Quietness, and the like; and shewn how happy we are under her Majesty's Administration; and exhorted Obedience to it, he had never been called to answer a Charge at your Lordships Bar. But the Tenor of all his subsequent Discourse, is one continued Invektive against the Government. Passive Obedience is set down as an indispensable Duty: But 'tis evident, by the whole Sermon, that it is not due to Queen ANNE, or her Administration. Now what can that be, but to usher in a *Rightful Title*, (I think they call it) of one on the other Side the Water?

There is such an Affinity, my Lords, between this Sermon, and the Doctrines which are preach'd and propagated by a certain Set of Men, that I cannot but observe to your Lordships on this Occasion, how industrious they have been ever since the Revolution, to prepare a Way for another. They are the pure and undefiled Church of *England!* The only Men of loyal and steady Principles! They never took the Oaths to the Government; never bent their Knee to *Baal!* They have their own Archbishops, Bishops and Pastors, and constitute the only true and pure Church of *England!* We are all Schismatics, that is, all the rest of *England* are Schismatics, Hereticks and Rebels! Now pray, my Lords, What are the peculiar and distinguishing Characteristicks, the favourite and darling Tenets of these Men? What else but *Passive Obedience, Jus Divinum*, an *Hereditary, Indefeasible Right of Succession*, which no Necessity, no Act of Parliament, no Prescription of Time, no natural or legal Incapacity, can ever invalidate or set aside? If they are in the Right, my Lords, what are the Consequences? The Queen is not Queen; Your Lordships are not a House of Lords, for you are not duly summon'd by a legal Writ; We are no House of Commons, for the same Reason; all the Taxes which have been raised for this twenty Years have been arbitrary and illegal Extortions; all the Blood of so many brave Men, who have died (as they thought) in the Service of their Country, has been spilt in Defence of an Usurpation; and they were only so many Rebels and Traitors.

My Lords, If these Puritans (I think I may call them) these undefiled pure Church-Men, would confine themselves to their own Conventicles, to get Money from a few deluded Women; it may, perhaps, be consistent with the Indulgence of the mildest of Governments, to suffer them to enjoy the Benefit of that Toleration which is allow'd to Protestant Dissenters, how pernicious and destructive soever to the Publick may be their Principles. But when they shall come and vent their Treasons abroad; when they shall occasionally conform, and take the Oaths to the Government, in order the better to destroy it; when they shall abjure the pretended Prince of *Wales*, but not forget him; when they shall invade the Pulpits of the true Church of *England*; when the Pulpit of your Metropolis, instead of teaching the People to pay their Anniversary Tribute of Praise and Thanks to Almighty God for the many wonderful Successes with which he has bless'd those Arms which were taken up in Defence of the Revolution; when (I say)

that Pulpit shall be prostituted and polluted by venting Sedition against the best of Queens; it is high Time for your Lordships to animadvert upon it, for the Honour of those glorious Princes who are dead; for the Honour of her Majesty, who so happily rules over us; and for the Peace and Tranquility of all her Subjects.

My Lords, If I was not afraid of being thought too tedious to your Lordships, I would offer to you a few Words concerning that Administration which the Doctor has so maliciously defamed; for as fond as this Gentleman, and those like him, are of meddling with Politicks in the Pulpit; and, as himself expresses it, *of setting the People right in their Principles*; I do not find they ever teach what the Ends of Government truly are.

My Lords, *Tully*, who takes it from *Aristotle*, states the ultimate End of Government, and the Mark which Rulers ought to aim at, to be *Otium cum Dignitate*, or Peace with Reputation. Towards attaining *Oratio pro Publico Sextio*, this End, he enumerates the several Particulars which it requires the greatest Application and Vigilance of good Governors to promote and maintain. And the chief Branches, as he states them, are, Religion; the just and legal Powers and Rights of the Legislative, and of the Magistrates subordinate to that; a due Administration of Justice; the Publick Treasure and Credit; Military Virtue; and concludes with *Laus Publica*; which, indeed, is the Result of a good Administration of the several Branches mention'd. For Praise both at Home and Abroad will never fail to attend good Management.

Now, my Lords, if any Man will but reflect on every one of these Particulars, and instance when in any Age there has been in this Island, a more universal glorious Administration, I will allow what the Doctor says to be true.

To begin with Religion, my Lords, let any one look upon that Reverend Bench, and say when it was ever filled with greater Examples of Piety, Learning, and Christian Charity. That truly Christian Moderation, and extensive Zeal, and Charity to the Protestant Religion, will, in all human Probability, my Lords, (if ourselves, by little Animosities, do not obstruct it) will, I say, raise the Lustre and Reputation of our Church to such a Degree, that, as the Glory of our Arms justly intitles our Nation at present to hold the first Rank, so shall our Church be look'd upon as the Mother of all the Reformed Churches in *Europe*.

As to the just Rights and Powers of our Legislative, your Lordships, and all of us know, whether ever any Prince on our Throne has had a more tender Concern for them than her Majesty; or whether at any time there has been a more due and impartial Administration of Justice.

For the Treasure and Credit of the Nation, I appeal to all that hear me, whether ever such large Sums were more chearfully given, or more justly administred. Never were there greater Demands than during this necessary War, nor ever Demands more freely complied with by the People. Such is the Confidence they have in the publick Management, and so ineffectual this Doctor, and his Brethren's sounding a Trumpet to Sedition.

As for our Arms and Reputation; the many unparallel'd Successes, during her Majesty's Reign, by Sea and Land, speak sufficiently, and do sufficiently proclaim, that her Majesty has far exceeded all her Predecessors. Our *Henrys* and our *Edwards* have justly left behind them immortal Fame, for having
broke

broke and subdued in their Times, the Power of *France*. *Queen Elizabeth* will be ever Glorious for having humbled the Pride of *Spain*. Those two great Monarchies have each in their Turn aimed at the universal Monarchy of *Europe*; and each hath been near compassing it, notwithstanding that the one always opposed the other. But it was never imagined, that if they once became united, any Force in *Europe* could have disputed with them. Yet, my Lords, we have lived to see those two formidable Powers united, and threatening Destruction to all the Liberties of *Europe*. It was a Task reserved for her Majesty to encounter this united Force. She has attack'd and reduced them to sue for Peace; and we are perhaps just now at that very decisive Period of Time, when we are to reap the Fruits of a long and expensive War, by the Conclusion of a solid and lasting Peace.

Now, my Lords, at such a critical Juncture, at a Time when it behoves us more than ever to preserve that Union amongst ourselves, upon which the Union of the whole Alliance does so much depend; upon which the happy Conclusion of this War, and consequently the Safety and Honour of our Church and State does depend; What does this Pious Son of the Church? What does this Loyal Subject, this Passive Obedience Gentleman do? He is preaching to the City of *London*, from whence we are to receive the greatest Part of the Supplies granted for carrying on the War: Does he say one Word to them to promote and carry on the Publick Good? No, my Lords: He does, to the utmost of his Ability, endeavour to create in them groundless Mistrusts and Jealousies of the Administration. And I will appeal to the Conscience of every one that hears me, and desire, that laying their Hand upon their Heart, they will truly determine within themselves, whether, if those Citizens who heard this Sermon had been byassed by it, we could have expected one Penny of Money from them, to support a Government, which was represented so odious. But those honest Citizens, my Lords, heard this Trumpeter of Sedition with Indignation. Their Affection to the Government is not to be shaken. Her Majesty is Absolute in the Hearts of her Subjects; which is the best way of being absolute: And all the artificial Suggestions of these *False Brethren* (to use his own Language) will never lessen their Affections to her.

But, my Lords, how impotent and weak soever the Malice of these Men may prove; yet when such Doctrines are broached, and publicly preached, as tend to inflame a free Nation, to foment Divisions and Parties, to seduce us from our Allegiance to the best of Princes; it becomes the House of Commons, who are Guardians of the Constitution and Liberties of the People, to bring such Delinquents to Justice; and it will become your Lordships, who are Guardians of the Constitution of the People, to prevent the growing of such an Evil. This Man, my Lords, is an inconsiderable Tool of a Party; no ways worth the Trouble we have given your Lordships: But we look upon it that your Lordships Judgment in this Case, will be giving a Sanction which shall determine what Doctrines of this kind shall, or shall not be preached. We are persuaded therefore that your Lordships, in giving Judgment on this Case, will have a Regard to the Honour of the late King and Queen, so highly aspersed; to the Security of her Majesty and her Government; to the Protestant Succession; to the Preservation of the Peace at home, and Reputation abroad; where, if it shall be heard that you have Men amongst you,

insolent enough to vent such Notions, they may likewise hear that it has not been done with Impunity. For all these Reasons, we do hope that your Lordships will inflict such condign Punishment on this Offender, as may deter others from the like Insolence for the future.

Sir Peter King. MY Lords, The Gentlemen who have gone before me having finish'd the first Article of the Impeachment, by Command of the House of Commons, I proceed to make out the second, which relates to the Toleration, one of the principal Consequences of the Revolution. It is well known that great Severities had been formerly used against Protestant Dissenters, which were fomented by Popish Practices, in order to divide us, and thereby weaken the common Protestant Interest, and particularly that of the Church of *England*: This the whole Church of *England* plainly saw in the Reign of the late King *James*, when Popery was coming in like a Flood, and threatened an universal Ruin; and when they did universally profess their Readiness and Intention to shew all manner of Tendernefs to other Protestants, when it should be in their Power to do it.

The Seven Bishops, who, to their everlasting Honour, made so noble a Stand for the Liberties of the Church and Kingdom, did, in their Petition to King *James*, declare, That their not reading the Declaration for Liberty of Conscience, was not from any want of due Tendernefs to the Dissenters, in relation to whom they were willing to come to such a Temper as should be thought fit, when that Matter should be considered and settled in Parliament and Convocation.

And to the Glory of the Church of *England*, it must be remembred, that when the Revolution was afterwards effected, they were as good as their Word, and an Act pass'd, in the very first Year of their late Majesties King *William* and Queen *Mary*, intitled, *An Act for Exempting their Majesties Protestant Subjects, dissenting from the Church of England, from the Penalties of certain Laws*. This is that Act that is commonly call'd *The Act of Toleration*, and was confirm'd by another Act made in the succeeding Parliament. As this Act is agreeable in itself to the Profession of the Christian Religion, and particularly to the Doctrine of the Church of *England*; so it hath been found, by Experience so much for the Honour of the Kingdom, and for the Credit of the Church, that her Majesty has been pleas'd to declare from the Throne her Intention inviolably to maintain it; and both Houses of Parliament have done the same in the most solemn Manner.

Here the Duke of Buckingham moved the Lords to adjourn to their own House; which they did: And the Lords being returned to the Court, and Proclamation commanding Silence made:

Lord Chancellor. Gentlemen, you that are the Managers for the House of Commons may proceed in the Method you were in.

Sir Peter King. My Lords, The Act of Parliament that I was mentioning to your Lordships, is the Act relating to the Toleration, refer'd to in the Preamble to the Articles; your Lordships, and every one else, remember the Necessity there was for that Act; and having experienced the Benefit of it, her Majesty and both Houses of Parliament have concurred in a Declaration, that that Act shall be in-

violably

violably observed: This being then not only a positive Law, but also a beneficial One, as well for the Benefit of the Church in particular, as the Welfare and Support of the Protestant Interest in general, it very ill became any private Person to endeavour to bring that Law, by any publick Discourse, into Contempt or Disrepute.

The Article the Doctor is charged with, in relation hereto, is, "That he suggests and maintains, "That that Toleration granted by Law is unreasonable, and the Allowance of it unwarrantable; "and asserts, that he is a false Brother, with relation to God, Religion and the Church, who defends Toleration and Liberty of Conscience; that "Queen Elizabeth was deluded by Archbishop Grindall, whom he scurrilously calls a false Son of the Church, and a perfidious Prelate, to the "Toleration of the *Genevian* Discipline; and that "it is the Duty of the superior Pastors to thunder "out their Ecclesiastical Anathemas against Persons intitled to the Benefit of the said Toleration, "and insolently dares and defies any Power on Earth "to reverse such Sentences.

My Lords, The first Part of this Article, which is the principal Part, contains a general Charge against the Doctor, for affirming and maintaining, "That the Toleration granted by Law is unreasonable, and the Allowance of it unwarrantable. The rest of the Article consists of particular Passages, taken out of his Sermon, tending to make good and prove that general Charge.

As to the general Charge contain'd in the first Part of this Article, of his maintaining the Toleration granted by Law to be unreasonable, and the Allowance of it unwarrantable: His Answer is very observable, and is, That upon the most diligent Enquiry, he has not been able to inform himself that a Toleration hath been granted by Law; but admits, that an Act did pass in the first Year of King William and Queen Mary, intitled, *An Act for exempting their Majesties Protestant Subjects, dissenting from the Church of England, from the Penalties of certain Laws.* Which Exemption, he saith, he doth not any where maintain to be unreasonable, or the Allowance of it unwarrantable; but hopes that he had prevented any such Misapprehension, by declaring in his Sermon preach'd at St. Paul's, that he intended not to cast the least invidious Reflection upon that Indulgence which the Government had given.

Indeed, it is almost difficult to be serious in giving a Reply to that Part of his Answer, That he cannot inform himself that a Toleration hath been granted by Law. 'Tis true, the Word Toleration is not mention'd in that Act, neither is the Word Indulgence to be found in that Law; but every Body knows that the Exemption granted by that Act is commonly called *The Toleration*, and the Act itself, *The Toleration Act*: What is the Intent of that Act, but to tolerate and allow Persons, qualified by that Act, to exercise their Religion, notwithstanding Penal Laws to the contrary. Toleration is really a Word of less Import than Indulgence, it is a bare Permission, and Allowance; and this Word has gain'd such a known and fix'd Notion and Signification in every one's Mind, that whenever it is mention'd, there is not any Doubt what is meant by it: It is now become a Word of Art, that not only in common Conversation, but even in the most publick Acts of State, the Exemption granted by the Act made in the 1st of King William and Queen Mary, is call'd *The Toleration*. Did not her Majesty, in her Speech to both Houses of Parliament from

the Throne, in the Year 1705, declare that she would always inviolably maintain *The Toleration*? Did not both Houses of Parliament, in their several Addresses to her Majesty for that most gracious Speech, express their deep Satisfaction of her Majesty's Resolution to maintain *The Toleration*? In the free Conferences between the Lords and Commons about the Bill for preventing Occasional Conformity, in the Year 1702. Is not this Act of the 1st of William and Mary, called *The Act of Toleration*, and the Exemption granted by that Act called *The Toleration*? So that it seems strange the Doctor should not know that a Toleration had been granted by Law; and it is more strange yet, when he himself, in this very Sermon, call'd the Indulgence granted by that Act, *The Toleration*.

In the 14th Page of his Sermon, where he is complaining of false Brethren in the Kingdom, who are permitted and suffered to combine into Bodies and Seminaries, wherein Atheism, Deism, Trithemism and Socinianism, and a great many other wicked Principles are taught; he concludes thus, "Certainly, (says he) *The Toleration* was never intended to indulge and cherish such Monsters and "Vipers in our Bosom". What was it possible for the Doctor to mean in that Place, by *The Toleration*, but the Indulgence, as he calls it, granted to the Dissenters by the Act of 1 Gul. and Mar.

In the 19th Page of the Sermon, speaking of the Dissenters, he says, "Now they have advanced "themselves, from the religious Liberty our gracious Sovereign has indulged them, to claim a civil Right, as they term it, and to juggle the "Church out of her Establishment, by hoisting "their *Toleration* into its Place." What could he possibly mean here by these Words, but that Toleration, or that Indulgence, which was granted in the Time of the King and Queen to the Dissenters? So that it is plain, that when he made, and preached, and published this Sermon, he knew very well, that that Indulgence that was granted by the Law, made in the first Year of King William and Queen Mary, was commonly called *The Toleration*; and this Toleration, granted by that Law, is that which the Commons in their Impeachment say he maintains to be unreasonable, and the Allowance of it unwarrantable; and this is what I am now to make out and prove.

But I must do the Doctor Justice to own, that Page 20. of his Sermon preach'd at St. Paul's, he doth use these Words, referr'd to by him in his Answer, viz. "I would not here be misunderstood, "as if I intended to cast the least invidious Reflection upon that Indulgence the Government "has condescended to give them; which I am sure "all those that wish well to our Church, are very "ready to grant to Consciences truly scrupulous; "let them enjoy it in the full Limits the Law has "prescribed.

The Doctor, by putting in that Caution, seems himself to be apprehensive, his Words were otherwise in danger to be esteem'd a Reflection upon that Indulgence or Toleration that the Government had given. Having just before commended the Severities that were used in the Reign of Queen Elizabeth against the Dissenters; which could not be spoken in Commendation of the Toleration; but would reasonably be understood to be a Condemnation of it, because it removed and took away those Severities; he then subjoins the foremention'd Passage; which dry Caution will not excuse the Doctor, if in the other Parts of his Sermon he doth visibly and plainly condemn the Toleration, and censure it as unrea-

unrea-

unreasonable, and the Allowance of it unwarrantable; which that he doth, I shall endeavour to prove from other direct and formal Passages in his said Sermon.

The first Passage that I shall cite to this Purpose is in the 10th Page of the Sermon, and is in these Words; "So that, in all those Cases before-mentioned, whosoever presumes to innovate, alter, or misrepresent any Point in the Articles of the Faith of our Church, ought to be arraign'd as a Traytor to our State; Heterodoxy in the Doctrines of the one, naturally producing, and almost necessarily inferring Rebellion and High Treason in the other, and consequently a Crime that concerns the Civil Magistrate, as much to punish, and restrain, as the Ecclesiastical." The beginning of this Passage is tied up to the Cases beforementioned, *so that in all those Cases beforementioned*, which being a Term of Relation, must be expounded in Reference to what went before.

This Passage is contained in his second Head of false Brethren, of those who are false Brethren with Relation to the State, Government, or Society of which they are Members. And on Perusal thereof, I do not find any one Article of the Faith of our Church beforementioned under that Head, to which these relative Terms do refer; for all that he saith before under that Head is, "That the Constitutions of most Governments differing according to their several Frames, and Laws, upon which they are built and founded, it is impossible to lay down any one universal Rule, as the Scheme and Measure of Obedience, that may square to every one of them: Only this Maxim in general, he presumes, may be establish'd for the Safety, Tranquility, and Support of all Governments, That no Innovation whatsoever should be allowed in the Fundamental Constitution of any State, without a very pressing, nay, unavoidable Necessity for it; and whosoever singly or in a private Capacity should attempt it, is Guilty of the highest Misdemeanour, and is an Enemy to that Politick Body of which he is a Member.

Then the Doctor applies this Maxim to our Government: "Our Constitution, saith he, both in Church and State, has been so admirably contrived, with that Wisdom, Weight, and Sagacity, and the Temper and Genius of each, so exactly suited, and model'd to the mutual Support and Assistance of one another, that 'tis hard to say, whether the Doctrines of the Church of England contribute more to Authorize and Enforce our Civil Laws, or our Laws to Maintain and Defend the Doctrines of our Church. The Natures of both are so nicely correspondent, and so happily intermixt, that 'tis almost impossible to offer a Violation to the one, without breaking in upon the Body of the other: So that in all those Cases beforementioned, whoever presumes to alter, innovate or misrepresent any Point in the Articles of the Faith of our Church, ought to be Arraign'd as a Traytor to our State, &c.

I read your Lordships this whole Paragraph, to shew, that the Cases said to be beforemention'd, are not contained in this Head of the Sermon, but they are plainly contained in a former Paragraph, viz. in his first Head of false Brethren, with relation to God, Religion, and the Church in which they hold Communion; under which Head the Doctor enters into a long Description of such Kind of false Brethren, and enumerates several Articles and Rites of the Church, the Disbelievers or Deni-

ers whereof are termed false Brethren; and amongst other of his Characters, in p. 8. he brands him for being false to the Interest of the Church, that gives up any Point of her Discipline and Worship; these are the exterior Fences to guard the Internals of Religion, without which they are left naked, without Beauty, Order, or Defence. Should any man out of Ignorance, or Prejudice to the ancient Rights and essential Constitution of the Catholick Church, affirm, "That the Divine Apostolical Institution of Episcopacy is a novel Doctrine, not sufficiently warranted by Scripture, and that 'tis indifferent whether the Church be Governed by Bishops or Presbyters: Is not such an one an Apostate from his own Orders? So that one of the beforementioned Cases of false Brotherhood is, the affirming that the Divine Apostolical Institution of Episcopacy is a novel Doctrine, not sufficiently warranted by Scripture, and that it is indifferent whether the Church be governed by Bishops or Presbyters. This is affirmed and held by all the Dissenters; and tho' they should be mistaken in their Opinion, yet still it is their Opinion; and they are notwithstanding tolerated, and are exempted by the Toleration Act from subscribing the 36th Article, that the Book of Consecration of Archbishops and Bishops, and of the Ordination of Priests and Deacons, set forth in the Times of K. Edward the Sixth, contain in it all Things necessary to their Consecration and Ordination, and hath nothing in it either superstitious or impious: Now notwithstanding this Innovation or Alteration of this Article of the Church by the Dissenters, the Law doth nevertheless tolerate and indulge them.

But the Doctor is of another Opinion, and he affirms, that whoever innovates, alters, or misrepresents this Point in the Articles of the Faith of our Church, ought to be arraign'd as a Traitor to the State, and ought to be punished, as well by the Temporal, as the Ecclesiastical Magistrate. For he goes on, and carries it yet a great deal further, by the Reason he gives for his Assertion, which is, "Heterodoxy in the Doctrines of the one, naturally producing, and almost necessarily inferring, Rebellion and High Treason in the other; and consequently a Crime that concerns the Civil Magistrate, as much to punish and restrain, as the Ecclesiastical. Here's an Assertion to the Purpose; that Heterodoxy, that is, the holding a different Opinion from any Article of the Faith of our Church, naturally produces, and almost necessarily infers Rebellion and High Treason in the State, and consequently a Crime that concerns the Civil Magistrate to punish, as well as the Ecclesiastical. He himself, in the immediate subsequent Words, doth own, That this Assertion at first View may look like an highflown Paradox; and I believe it will still appear to be so upon a Review, That whosoever is of a different, or other Opinion, in any of the Articles of the Faith of the Church, is guilty of High Treason; and the Temporal, as well as the Spiritual Magistrate, ought to punish him as a Traitor for it. The Articles of the Church are in Number thirty-nine; some of the Dissenters are by the Act of Toleration exempted from subscribing three and a Half of them, viz. the 34th Article, which relates to the Traditions and Ceremonies of the Church, and the Power of the Church to ordain, change, and abolish Ceremonies and Rites: The 35th Article, concerning the Book of Homilies, and reading of them in Churches: The 36th Article, concerning the Consecration of Archbishops and Bishops, and the Ordination of Priests

Priests and Deacons; and the former Part of the 20th Article, which asserts the Power of the Church to decree Rites and Ceremonies, and Authority in Controversies of Faith. Other Dissenters, who scruple the baptizing of Infants, are also exempted from subscribing that Part of the 27th Article which relates to Infant Baptism; and the Quakers are exempted from subscribing any of the Articles, and are only required to subscribe a short Declaration of the Trinity, and that the Scriptures are given by Divine Inspiration. All these several Sorts of Dissenters, notwithstanding their Heterodoxy in these Points, are exempted by the Toleration Act from the Penalties of the former Laws, and are by this Act preserved in the free Exercise of their Religion or Worship; and not only the Penalties inflicted on them by former Laws are taken away, but several Immunities and Privileges are given them, as an Exemption of their Teachers from Parish Offices, and a Penalty for disturbing their Congregations. Now when this is establish'd by a Law, and that Act of Toleration is in full Force, for the Doctor to affirm, notwithstanding all this, that Heterodoxy, or a different Opinion from any of the Articles of Faith of our Church, almost necessarily infers Rebellion and High Treason in the State, and is a Crime that Concerns the Civil Magistrate to punish, as well as the Ecclesiastical; What can be a more direct breaking in upon, and disavowing of the Toleration than this? Is not this to maintain the Toleration granted by Law to be unreasonable, and the Allowance of it unwarrantable?

Another Passage that I shall cite to prove the general Charge against the Doctor, is in the 16th and 17th Pages of the Sermon: *What could not be gained by Comprehension and Toleration, must be brought about by Moderation and Occasional Conformity; that is, what they could not do by open Violence, they will not fail by secret Treachery to accomplish. If the Church can't be pulled down, it may be blown up; and no Matter with these Men how 'tis destroyed, so that it is destroyed.* In this Place the Doctor is speaking of the great Mischiefs and Perils of his False Brethren to the Church. And to prevent any mistaken Notions of the Church, he intimates, that we are to understand the true genuine Notion of it, as it stands contradistinguish'd in its establish'd Doctrine, Discipline and Worship from all other Churches and Scismaticks, who would obtrude upon us a wild negative Idea of a National Church, so as to incorporate themselves into the Body as true Members of it; whereas that Latitudinarian Heterogeneous Mixture would render it the most absurd, contradictory, and self-inconsistent Body in the World: And from thence he proceeds to shew that this Design of a Comprehension miscarried, and that that long projected Scheme of the Ecclesiastical *Achitophel's* was blasted; "But says he, since this Model of universal Liberty and Coalition failed, and these false Brethren could not carry the Conventicle into the Church, they are now resolved to bring the Church into the Conventicle, which will plausibly and sily effect her Ruin". And how is that to be done? Why, "What could not be gain'd by Comprehension and Toleration, must be brought about by Moderation and Occasional Conformity; that is, what they could not do by open Violence, they will not fail by secret Treachery to accomplish; if the Church can't be pull'd down by Comprehension and Toleration, it may be blown up by Occasional Conformity and Moderation; and

"no Matter with these Men how 'tis destroy'd, so that 'tis destroy'd". Is not this calling the Toleration an open Violence to the Church? That it was an Attempt made to destroy the Church, tho' the Church itself came into, and settled this Toleration? I say, the Legislature in the Time of their late Majesties King *William* and Queen *Mary*, and particularly the Bishops, the Fathers of the Church, were very well satisfied that this Toleration granted to the Dissenters, was no way prejudicial to the Safety and Security of the Church. Now for the Doctor to come and say, the Toleration was intended to pull down the Church, and that it is an open Violence to the Church; is not this to maintain, that the Toleration is unreasonable, and the Allowance of it unwarrantable?

My Lords, These Passages which I have cited to your Lordships, do prove the general Charge of this Article: There are other Passages in the Sermon, particularly referr'd to in the Article, which likewise prove this general Charge, to which I shall next proceed. And,

The next Part of the Charge in the second Article is, That he asserts, that he is a False Brother with relation to God, Religion or the Church, who defends Toleration and Liberty of Conscience.

These Words are contained in so many express Terms in the eighth Page of his Sermon, where after he hath copiously described his false Brethren, he comes and sums up the Whole in these Words: *If upon all Occasions to comply with the Dissenters both in publick and private Affairs, as Persons of tender Conscience and Piety, to promote their Interests in Elections, to sneak to 'em for Places and Preferment, to defend Toleration, and Liberty of Conscience, and under the Pretence of Moderation to excuse their Separation, and lay the Fault upon the True Sons of the Church for carrying Matters too high; If to court the Fanaticks in private, and to bear them with Patience, if not Approbation, Rail at and blaspheme the Church, and upon Occasion to justify the King's Murder; If to flatter both the Dead and the Living in their Vices, and to tell the World, that if they have Wit and Money enough, they need no Repentance, and that only Fools and Beggars can be Damn'd; If these, I say, are the Modish and Fashionable Criterions of a true Church-man, God deliver us from all such False Brethren!*

So that one Mark of these False Brethren, in this Part of his Sermon, is to defend Toleration and Liberty of Conscience. As to this, the Doctor gives two Answers, one by way of Inference or Presumption, and the other direct; that by way of Inference is, "That he having so plainly declared himself in Favour of the Exemption granted by Law; when he blames those who upon all Occasions defend Toleration and Liberty of Conscience, he cannot be thought to reflect on the Defenders of that legal Exemption or Indulgence, which he himself approves and defends.

Now if he had not in other Parts of his Sermon condemn'd the Toleration expressly, it might have pass'd for an Answer. But now, if the Doctor has more than once in other Parts of his Sermon directly inveigh'd against this Toleration, then his Meaning is more naturally to be understood by so many several Passages, than by one single Sentence, and with what View thrown in, the reading of the Sermon will plainly shew. And therefore the true Way to come at the true Meaning of his Words, is to take them as they stand in his Sermon, and that is what your Lordships will judge

judge by. In the next Place he gives a direct Answer to this Part of the Charge, which is, that he does not mean by this Description of a False Brother, those who only defend Toleration and Liberty of Conscience, and do no more; but he only blames those who upon all Occasions defend Toleration and Liberty of Conscience, and to excuse their Separation, lay the Fault upon the true Sons of the Church for carrying Matters so high; so that I don't reckon him, says he, as a False Brother who barely defends Toleration and Liberty of Conscience; except that at the same Time that he is defending Toleration, he lays the Fault of the Separation upon the true Sons of the Church for carrying Matters too high. Now I submit to your Lordships, upon reading of this Passage, whether it is capable of such an Interpretation. If it be look'd into, it will be found that the several particular Characters there mention'd, are all of them so many particular Marks of a False Brother; it is not necessary that two, or three, or all of them meet together in one Person to make up the Character of a False Brother; but if any one of them be found in any Person, 'tis sufficient to characterize him a False Brother: Whoever is guilty of any one of these Acts, of which defending Toleration is one, is a False Brother; and his asserting the defending of Toleration to be a Mark of a False Brother, is an evident Declaration against the Justice and Expediency of the Toleration.

The next particular Charge upon him in this Article is for asserting, "That Queen Elizabeth was deluded by Archbishop Grindall, whom he scurrilously calls a false Son of the Church, and a perfidious Prelate, to the Toleration of the Genevian Discipline". This Charge upon him is founded on those Words of his Sermon, in the 19th Page; these are his Words: *Have they not, ever since their first unhappy Plantation in this Kingdom, by the Intercession of that False Son of the Church, Bishop Grindall, always improv'd, and rise upon their Demands in the Permission of the Government? Insomuch that Queen Elizabeth, that was deluded by that perfidious Prelate to the Toleration of the Genevian Discipline, found it such an Headstrong and encroaching Monster, that in eight Years she foresaw it would endanger the Monarchy, as well as the Hierarchy; and like a Queen of true Resolution, and pious Zeal for both, pronounc'd, That such were the restless Spirits of that factious People, that no Quiet was to be expected from them, 'till they were utterly suppress'd: Which, like a prudent Princess, she did by wholesome Severities, that the Crown for many Years sat easy and flourishing on her Head.*

As to that Part of the Charge where he says, That Queen Elizabeth was deluded to the Toleration of the Genevian Discipline by Archbishop Grindall, the Doctor's Answer is, "That he humbly conceives he hath good Authority from the Histories and Monuments of those Times for such Assertion; but whether he hath, or hath not, humbly apprehends such Assertion to be no Proof of his maintaining or suggesting, That the exempting of Protestant Subjects dissenting from the Church of England, from the Penalties of certain Laws, granted by an Act made in the first Year of the Reign of King William and Queen Mary, (which Exemption he supposes to be intended by the legal Indulgence, or Toleration granted to Dissenters, mention'd in the Preamble of the Articles, and by the Toleration

" granted by Law mention'd in this second) is unreasonable, or the Allowance of it unwarrantable.

My Lords, It might not perhaps be difficult to shew that there are some Mistakes in this Fact; but whether there be or no, will not now be worth spending your Lordships Time; for I do agree with him, That the material Point is what he puts it upon, Whether this Assertion, as printed and delivered by him in his Sermon, be a Censure or Condemnation of the Toleration Act. Now whether it be so or no, will appear by taking the whole Clause together. This Passage is in the 19th and 20th Pages, and is in that Part of his Sermon where he is shewing the great Perils and Mischief of his False Brethren to the State, and that they are destructive to our Civil Rights and Liberties; and in the Pursuit of his Argument he plainly shews that the False Brethren there meant are the Dissenters, who are tolerated by this Act of Parliament. "These False Brethren, says he, have now advanced themselves from the Religious Liberty our Gracious Sovereign has indulged them, to claim a Civil Right, and to juggle the Church out of her Establishment, by hoisting their Toleration into its Place". So that 'tis plain, these False Brethren here spoken of are the Dissenters, those who have the Benefit of the Toleration Act. And then he goes on; "And to convince us what alone will satisfy them, insolently demand the Repeal of the Corporation and Test Acts, as an Ecclesiastical Usurpation, which indeed under her Majesty (whom God long preserve for its Support and Comfort) is the only Security the Church has to depend upon; and which they have so far eluded by their abominable Hypocrisy, as to have undermin'd her Foundations, and endanger'd the Government, by filling it with its profess'd Enemies. These Charges are so flagrant and undeniable, that a man must be very weak, or something worse, that thinks or pretends the Dissenters are to be gain'd or won over by any other Grants and Indulgences, than by giving up our whole Constitution: And he that recedes the least Tittle from it, to satisfy or ingratiate with these clamorous, insatiable and Church-devouring Malignants, knows not what Spirit they are of, or he ought to shew who is a true Member of our Church.

These Passages I have read to your Lordships, to shew that these False Brethren here spoken of are the Dissenters, who are now tolerated by the Law granted to them in the Time of their late Majesties King William and Queen Mary; and of these Dissenters follows this Passage; "Have they not, ever since their first unhappy Plantation in this Kingdom, by the Intercession of that False Son of the Church, Bishop Grindall, always improv'd, and rise upon their Demands in the Permission of the Government? Insomuch, that Queen Elizabeth, that was deluded by that perfidious Prelate to the Toleration of the Genevian Discipline", *id est*, The Discipline and Polity of the Dissenters, so called because taken from Geneva, "found it such a headstrong and encroaching Monster, that in eight Years she foresaw it would endanger the Monarchy, as well as the Hierarchy; and, like a Queen of true Resolution and pious Zeal for both, pronounc'd, That such were the restless Spirits of that factious People, that no Quiet was to be expected from them, 'till they were utterly suppress'd; which, like

“ like a prudent Princess, she did by wholesome Severities, that the Crown for many Years sat easy and flourishing on her Head.

In this memorable Passage he represents Archbishop *Grindall* as a False Son of the Church, and a perfidious Prelate, for deluding the Queen into a Toleration of the *Genevian* Discipline. Whether that Fact be true, or not, is not material to our Purpose; but this is, that he charges it for a Fault on the Archbishop, and for which he calls him a False Son of the Church, and a perfidious Prelate, for inducing the Queen to give a Toleration to the Dissenters in those Days: The Fault is not, that it was a regal Toleration only, but the Fault was in the Toleration itself, in consenting to a Liberty to the Dissenters. Now what is this in Effect, but to preach to the whole World, That the Parliament are in the Wrong to grant a Toleration to the Dissenters; That the Lords and Commons, who consented to the Toleration, are not true Sons of the Church; And that the Bishops, who are for tolerating the Dissenters, are neither Fathers nor Sons of the Church, but corrupt and perfidious Prelates!

That this Character of Archbishop *Grindall* was design'd for a Censure of the present Toleration, will appear more fully by the contrary Character he gives of Queen *Elizabeth*; he commends her Resolution and pious Zeal for “ the Monarchy and Hierarchy, in declaring that no Quiet was to be expected from the restless Spirits of that factious People, ’till they were utterly suppress’d; which, like a prudent Princess, she did by wholesome Severities, that the Crown for many Years sat easy and flourishing on her Head”. Now what can the *English* of all this be, but to inflame the Government against the Dissenters? What could be said more prevalent for this Purpose, than to recommend it as a noble Resolution and pious Zeal in Queen *Elizabeth*, utterly to suppress the Dissenters? And if that Resolution be to be followed, the Legislature must repeal the Toleration Act. And what could be said more contrary to the Toleration Act, than to recommend the Severities used in Queen *Elizabeth*’s Reign, because they were wholesome in themselves, and of happy Consequence to the Person and Government of that Renowned Queen. If there were not a Necessity for it on this Occasion, I would not mention what those wholesome Severities were, but rather cast a Veil over that Part of the Reign of that great and glorious Queen.

To give a short View of these wholesome Severities; some Hereticks were burnt, other Persons were hang’d, some had their Goods confiscated, others had their Persons imprison’d; and to mention more particularly a publick Act in Writing that cannot be falsified or misrepresented, and which is since relaxed by the Toleration Act, an Act passed in the 35th Year of Queen *Elizabeth*, Intituled, *An Act to retain the Queen’s Majesty’s Subjects in their due Obedience*; by which the Dissenters are, among other Penalties, to abjure the Realm in forty Days, or suffer Death without Benefit of the Clergy.

This Penalty of Abjuration of the Realm was taken from the antient Common Law of *England* in relation to Felony, by which if a Man committed any Felony, excepting Sacrilege, and fled to a Parish Church, he might within forty Days before the Coroner confess the Felony, and take an Oath to abjure the Kingdom for ever; and if he thus confess’d and took that Oath, he was thereby attainted of the Felony, and then he had forty Days from the

coming of the Coroner to provide and prepare for his Voyage; and the Coroner assigned him such a Port as he chose for his Departure out of the Kingdom; and if he did not go straitway out of the Kingdom, or being gone out, did return without License, he had Judgment to be hang’d, except he was a Clerk, and then he had his Clergy.

This Practice was what the Law call’d Abjuration; and being by several Regulations (in the Time of *Henry* the Eighth) in Effect taken away, the Revival of this Practice was thought to be a wholesome Severity, fit to be inflicted on the Protestant Dissenters of those Times: And therefore the 35th of Queen *Elizabeth* doth enact, ‘ That if any Person, obstinately refusing to repair to some Church or Chapel, or usual Place of Common-Prayers, and forbearing by the Space of a Month to hear Divine Service, should after forty Days after the End of that Session of Parliament, willingly join or be present at any Conventicle or Meeting, under Pretence of Religion, contrary to the Laws and Statutes of the Realm; that then such Person should be committed to Prison, till he should conform and come to Church: And if within three Months after Conviction he should not conform and come to Church, and make his publick Confession and Submission, being thereunto required according to the Form of the said Act; that then such Offender should abjure the Realm; and if, being thereunto required, should refuse to make such Abjuration, or after such Abjuration made, should not within the Time appointed him depart the Realm, or after such Departure should return without the Queen’s License; then in every such Case, every Person so offending, should be a Felon without Benefit of Clergy’. So that the Abjuration inflicted on Protestant Dissenters by this Act, was worse than Abjuration for Felony at the Common Law; in that they had the Benefit of the Clergy, in this they had not.

This is one of the Severities of Queen *Elizabeth*’s Reign. Whether it be a wholesome Severity or not, human Nature will determine: However wholesome it might have been esteemed in those Days, by those who had the Power and Will to punish others, yet the Legislature have in *Terminus* declar’d it unwholesome for these Times; and the Toleration Act doth expressly, and by Name, exempt the Protestant Dissenters from the Penalties of this Act of the 35th of Queen *Elizabeth*.

Now when the Toleration Act hath granted this Exemption, for the Doctor to come and publicly represent an Archbishop as a False Son of the Church, and a perfidious Prelate, for being for the Toleration of Dissenters in his Time; and at the same Time recommend the Resolution and pious Zeal of Queen *Elizabeth*, for declaring that she would utterly suppress them, and her great Prudence in exercising wholesome Severities against them, which were of happy Consequence to her Person and Government; What could be said more against the Toleration Act, than this is? The Toleration Act exempts the Dissenters from the Penalties and Severities inflicted in Queen *Elizabeth*’s Reign; the Doctor recommends them all again, as wholesome and necessary. Let any Person judge, whether this is not an express Declaration against the Toleration Act?

There is yet one Thing more charged upon the Doctor in this Part of the second Article; viz. That he scurrilously calls Archbishop *Grindall* a False Son of the Church, and a perfidious Prelate, for

for deluding Queen *Elizabeth* to the Toleration of the *Genevian* Discipline. Whether this, consider'd abstractedly by itself, be in Law a Crime, or not, is not necessary for me here to examine. The Doctor conceives, that no Words spoken of an Archbishop, above one hundred and twenty Years since deceased, will in Construction of Law amount to an High Crime and Misdemeanor: Whether it be so or not, in itself, I shall say nothing of at present; because I take it, that this is only taken Notice of as an Aggravation of the Crime charged upon him, and to shew his Zeal against the Toleration; that he was not contented with censuring the Toleration itself, but rakes into the Ashes of an Archbishop, that had been in his Grave one hundred and twenty Years, and blackens his Memory, because he was for the Toleration of those People who are now by Law tolerated.

My Lords, I would on this Occasion say a Word or two to the Memory of that Archbishop. The Doctor says, He was under the Displeasure of Queen *Elizabeth*; that is very true: And he pretends, the Occasion of his being under her Displeasure, was, for permitting Innovations to be obtruded upon the Church. Those Innovations were no other than what several other Bishops at the same Time likewise practis'd, and some Bishops since have done not much unlike: It was for encouraging the Meetings and Exercisings in those Days, call'd Propheysings; which were Meetings of the Clergy, to improve one another in the Knowledge of the Scriptures, and tended to make a learned and industrious Clergy. This was misrepresented to the Queen, and was the visible Cause of his Disgrace. But the true Reason of his Disgrace, as Historians say, sprung from the Hatred of the Earl of *Leicester*, who was then in great Power and Credit with the Queen, and her great Favourite. This Earl of *Leicester* cast a covetous Eye upon *Lambeth-house*, and would have had the Archbishop to have alien'd it, but he would not comply with him; which, as the Historians say, made the *Leicester* Party to malice him. The Earl was likewise provoked and incensed against him for another Reason, viz. for prosecuting one *Julio*, a Physician of the Earl's, an *Italian* Physician, for having two Wives, one of which was the Wife of another Man, with whom he lived in Adultery: For these two Offences against the Earl of *Leicester*, who bore a mighty Power at Court with the Queen at that Time, was this Storm raised against him. But, my Lords, for his Life and Doctrine, the Archbishop was one of the most pious, learned, and considerable Prelates of that Time. 'Tis very true, that he was one of those Bishops that look'd upon the Exercises used in those Times by the Clergy, call'd Propheysings, to be very necessary for their Improvement, and for the Benefit of the Church; and some of the best Bishops of those Times concurr'd with him in the same Opinion. He was a man of the most exemplary Life and Conversation, free from the Suspicion of a Crime. In his younger Days he was Chaplain, with *Rogers* and *Bradford*, to *Ridley* Bishop of *London*, who gave this Character of him, That he was known to be a Man of Virtue, Honesty, Discretion, Wisdom and Learning. In the Persecution under Queen *Mary*, when his Master and Fellow-Chaplains were burnt for Religion, he became an Exile on the same Account, and quitted his Ease, Preferments, and Hopes at Home, to enjoy the Liberty of his Conscience in a foreign Country, and went to *Strasbourg*: And when the famous Troubles begun at

Frankfort, about the Use of the *English* Service, where the Foundations were laid of the Divisions that have since divided and rent the Church, he was so far from disliking the *English* Method, that he went from *Strasbourg* to *Frankfort*, to encourage and persuade the Congregation there to submit to the *English* Establishment; and he himself stuck close to it all his Life-time. At his coming Home, in the Beginning of the Reign of Queen *Elizabeth*, he had a great Hand, and was very instrumental, in preparing the Liturgy and Book of Common-Prayer: And the first Time that the *English* Service-Book was introduced at *St. Paul's* in *London*, the Privy Council, and great Officers of State, for the greater Solemnity, came to *St. Paul's*; and *Grindall* was appointed to preach to that great Audience, upon that solemn Occasion. He was one of the first five Bishops made by Queen *Elizabeth*; and was first Bishop of *London*, afterwards Archbishop of *York*, and last of all Archbishop of *Canterbury*. And when afterwards, by the Earl of *Leicester's* Artifice, he was out of Favour, and under the Queen's Displeasure; yet he had so great an Interest in the Clergy, and their Esteem of him was so extraordinary, that even whilst he was under Disgrace at Court, and the Displeasure of the Queen, a considerable Number of the Convocation, then met, presented an elegant Petition in *Latin* to the Queen, to restore him; wherein they represent to her Majesty, 'That the Archbishop had led a Life free, not only from all Crime, but even from the Suspicion of a Crime: That he had preserved his Religion from all, not only Corruption of Popery, but Schism; and had suffer'd Persecution for Righteousness sake, having wander'd Abroad in other Countries for the Cause of the Gospel: And therefore they most humbly besought her Majesty, not only to lift up the Archbishop broken with Grief, but to restore the Church to the Archbishop, and the Archbishop to the Church, to her Subjects, to his Brethren, to foreign Nations, and, in a Word, to all pious People'. These were the Thoughts of the Clergy of the Archbishop at that Time, even when he was under the Displeasure of the Queen; so that there was no Reason for the Doctor to asperse him as a false Son of the Church, or a perfidious Prelate; for it appears on the contrary, that he was a Man universally esteem'd for his Virtue, Piety, and Learning.

The last Charge of this Article is, that he asserts, "That it is the Duty of Superior Pastors to thunder out their Ecclesiastical *Anathemas* against Persons intitled to the Benefit of the Toleration; and insolently dares or defies any Power on Earth to reverse such Sentences."

To which the Doctor gives this Answer; "That the Persons intitled to the Benefit of the Toleration, are not by him mentioned or intended: But if these Expressions in his Sermon must be determin'd to any one Sort of Persons, he conceives that the Connection of his Discourse will determine them to those Schismatical and Factious Persons, who take Permission for Power, and advance Toleration immediately into an Establishment."

Now be it so, that he means those Schismatical and Factious Persons; the next Question, which will set this Matter in a clear Light, will be, Who those Schismatical and Factious Persons are, who take Permission for Power, and advance Toleration immediately into an Establishment? And it is plain from the Passage itself, which is in Page 25.

of the Sermon, that he means the Dissenters, those which are intitled to the Benefit of the Toleration.

"If our Dissenters, saith he, had lived in the Times of St. Paul, they would have branded him as an intemperate, hot, furious Zealot, that wanted to be sweeten'd by the gentle Spirit of Charity and Moderation, forsooth. Schism and Faction are Things of impudent and incroaching Natures; they thrive upon Concessions, take Permission for Power, and advance a Toleration immediately into an Establishment; and are therefore to be treated like growing Mischiefs, or infectious Plagues, kept at a Distance, lest their deadly Contagion spread. Let us therefore have no Fellowship with these Works of Darknes, but rather reprove them. Let our Superiour Pastors do their Duty, in thundering out their Ecclesiastical Anathemas; and let any Power on Earth dare reverse a Sentence ratified in Heaven". And indeed the Doctor doth, in the following Part of his Answer, in effect own it: For, saith he,

"As to the last Part of the second Article, where by the said Henry Sacheverell is charged with insolently daring, or defying any Power on Earth to reverse the Ecclesiastical Sentences there mentioned: He the said Henry Sacheverell saith, That the Sentence which he the said Henry Sacheverell dares any Power on Earth to reverse, is such, and such only, as is ratified in Heaven; and such Sentence he still affirms to be by any earthly Power irreversible: And hopes it will not be thought insolent in him to affirm, what he conceives would be Blasphemy in any one to deny: And doth further acknowledge himself firmly to believe, that some Sentences pronounced by the Pastors of the Church are ratified in Heaven; and that some Persons exempted from Punishment by the particular Laws of the Land, may yet by the Laws of Christ be justly liable to such Sentence; and that Schism, or a causeless Separation from a Church injoining no sinful Terms of Communion, is a Sin, which exposes the Person guilty thereof to the Censures of the Church.

The House of Commons charge the Doctor with Insolence, in daring or defying any Power on Earth to reverse the Ecclesiastical Sentences mentioned in his Sermon; and he, by Insinuation, retorts upon them the Charge of Blasphemy. This the House of Commons thought they had Reason to resent, and to call upon your Lordships for immediate Punishment of him, for treating them in this Manner; but they leave it to your Lordships, in what Manner you will think fit to do them Justice, in vindicating them against such a Charge. But as to this Passage now before you, he affirms, "That some Sentences pronounced by the Pastors of the Church, are ratified in Heaven; That some Persons exempted from Punishment by the Laws of the Land, may yet by the Laws of Christ be liable to such Sentence: And that Schism, or a causeless Separation from a Church injoining no sinful Terms of Communion, is a Sin, which exposes the Person guilty thereof to the Censures of the Church". Now what is this but to say, The Dissenters causelessly separate from the Church, which imposes no sinful Terms of Communion, and so are guilty of Schism? Tho' the Law of the Land doth exempt them from Punishment for this Schism, yet for this Sin they are expos'd to the Censures of the Church; those Censures, when inflicted, are ratified in Heaven: Therefore, notwith-

standing the Law of the Land hath given them this Exemption, let the Ecclesiastical Superiors know their Duty, in thundering out their Anathemas against them, and let any Power upon Earth dare to reverse their Sentences if they can. As to the Power of the Church in censuring or excommunicating, it is not necessary for me to say any Thing of it upon this Occasion: But the Doctor is a Minister of the Church of England, who hath submitted to the Queen's Supremacy, and by the Canon is bound to maintain and preach the Queen's Supremacy; her Majesty is Supreme over all Causes, and over all Persons, as well Ecclesiastical as Civil; and by an Act of Parliament made since her Majesty's happy Accession to the Crown, viz. the Act relating to her Majesty's Bounty for the Augmentation of the Maintenance of the poor Clergy, she is owned and recognized to be the only Supreme Head on Earth of the Church of England: Her Majesty hath by Law a Supreme controlling Power over all the Censures and Excommunications of the Church; this Power she exercises according to the Rules of Law, by her several Officers and Ministers of Justice. The Exercise of the Church's Censures, Jurisdiction and Power, must be according to Law; and if any Person be excommunicated against Law, the Queen's Courts may and will command the Ecclesiastical Judge to absolve such excommunicated Person, and restore him to the Communion of the Church again: This is the Supremacy of the Queen, which is the Doctrine of the Church of England; and by Virtue of this Supremacy, if any Judge of the Spiritual Court shall pretend to excommunicate any of the Dissenters for any Thing which by Law they are not obliged to do, or which by Law they are excused or exempted from, the Courts of Justice in Westminster-hall will in such Case award a Prohibition, and compel the Ecclesiastical Judge to absolve him. Suppose that notwithstanding the Toleration Act, a Dissenter should, for not coming to the Church, be sentenced in the Spiritual Court by the Judge there, or be proceeded against there, in order to an Excommunication; a Prohibition will lye to that Judge from the Queen's Courts upon the said Act, and the Courts of Common Law will prevent him from such Proceeding; and if Sentence be pass'd, will compel the Judge to annul the Excommunication, and receive the Party again. Now, for the Doctor to come and say, That though the Dissenters are tolerated by this Act of Parliament, and though they are exempted by Law from Penalties, yet let the Law of the Land be what it will, let the Ecclesiastical Pastors do their Duty, let them fulminate their Excommunications, and thunder out their Anathemas, and let the Civil Magistrate, the earthly Powers, dare to reverse them, if they can: I submit this to your Lordships, whether this is not directly impugning the Queen's Supremacy, as well as weakening and censuring the Toleration, which is what he is charg'd with in this Article.

My Lords, I will not take up more of your Lordships Time; there are other Gentlemen to come after me, who will abundantly supply my Defects, and offer to your Lordships some farther Considerations to make out the Charge contained in the second Article.

Lord William Pawlet. MY Lords, the Charge against the Doctor in this second Article, is a Crime of a very Heinous Nature: It has always been esteem'd one of the happy Consequences of the late Revolution, that her

her Majesty's Protestant Subjects, by a legal Indulgence granted to Dissenters, were united in Interest and Affection, in the Defence of her Majesty's Sacred Person and Government.

It is too well known, my Lords, how in former Times, when Popery had almost prevail'd in the Ruin of our State and Church, the Protestants of the Kingdom were, by the Artifice of Papists, set against each other, that by such Divisions Popish Tyranny might be established among us.

The Act of Parliament made in the first Year of the Reign of their late Majesties King *William* and Queen *Mary*, to exempt Protestant Dissenters from the Church of *England* from the Penalties of certain Laws, was made to defeat any such future Attempts of the Papists; the Preamble of the Act declares, that *some Ease to scrupulous Consciences, in the Exercise of Religion, may be an effectual Means to unite her Majesty's Protestant Subjects in Interest and Affection.*

We have seen, my Lords, the good Effects of the Wisdom of the Legislature in making this Act; her Majesty's Protestant Subjects are now all easy under her Administration; and how many Dissenters have we seen, who since the Toleration are become sincere Converts to the Church. And I may say, that by this Toleration the Prejudices of the Dissenters in general wear off, and their Number daily decreases.

And yet with what odious Colours, and Language unbecoming a Divine, does the Doctor paint out this Toleration, and how does he factiously endeavour to excite and stir up People against it?

'Tis, my Lords, a poor Shift which the Doctor makes in his Answer, that he knows of no Toleration granted by Law; and yet in the same Answer he owns there is an Indulgence which the Government hath condescended to give Dissenters. My Lords, the Word *Indulgence* is no more in the Act of Parliament than the Word *Toleration*; and it is well known that the Act of Parliament he alludes to is every where, not only in Courts of Justice, but even in Parliament, called *The Toleration-Act*; and is frequently so called by your Lordships in the Account of your Lordships Proceedings in Parliament, in Relation to the Bill against *Occasional Conformity*, which Account was publish'd and printed by your Lordships Order.

When the Doctor says, that he has not been able to inform himself that a Toleration hath been granted by Law, it plainly seems to import, as if the Doctor doubted of the Authority of Parliament that made that Law; it looks like the common Sophistry of Papists and Jesuits, who pretend to own the Church of *England* as by Law Established; because they disown the Authority of all our Laws made since the Reformation.

My Lords, her Majesty hath always been pleas'd graciously to declare she will defend this Toleration, and this her gracious Resolution has, among the innumerable Blessings of her Reign, united all her Protestant Subjects in their Loyalty and Duty to her.

The Commons rest assured that your Lordships will always assist these gracious Purposes of her Majesty, and that as there can hardly be any Instance given of so seditious and barefaced an Attempt against the Peace and Quiet of the Kingdom, as the Doctor hath been guilty of, so your Lordships will, by an Exemplary Punishment suitable to so high a Crime, vindicate the Authority of Parliaments, and give an effectual Discouragement for

the future, to all such turbulent and seditious Preachers.

Mr. Cooper. I Think, my Lords, it is unnecessary at this Time to urge all the Arguments which might be made use of, to justify the Reasonableness of the Toleration granted to Protestant Dissenters, by exempting them from the Penalties of certain Laws. It may suffice to say, that this Indulgence is required from us as Christians, and as we are Men professing Humanity and good Will towards one another.

Whoever maintains, that the Toleration is unreasonable, and the Allowance of it unwarrantable, seems necessarily to assert, that the Exemption granted to her Majesty's Subjects from the Penalties of former Laws, ought to be reassumed; unless we are to suppose, that it can be reasonable to allow what is unwarrantable.

This Assertion therefore evidently Arraigns the Act of Toleration, a Law now in Being, a Law by which the People (throughout the whole Series of this dangerous War) have been more firmly united in Interest and Affection, than formerly; I mean, in the Days when the Penalties of those Laws were inflicted with intemperate Zeal.

My Lords, Before I proceed to make good the Charge contained in the second Article of the Impeachment exhibited against the Prisoner by the Commons, I must beg Leave to take notice of the Introduction to his Answer: It seems he cannot, upon the most diligent Enquiry, be able to inform himself, that a Toleration has been granted by Law. I take it, the Stat. 1 *W. & M.* which exempts Dissenters from the Penalties of former Laws amounts to a legal Indulgence, or Grant of Liberty of Conscience; for by that Repeal a Liberty is given, which was before restrained, so that without Impropriety it may be said, that Toleration is granted by Law. Doctor *Sacheverell* I find had rather it should be called an Exemption, for no other Reason, that I see, but because he has not said much, if any thing, of the Word *Exemption* in his Sermon, how free soever he has made with the Toleration.

Now taking it for granted (as I think with Reason I may) that Indulgence, Toleration, or Exemption from Penalties, signifies one and the same Thing, (especially as ordinarily made use of amongst us) Can any thing be more plain, than that many Passages in this infamous Libel cast black and odious Reflections upon the Toleration? They have been all read, and for fear (after what has been already said) of being too tedious, I will mention one only. The Words are these.

What could not be gained by Comprehension and Toleration, must be brought about by Moderation and Occasional Conformity; that is, what they could not do by open Violence, they will not fail by secret Treachery to accomplish. If the Church cannot be pulled down, it may be blown up; and no Matter with these Men how it is destroy'd, so it is destroy'd, &c.

Pray, my Lords, Is it reasonable to allow Toleration, or rather is not the Allowance of it unwarrantable, if it was the open and violent Means made use of to destroy the Church of *England*? And is not this a most uncharitable Censure, highly reflecting upon the Act of Toleration, and the Legislative Authority? Is not this maliciously and falsely suggested, with a wicked and seditious Purpose, to create Jealousies and Misunderstandings amongst her Majesty's People?

Comprehension and Toleration are represented as open Violence; Moderation and Occasional Conformity, as secret Treachery, by which the Church may be blown up, though it could not be pulled down by the violent Means of Comprehension and Toleration.

I should waste too much Time unnecessarily, if I should take particular Notice (after what has been already so well urged in Maintenance of the second Article) of all the Passages which seem to be equally liable to Censure.

The *Antistasis* throughout this Paragraph is so very plain, that I hope it is not one of those mentioned in the Doctor's Answer to carry a dubious Sense. The Prisoner seems to have taken care to explain himself, for fear his Meaning should have been doubtful; and therefore having said,

What could not be gained by Comprehension and Toleration, must be brought about by Moderation and Occasional Conformity; then he adds, that is, what they could not do by open Violence, they will not fail by Treachery to accomplish.

Having thus inveighed against the Toleration, with much Ill-nature and Bitterness of Spirit, he is pleased in the next Place to assert, That he is a False Brother with Relation to GOD, Religion or the Church, who defends it.

The Answer to this Branch of the second Article is long, and, as I apprehend, seems to be Evasive. First, there is a Difference again taken, between Toleration and Liberty of Conscience, and an Exemption or Indulgence; and under this Distinction, which, for the Reasons I have mention'd, is a Distinction without a Difference, the Doctor takes the Liberty to maintain and justify, that he is a False Brother who defends Toleration and Liberty of Conscience.

I must own he endeavours to evade the Charge, by saying he means those only, who at the same Time they defend Universal Toleration and Liberty of Conscience, do also excuse the Separation, and lay the Fault upon the true Sons of the Church, by carrying Matters too high.

Whatever he is pleased to say he meant, in Answer to this Part of the Article, surely no such Meaning can be collected from his Sermon. Throughout the whole Libel, I presume to say there is not one Word of Universal Toleration, or Universal Liberty of Conscience; this is another kind of Toleration, never heard of, till it was new coined, in order to extenuate his vile and uncharitable Assertions.

Here he is pleased to sum up the modish *Criteria*, as he terms them, of a true Church-Man, in a figurative and ironical Manner, and plainly asserts they are the several Characteristicks of a False Brother; amongst the rest, to defend Toleration is said to be one; and under Pretence of Moderation to excuse the Separation (*i. e.*) of the Dissenters, of whom he had next before spoken, is another; and concludes the Paragraph with this pathetick Expression, *God deliver us all from such False Brethren.*

Having thus treated those who defend Toleration, his Superior Pastors are in the next Place to be admonished of their Duty, which is to thunder out their Ecclesiastical *Anathema's* against the Persons intitled to legal Indulgence; which *Anathema's* are stiled Sentences ratified in Heaven, and such as no Power on Earth dare reverse.

Far be it from me to say, that Sentences ratified in Heaven can be reversed by the Powers of this

World. But if Doctor *Sacheverell* were a Superior Pastor, and should Anathematize, or, in plain *English*, Curse and Sentence all those who enjoy the Benefit of Toleration, to Damnation, he must excuse, if I could not believe that such a Sentence would be ratified in Heaven.

And as to any Ecclesiastical Censure not ratified in Heaven, it is downright Insolence to say, there is no Power upon Earth that can reverse it.

But since our Superior Pastors will exercise a truly Christian and noble Spirit of Charity and Moderation, and indulge scrupulous Consciences, the Doctor is pleased however to bear his Testimony against it, and is not contented with delivering over to Satan those only who enjoy the Indulgence, but they who defend Toleration must also bear them Company.

His indeed is a very comprehensive *Anathema*, and is conceiv'd in these Words; *viz. And as he chose it in this World, appoints him in the next his Portion with Hypocrites and Unbelievers, with all Liars, that have their Part in the Lake which burns with Fire and Brimstone, with the grand Father of Falshood, the Devil and his Angels. And so here we leave our False Brethren, in the Company they always kept Correspondence with.*

This, my Lords, is a most dreadful unchristian Sentence, a Sentence so barbarous, so astonishing, that I am at a Loss to imagine, how it could enter into the Mind of Man to conceive it.

Perhaps, my Lords, it may be equally dangerous to defend the *Athes* of the venerable Prelate Archbishop *Grindall*; he, it seems, was a false Son of the Church, and a perfidious Prelate, because he deluded Queen *Elizabeth* to a Toleration of the *Genevian* Discipline. Here we may observe the Doctor's great Aversion to all kind of Toleration.

Methinks, for the Sake of the Reformation, better Language should have been given, and more decent Expressions should have been bestow'd upon a Man we all know bore so considerable a Part in the Establishment of it.

Here likewise we may observe the Doctor's Inclination to wholsome Severities, such as Queen *Elizabeth* made use of, which were such as I hope will never be seen more in this Kingdom. And by the Way, what a Spirit is this Man of, who can find nothing to commend in the Reign of that glorious Queen, but the blackest and worst Part of it.

I cannot agree, that these harsh Expressions, as the Answer owns they are, are the rather to be excused, because the Remains of the Archbishop were so long since deposited, especially when we consider that his Memory has been had in the highest Esteem and Veneration by all the Reformed Churches in *Christendom*, from that Time down to the Fifth Day of November last.

For my own Part, I think it very Immoral to cast Reflections upon the Dead, how ill soever they may have deserved from us; and the longer a Man has been so, in my Opinion, rather aggravates than lessens the Immorality.

I am free to own, he whose Morals will permit him to reflect upon the Departed, is not therefore to be impeached for it, as for an High Crime and Misdemeanor; but that is not the present Case. Archbishop *Grindall* is thus severely treated upon a Supposition he deluded the Queen to a Toleration; and all the hard Words which are falsely and unreasonably bestowed upon him, are evidently levelled at

at the present Toleration, and designed maliciously to Asperse and Traduce it, by representing it as injurious to the Character of all concern'd in it, dangerous to her Majesty, and destructive to the Constitution both in Church and State.

By these Means, my Lords, and others (if possible worse than these) one Part of the People, through groundless Fear and Jealousy, unreasonably and maliciously instilled, are to be stirred up to Arms and Violence; others, upon the Peril of Damnation, are not so much as to utter one Word in Defence of Toleration; whilst the third and last Part are to have the Doctor's wholesome Severities executed upon them.

My Lords, 'Tis too Notorious that this Incendiary, for so the Articles of the Commons of Great Britain have called him, has already stirred up unaccountable Feuds and Quarrels throughout the Nation; the Commons are too sensible of it, and have therefore brought the Offender before your Lordships in Justice and Judgment.

Many are the Seeds of Sedition which he has sown; and the Fruit to be expected, is Civil Discord and Confusion, unless some Remedy shall be applied to prevent it.

The Commons, for her Majesty's Safety, and for the Security of the Constitution, have thought it absolutely Necessary to bring him to answer for these High Crimes and Misdemeanors before your Lordships Tribunal; conceiving his Offences to be of so exorbitant a Nature, that they deserve the Solemnity of this Proceeding.

And then the LORDS adjourned to their House above.

Wednesday, March 1. The Third Day.

THE Lords coming down into *Westminster-Hall*, and being seated in the manner before-mentioned, Proclamation was made by the Serjeant at Arms as follows:

Our Sovereign Lady the Queen doth strictly Charge and Command all manner of Persons to keep Silence, upon Pain of Imprisonment.

Then another Proclamation was made: *Henry Sacheverell*, Doctor in Divinity, come forth, save thee and thy Bail, else thou forfeitest thy Recognizance.

The Doctor appearing at the Bar accordingly, with his Counsel as before.

Lord Chancellor. Gentlemen of the House of Commons, you may proceed in your Evidence.

Mr. Thompson. MY Lords, Your Lordships having heard what has been produced in Maintenance of the two first Articles of this Impeachment, I shall take the Liberty to proceed, and endeavour to discharge the Trust reposed in me by the Commons, to support the third Article, and the Accusations contained in it. I will not waste your Lordships Time, by making any Apology for my Inabilities, and being unequal to this Undertaking; not doubting but that I shall find from your Lordships a candid Interpretation of whatever I shall offer on this Occasion.

This Article, my Lords, is founded on a Vote or Resolution of your Lordships, and the Commons, in Parliament assembled, which is recited in the Preamble of these Articles, and the Occasion of

which it may be necessary to mention to your Lordships. It was some few Years ago that there were many scandalous and seditious Rumours spread Abroad, of the Danger of the Church of *England*, as established by Law. There were several Libels dispersed over the Kingdom, reviling her Majesty's Administration in Church and State; and among the rest, one intitled, *The Memorial of the Church of England*. Her Majesty was pleased to take Notice of these seditious Reports from her Throne to the Parliament; and thereupon your Lordships and the Commons, on the 17th of *December*, 1705, came to the Vote or Resolution mentioned in the Preamble, and an Address, which is recited to this Effect; "That your Lordships, and the Commons, in Parliament assembled, did address and lay before her Majesty a Vote or Resolution, That the Church of *England*, as established by Law, and which was rescued from the extremest Danger by his late Majesty, of glorious Memory, was, by GOD's Blessing, under her Majesty, in a safe and flourishing Condition; and that whoever should go about to suggest and insinuate that the Church is in Danger under her Majesty's Administration, is an Enemy to the Queen, the Church, and the Kingdom."

"And that your Lordships, and the Commons, by their said Address, did humbly beseech her Majesty to make the said Vote or Resolution publick, and to take effectual Measures for the punishing the Authors and Spreaders of such malicious and seditious Reports. And that on the 20th of the same *December*, her Majesty was pleased to issue her Royal Proclamation accordingly."

"Now, my Lords, this Article charges "That in Opposition to, and Defiance of, and in order to arraign and blacken that Vote or Resolution, Doctor *Sacheverell*, in his Sermon preached at *St. Paul's*, does suggest and assert the Church of *England* to be in a Condition of great Peril and Adversity under her Majesty's Administration." The Article further says, "That he wickedly and maliciously insinuates, That the Members of Parliament, who passed that Resolution, were themselves conspiring the Ruin of the Church, which they voted to be out of Danger: And this by way of Parallel, or Allusion to that Assembly, who voted the Person of King *Charles* the First to be out of Danger, at the same Time when they were conspiring his Destruction."

My Lords, I will now do the Doctor the Justice to take Notice of what he says in his Answer, and alledges as his Justification. He denies that he asserts the Church to be in Danger, under her Majesty's Administration; or otherwise than from Vice and Infidelity, Blasphemy and Profaneness. And as to the Parallel in the Vote, and the Insinuation of the Members conspiring the Ruin of the Church; He says, he never mentions that Vote, nor did he design the Parallel as laid to his Charge. He only meant, That while some Men were conspiring the Death of the King, others, not privy to this Design, voted him out of Danger: So, though the Members voted the Church to be out of Danger, yet others were conspiring against the Church, and by their Vice and Infidelity were drawing down Vengeance on the Church and Kingdom. And as to that Vote made four Years ago, He says, it concerns only those who did then insinuate the Church of *England* to be in Danger under her Majesty's Administration.

Now,

Now, my Lords, having stated the Charge, and the Defence, I shall proceed to acquaint your Lordships with the several Passages of the Sermon, which the Commons apprehend will make out their Accusation. And here, my Lords, I shall take Leave to say, That no strained or forced Constructions can be desired by the Commons, or expected from your Lordships, or any Inferences to be deduced, but what naturally arise from a fair, impartial, and candid Interpretation.

My Lords, The first Passage which the Commons apprehend is for their Purpose, is in the 5th Page; the Doctor just before, enumerates St. Paul's Misfortunes that befel him, whilst he was propagating the Gospel, and says, "There is a very observable Gradation in his Sufferings; but that, of all his Calamities, the highest of them proceeded from False Brethren." And taking Notice of the Condition of the Church of *Corinth*, then follow these Words; "Though it were very obvious to draw a Parallel here betwixt the sad Circumstances of the Church of *Corinth* formerly, and of the Church of *England* at present, wherein her holy Communion has been rent and divided by factious and schismatical Impostors, her pure Doctrine has been corrupted and defiled; her primitive Worship and Discipline profaned and abused; her sacred Orders denied and vilified; her Priests and Professors (like St. Paul) calumniated, misrepresented and ridiculed; her Altars and Sacraments prostituted to Hypocrites, Deists, Socinians and Atheists; and this done, I wish I could not say, without Discouragement, I am sure with Impunity, not only by our professed Enemies; but, which is worse, by our pretended Friends, and False Brethren.

It may be observed, that the Doctor is very free in his Parallels; and when either Church or State is to be represented by Comparisons, he is pleased to make use of the worst he can find. He says, The Church of *Corinth* was in the utmost of Perils; and then it was to his Purpose to make the Allusion, and bring the Church of *England* into the same Condition.

Here are many Particulars in this Passage, whereby the Church is said to be in sad Circumstances, and I cannot tell how to apply them according to the Doctor's Way of Interpretation; for he says, all these Enormities are practised, not only without Discouragement, but with Impunity; not by professed Enemies, but by False Brethren: So he plainly shews who he aims at, as the Authors of these Calamities. He excludes vicious Infidels, Blasphemers, and Hereticks, who are professed Enemies, and lays it upon False Brethren: And he explains what Sort of False Brethren he means; For who can prostitute Altars and Sacraments to Deists, Atheists, and Socinians, but some of his own Order? And who are to punish such Offences among the Clergy, but their spiritual Superiors? And whether they are not Part of her Majesty's Administration, I submit to your Lordships.

But, my Lords, supposing the Fact to be true, That there are erroneous Doctrines publish'd; to what End must the World be told in this Manner that they are vented with Impunity, but to reflect on those who should punish them? And can that be done without a Prosecution? If the Doctor had produced any of his undeniable and ample Proofs of these Matters, (which he mentions in his Answer) before any Court that had a proper Conscience of them, and been denied Justice, he might have had more Reason for Complaint: But to blame his Su-

periors for not punishing what they might be ignorant of, and which, he says, he was not, (and for which he might have promoted a Prosecution) seems to retort the Guilt upon himself, which he would lay upon them.

My Lords, The second Passage is in Page the 16th. He is talking of a Comprehension which was designed, not long since, to unite the Church and Dissenters; and complains of the Persons who were concerned in that heinous Intention; and then he asserts, "That since this Model of an Universal Liberty and Coalition failed, and these False Brethren could not carry the Conventicle into the Church, they are now resolved to bring the Church into the Conventicle, which will more plausibly and slyly effect her Ruin. What could not be gained by Comprehension and Toleration, must be brought about by Moderation and Occasional Conformity; that is, What they could not do by open Violence, they will not fail by secret Treachery to accomplish. If the Church can't be pull'd down, it may be blown up; and no Matter, with these Men, how it be destroyed, so that it is destroyed". Now, my Lords, who were these False Brethren that were concern'd in this Design of Comprehension, which failed, and who introduce worse Mischiefs? Do these Dangers proceed from Vice and Infidelity, from Blasphemy and Erroneous Doctrines? No, my Lords, these False Brethren are described in the Page before, under his Second General Head, to be in Church and State: Which must be Persons in Power and Authority; the Expression itself imports it; nor could they otherwise be capable of accomplishing that Design, of uniting the Dissenters and the Church: To which Design, and the Authors who intended it, he is pleased to give the most vile and scurrilous Names imaginable; and afterwards he lays to their Charge an Intention to blow up the Church by Moderation. And this, I suppose, is one of the Vices which the Doctor mentions in his Answer, as one Means of Danger to the Church. If Moderation be a Vice, I will do the Doctor the Justice to acquit him from the least Tincture of it, in any of his Works that I have ever met with.

My Lords, The Third Passage is in Page the 18th. He is continuing his Observations of the Danger from the same False Brethren in Church and State; and then his Words are, "Falshood always implies Treachery; and whether that is a Qualification for any one to be trusted, especially with the Guardianship of our Church or Crown, let our Governors consider". This, my Lords, must relate to Persons, who (as he would insinuate) are not fit to be trusted with the Guardianship of the Church or Crown: And whether this Reflection does not seem to aim higher than the Administration, I submit to your Lordships.

The next Passage is in Page the 20th: The Words are these; "And now we are under no Danger in these deplorable Circumstances? Must we lull ourselves under this sad Repose, and in such a stupid Lethargick Security embrace our Ruin? When *Elisha*, the Great Prophet of God, was surrounded with an Host of Enemies that fought for his Life, his blind Servant beheld not the Peril his Master was in, till his Eyes were opened by a Miracle, and he found himself in the midst of Horses and Chariots of Fire. I pray God we be out of Danger; but we may remember, that the King's Person was voted to be

"be so at the same Time that his Murderers
"were conspiring his Death.

Now, my Lords, the Doctor, to excuse this Passage, says, the deplorable Circumstances we are in, proceeds from the Maturity of National Sins, &c. as in his Answer. But who are mention'd in his Sermon as the Occasion of the Maturity of National Sins but the Dissenters, who, he says, are plotting the Ruin of the Church, and False Brethren join with them? So that here neither is the Danger asserted from Vice and Infidelity, but as it is occasioned by the Dissention from the Church, which the Law has thought fit to apprehend as no Danger to the Church; and therefore it did not become him to assert the contrary. Then as to the Parallel of the Assembly who voted King *Charles* the First out of Danger, and of the Members who made the Vote about the Danger of the Church Four Years ago, he says, he meant no Reflection on any of the Members who passed that Vote, because he never mentioned that Vote; and as to the Vote about King *Charles*, others were conspiring his Ruin than those who voted him out of Danger; so while the Parliament voted the Church out of Danger, there were other Enemies conspiring her Ruin. If the Doctor intended no Reflection upon that Vote, Why was Voting in any Case mention'd? Can any one imagine that the Doctor did not know of that Vote, since the Danger of the Church is so much his Topick? Nor can I presume him ignorant of the Time when that Vote about King *Charles* was passed; which, as far as I can observe from the History of that Time, was in *November* 1648, that he was voted out of Danger; and when he was Tried and Beheaded, I need not mention to your Lordships: And whatever Alteration might be made in that Assembly after the Vote, and before his Death, was done by those Persons who conspired his Destruction, and who were Part of that Assembly who voted him out of Danger. So that it seems plain, that the Vote of Safety, and the Conspiracy of Ruin, came from most of the same Persons; and it does not seem very strange to suppose the Doctor intended his Allusion in the same manner.

And as to the Scripture he quotes to this Purpose, "That the blind Servant beheld not the Peril his Master *Elisba* was in, till his Eyes were opened by Miracle, and he found himself in the midst of Horses and Chariots of Fire." My Lords, these Horses and Chariots of Fire were not the Prophet's Enemies but his Friends; nor was there any Danger to be feared from them; on the contrary, they were a Security from his Enemies; so that he plainly perverts the Sense of that Text, to make a stronger Impression, and more effectually to delude the People.

My Lords, The last Passage is in the last Page: He is still talking of the Danger of the Church, and quotes a Text as in the *Lamentations* (viz.) "Though she lies bleeding of the Wounds she received in the House of her Friends". Indeed, my Lords, I can't find it there; therefore it seems to me to be a Lamentation of the Doctor's own making. Then he goes on, "Though the Ways of *Sion* may mourn for a Time, and her Gates be desolate, her Priests sigh, and she in Bitterness, because her Adversaries are Chief, and her Enemies at present prosper; though among all her Lovers she has few to comfort her, and many of her Friends have dealt treacherously with her, and are become her Enemies." My Lords, I mention these Passages only to shew, that the Doctor, by the most pathetic Expressions of his own, mix'd with these Texts

of Scripture, endeavours to represent the Church of *England* to be in the utmost Danger.

I shall trouble your Lordships no further with the Passages in this Sermon; but should not omit to take Notice, that there is a Suggestion in the Doctor's Answer, that the Vote four Years ago did not concern him; but that it related only to them that then did assert the Church to be in Danger: If he had minded the Words of the Vote, he would have found there was no Pretence for that Objection; for it is, "Whoever shall go about to insinuate, that the Church is in Danger under her Majesty's Administration;" which must relate to any Time during the Continuance of her Majesty's Reign.

And now, my Lords, I beg Leave to observe some Circumstances attending this Offence, which give it the highest Aggravation. That Memorial which was published some Years ago, and was the chief Occasion of the Vote in Parliament, was a Libel that reviled her Majesty and her Administration, as the Occasion of the Danger of the Church. The Author was pleased to conceal himself, and durst not avow his Doctrine; but the Book had the Fate it deserved: And from the Ashes of that Phoenix arose another Memorial, with many of the same virulent Expressions against her Majesty's Administration, agreeing in the whole Scope of it, as to the same scandalous Purpose; but far exceeding it in Malice and Inveteracy.

And this new Memorialist has presumed to publish his Seditious Reflections in the most open manner imaginable; first at the Assises at *Derby*, and afterwards in the great Church of this Metropolis; and has thought fit to print and disperse about forty Thousand of them over the Kingdom. From whence could this extraordinary Zeal proceed? Was it to exhort Men to revere their Governors, and to submit to those in Authority over them? Was it intended to preserve Peace and Good-will amongst Men? To promote Charity, Brotherly Love and Affection? No, my Lords, there is plain Evidence to the contrary, *Ex ore suo judicabitur*. He tells you the Reason of his Topicks in that Place; he says, he intended "To open the Eyes of the deluded People in that great Metropolis; to set the rich and powerful Inhabitants right in their Notions of Government in Church and State." They were obliged to him for his pious Design, and for instilling those Doctrines, which, as your Lordships were told Yesterday, would make their Religion, Liberty, Property, and all that is dear and valuable, Precarious: He tells you further, "That our Constitution of Church and State is vigorously attack'd from without, and lazily defended from within; that there are Attempts upon the Friends of the Church, to shut their Eyes and Mouths, in order to undermine and destroy them; that he thinks the Pulpit a proper Place for Politicks; and that it is the Business of a Clergyman to sound a Trumpet in *Sion*, to cry aloud and spare not." And in his Preface to the *Derby* Sermon he explains himself still further upon this Topick, "That the Church is shamefully betrayed and run down; that there are some still who will defend it with their Lives and Fortunes." And states the Case as if there was an immediate Necessity to take up Arms for a Holy War upon this Occasion.

My Lords, This Crime is more heinous, for that there is the least Reason for these Seditious Murmurs, that has been in any Reign whatever. Is there any Invasion or Attempt upon the Liturgy, even the least Ceremony of the Church, or any

Part of the Ecclesiastical Constitution? Are her Revenues impaired, or any of her Temporal Rights violated? No, my Lords; but our Royal Sovereign has distinguish'd her Care for this Church in a more peculiar Manner than any of her Predecessors; she has given from her own Revenue to increase that of the Clergy, for their more creditable Support, and to enable them to preach sound Doctrine for the Welfare of her Subjects; nor is her Majesty wanting to promote Religion, Piety and Virtue, by her own Royal Example, the most effectual Encouragement. These are the true Basis of the Church, and the best Pillars to support it. And what Occasion was there for these Reflections on her Majesty's Administration? Has not that venerable Bench given the World abundant Proof of their Care and Vigilance to preserve that Church, of which they are the Guardians, by their Learning and unblamable Conduct; by their zealous and resolute Defence of her in the worst of Times, and against all her Enemies? It is very surprizing that a Gentleman, whose Education has been in the Fountain of Learning and Religion so many Years (who cannot be presum'd to err through Ignorance) that he should presume in his private Capacity to contradict the Sense of the whole Nation, and cast such Aspersions on his Superiours. To what End could he so zealously disperse his Notions, if not to animate a deluded People to the Execution of seditious Designs.

It were to be wished, that a Government could be supported by Mildness and Clemency; but such is the State of depraved Nature, even these most Passive-Obedience Natures, that they are not contented to be only ungrateful for the Benefits they enjoy from the Church and State, but they must rebel against Principle, and fly in the Face of that Government from which they receive their Support and Protection.

The Doctor cries aloud, and there are many others that spare not: Some have presumed to censure this very Proceeding before your Lordships, as a Persecution of the Church. And what must be the Consequence of tolerating such bold and daring Spirits to go on in their seditious Practices!

If your Lordships do not vindicate your own Resolutions, and exert your Power and Authority to suppress that audacious and unparall'd Insolence, that daily flies Abroad from the Pulpit and the Press, (which, as the Doctor says truly, are become the Mints of Faction and Sedition) I may take Leave to say, there will be too much Reason for his Assertions of Danger both to Church and State: But the Commons are so well satisfy'd of your Lordships true Concern for the Preservation of our Constitution, that they cannot imagine you will suffer any Attempts that may be pernicious to the Welfare of the Government, to pass without condign Punishment; and therefore they intirely rely on your Lordships Wisdom and Justice.

Mr. Compton. **M**AY it please your Lordships, I am commanded by the Commons to assist in maintaining the third Article of their Impeachment against Doctor *Henry Sacheverell*, which has been fully opened to your Lordships by the learned Gentleman that spoke before me.

My Lords, The Commons think they have good Reason to assert, that Dr. *Sacheverell*, in his Sermon preach'd at St. Paul's, doth falsely and maliciously contradict and arraign a Resolution of both Houses of Parliament, approv'd of by her Majesty, and made publick by her Royal Proclamation.

My Lords. Your Lordships cannot but have observed, that it has been one of the constant Artifices of the Enemies of the present happy Establishment, who very well know the just Value the People of this Nation have for the established Church, to suggest and insinuate, that this Church is a Condition of great Peril and Adversity, in order to foment Animosities, and to cover Designs which they dare not publickly own. But how frequent soever this has been, I believe I may safely affirm, that this scandalous and seditious Assertion was never so boldly maintained, nor with such invidious and aggravating Circumstances, as by the Criminal at your Lordships Bar.

The learned Society, of which he is a Member, reaped such signal, such immediate Advantages from the Revolution, that he could not be unmindful, he could not be ignorant of the extreme Danger from which our Laws and Liberties, our Church and Constitution were rescued by his late Majesty. But such is his Ingratitude to our Great Deliverer, such is his Inveteracy to the Revolution, that he makes that very Revolution the Period of Time from whence the Enemies of our Church first had Hopes to deliver her up to her worst Adversaries. Nor does his Malignity cease there, but he endeavours to persuade the People, that from the Revolution to the present Time, there has been a continued Series of Contrivances to ruin and destroy the Church: At the Revolution, by open Violence; but *Now*, that is, under her Majesty's Administration, by *secret Treachery*; and since neither the late nor the present Reign can escape his Invectives, for what Person he relieves his Panegyrics, is submitted to your Lordships to determine.

My Lords, I would not take up any of your Lordships Time unnecessarily; but I must not conclude, without expressing the Indignation the Commons have at his traducing and vilifying the last Parliament, by that odious Parallel in the twenty first Page of his Sermon preach'd at St. Paul's.

My Lords, the Parliament he thus endeavours to blacken, was opened with so full an Appearance in both Houses, that her Majesty observ'd it with Satisfaction from the Throne; and at the same Time her Majesty with Grief observed the Malice of such Persons, who suggested the Church was in Danger; and desired the Assistance of her Parliament to discountenance and defeat such Practices. And in Duty to her Majesty, to secure the Quiet and Peace of the Kingdom, and to disappoint the Designs of the Enemies of our Church and Constitution, both Houses of Parliament came to the Resolution, set forth by the Commons in the Articles of the Impeachment which have been read to your Lordships. And the same Parliament proceeded in this and other Matters which were before them, with so much Vigour as well as Prudence, that in less than six Weeks her Majesty graciously took Notice, that their Proceedings had had a good Effect all over *Europe*. And at the Conclusion of the Session, her Majesty, with great Goodness, declares how much she was pleas'd to observe their Unanimity and Zeal throughout the whole Session, against every Thing that tended to Sedition. It was this Parliament that so cheerfully concurr'd with her Majesty in promoting and completing the Union of the two Kingdoms. And it was the Gentlemen that compos'd this Parliament, join'd by the Representative of the other Part of the united Kingdom, who readily and unanimously assisted her Majesty in disappointing the Attempt of the Pretender to her Crown, whose chief Dependence was in the restless and arbitrary

bitrary Principles of some of her Majesty's Subjects, ill-affected to their Country.

And now, my Lords, is there any Ground to compare the dutiful Proceedings of such a Parliament, with what was done in those unhappy Times, with which he would maliciously draw a Parallel? No, my Lords. And I may safely venture to say, that 'tis impossible to find the least Resemblance between her Majesty's glorious Reign and that unfortunate Administration, except that there were

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then, as there are now, *Ministers of the Church, who by their Function, being Messengers of Peace, set up to be the Trumpeters of Sedition, and Incendiaries to Rebellion.* But, my Lords, the Commons hope, That the happy Period is now come, when even this Resemblance shall have its Determination; for they intirely rely on your Lordships Justice to inflict such an exemplary Punishment on this Offender, as may deter others from endeavouring to distract the Kingdom with such groundless Distrusts and Jealousies for the future.

Lord Coningsby. **M**Y Lords, I am commanded by the Commons of *Great Britain* to assist, and endeavour to make good, the important Charge they have exhibited against the Criminal at the Bar: And because I am least able, among all the Gentlemen that have that Honour, out of Indulgence to me I am assigned to the third Article, that wants least to be supported.

The Sermon preached by the Doctor at *St. Paul's*, and which has been read to your Lordships, from the first Word in the Title Page, to the last Line in the Conclusion, is one false, malicious, and seditious Assertion, That the Church of *England* was under the last Reign, and is under the present, in the utmost Peril and Danger.

The Proclamation which your Lordships have heard mentioned, and which was designed by our glorious Queen, from whose Speech it took its Rise, by your Lordships, and the Commons who concurred in it, to be a Warning to such Incendiaries, as the Criminal, not to trumpet amongst the People Suggestions so seditious, in order to cover Designs more dangerous, and which, God be praised, they are not yet strong enough, nor never I hope will be, publickly to own; shews this malignant Offender committed this Offence in Defiance of her Majesty, your Lordships, and the Commons.

The Proofs, which almost every Gentleman has brought to the two preceding Articles; and those particular Instances that have been so fully opened by these Gentlemen who have spoke before me to the present, shews that it would be vain in me, and mispending your Lordships Time, to pretend to enforce those Points, already so fully made good.

I shall therefore very shortly, tho' I hope very plainly, lay before your Lordships what are those pernicious Designs the Doctor intends to cover, and at last hopes to bring to pass, by his Preaching, Printing, and Publishing, not only round this Kingdom, but amongst his Friends on the other Side of the Water, this seditious, I may say, rebellious Discourse, for which he stands at present impeached by the Commons.

And as it has been shewn your Lordships, by the Gentlemen that made good the first Article, that the Doctor, by reflecting on the necessary Means to bring about the Revolution, the Foundation on which our present happy Establishment is built; by asserting that her Majesty ought to depend upon no other Title to the Crown but her Hereditary one;

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design'd, by such destructive Positions, to bring back the Pretender, with Popery and *French* Tyranny attending him, to govern the State.

So it is as plain, from the whole Scope of his Sermon, that the Doctor, and all those in Combination with him, have nothing more at Heart than to destroy the present Church, as established by the wholesome Laws of this Land, and that because it's most consonant in its Doctrine and Discipline to that of the primitive Christians, of any since the Time of the Apostles; and consequently less agreeable with the flaming Opinions of such Firebrands, who know not of what Spirit they are of: And this in order to set up a Scheme of a Church, agreeable to the tyrannical one they have projected for the State: A Church, the Doctor's I mean, though in Pretence Protestant, that would be ready soon to be turned into a Monster, by adding to itself a Popish Head.

A Church that will destroy all those that brought about, and have since supported the happy Revolution.

A Church, which upon Anti-Christian Principles professes Burning for Conscience sake; which the Doctor, like those wicked Men whose Mercies are cruel, calls wholesome Severities.

A Church that will turn all the Blessings we enjoy under the present Administration, into all those Miseries we got rid of by the late glorious Revolution.

I cannot doubt therefore but your Lordships will out of Duty to the best of Queens, and in Justice to your Lordships and the Commons, deter others from ever being guilty of the like heinous Offence.

Mr. Dolben. **M**Y Lords, This Article of the Commons Impeachment contains one Criminal Position, That the Church of *England* is now in a Condition of great Peril and Danger under her Majesty's Administration, aggravated by an odious Parallel that affords a Pregnant Proof of the true Spirit and Designs of this bold offender.

The Accusation has already been fully made out by plain and positive Words in his Sermon; from which, as well as from many other Passages, I shall beg Leave to submit to your Lordships Judgment, whether that wicked Parallel may not justly be turn'd upon him; Whether there is not more than Suspicion that he, and all his Abettors, are conspiring the Ruin and Destruction of the Church, when under the Disguise of a False Zeal they prostitute her sacred Name, to carry on dark and deep Designs, fatal both to Church and State.

I shall only briefly take Notice to your Lordships, that the Guilt of this Offence arises from a plain Contempt of her Majesty's Proclamation, and of the Resolutions of both Houses of Parliament; moved by no Inducement, but an Eagerness and Industry not to let any Shadow or Colour escape, that may contribute to his Part in the grand Design, to be only effected by fomenting Divisions and Distractions amongst us.

But, my Lords, in order to unveil the Doctor's Pretences, and to take away his trivial Excuses, I beg Leave to represent to your Lordships, that if the whole Legislature had not, from a full Conviction of the Church's Security and Safety, laid a severe Injunction against the publishing such a false and pernicious Suggestion, yet evident Truth ought to have taught him not to have transgress'd in so notorious a Manner.

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My Lords, When it appears that the Church has the Sanction of so many and so good Laws to establish and defend it; when the Veneration and Devotion to it, of so great a Majority of the People, is so visibly fix'd in their Hearts, that the bad Examples and provoking Behaviour of this False Brother, and of several others of the same Stamp, have not made the least Abatement, or Impression to its Disadvantage; when the Parliament on all Occasions appears so forward and unanimous in their Zeal and Affection for it; when 'tis recommended and illustrated by the Learning, Piety, Wisdom, Charity and Christian Moderation of so many of its chief Pastors; but above all, when 'tis under the Protection and Government of a Supreme Head, a true and constant Defender of its Faith and Discipline, who having already exposed her Royal Person to Hardships and Dangers, to rescue it in a Time of its utmost Peril, does continue daily to manifest the same Devotion, Piety and tender Concern for it: Under this powerful Alliance for its Support, can ought but Malice and Envy at its Prosperity, can any one but an Incendiary or disguis'd Enemy insinuate, that the Church of *England* is not fenced and fortified with an impregnable Barrier against all Danger, from open Attacks or Violations?

'Tis true indeed, my Lords, that no human Care or Policy can prevent the Attempts and secret Conspiracies of intestine Traytors. Vipers in the Bottom may sting, though the Body be covered with the strongest Armour. All that can be done is, to be watchful to discover and expose the Hypocrite, to detect and punish his Crimes. The Commons, on this Occasion, are here exerting their Part of this Duty, fully assured of Success from your Lordships equal Zeal and Justice.

My Lords, You have now brought to your Bar a Clergyman, bound, by the strongest Ties and Duty of his Function, to instruct and propagate the necessary Means for the Peoples true Happiness in this World, as well as the next; yet your Lordships will find him proved to be a Trumpeter Itinerant of Sedition and Rebellion, first at *Derby*, then in *London*; an Agent detach'd from that dark Cabal, whose Emissaries appear in all Shapes, and almost in all Places; an Asserter of such pestilential and unparallel'd Doctrines, as at once overthrow the whole Constitution both of Church and State. He may perhaps urge a Precedent, in which it has been pleaded, and from the Pulpit, that an urgent Necessity can justify the Breach of Laws; and from others, that in particular Cases they may be dispensed with; but this Gentleman must be allowed the Infamy, to have stretched and improved those pernicious Tenets to the exalted Height of making all our Laws, Liberties, Religion, and Lives, held only at the precarious Pleasure of any bold Invader; for nothing can be a plainer Exposition or Consequence, when 'tis taught, that no Oppression, no Violation can justify an Opposition to it.

My Lords, The Commons have brought this Offender before you, with a View, not only to detect and punish his Offence, but to obtain an Occasion in the most publick and authentick Manner to avow the Principles, and justify the Means, upon which the present Government and the Protestant Succession are founded and established; and this more out of a generous Concern for Posterity, than for our own present Security. My Lords, we are so happy as to have a Sovereign on the Throne, whose Goodness, Justice, and Piety, leaves no Room for the least Fear or Jealousy; but we hope the Re-

cord of this Proceeding will remain a lasting Monument, to deter a Successor, that may inherit her Crowns, but not her Virtues, from attempting to invade the Laws, or the Peoples Rights; and if not, that it will be a noble Precedent to excite our Posterity to wrestle and tug for Liberty as we have done. My Lords, I doubt not but her Majesty will with the greatest Satisfaction, see the Government thus put upon a right and equal Foot, since thereby those Blessings will be secured to future Ages, which her happy Reign has planted amongst us, since thereby she will intail a lasting Felicity on her People, and prevent those real Dangers both to Church and State, which at this Time are so falsely insinuated. But, my Lords, if this should not now be effectually obtained, and by such wholesome Severities as the Doctor applauds and recommends, give me Leave to conclude, with a juster Complaint than that in his Answer, That hard is the Fate of that People, who after having been twenty Years in War, in Conjunction with so many great Allies, with the Expence of so much Blood and Treasure, contending only against Tyranny and Oppression, and which we may justly hope is at last subdued, shall then see all *Europe* enjoy the Fruits and Benefits of our Labours; and at the same Time, tho' her Majesty's well chosen General shall at last bring home Peace, as he has so often the Laurels of Victory, to lay with humble Duty at her Royal Feet, yet we, only we, must be rendered incapable of the common Blessing, *betrayed at home to a perpetual Condition of Bondage, by such False Brethren as are at your Lordships Bar.*

Then the Lord *Haversham* moved to adjourn to their House above; and being returned, and seated as before, Proclamation for Silence was made by the Serjeant at Arms.

Lord Chancellor. Mr. *Dolben*, the Lords have taken Notice, that at the Conclusion of what you spoke, you us'd this Expression, * *as are at your Lordships Bar*; which words are so general, that their Lordships are of an Opinion that they want an Explanation.

Mr. *Dolben*. My Lords, those Words had relation only to the Prisoner *at the Bar*.

Serjeant *Parker*. MY Lords, Your Lordships have heard the three first Articles of this Charge largely spoken to; it is my Duty, in Obedience to the Command I have been honoured with by the Commons, to make good the Charges in the Fourth. I am sensible how unequal I am to such a Work, both from my want of Capacity, and my present Indisposition; but however, in such Manner as I can, I shall endeavour it.

This Article sets forth, That *He the said Henry Sacheverell, in his said Sermon and Books, does falsely and maliciously suggest, that her Majesty's Administration, both in Ecclesiastical and Civil Affairs, tends to the Destruction of the Constitution; and that there are Men of Characters and Stations both in Church and State, who are False Brethren, and do themselves weaken, undermine, and betray, and do encourage and put it in the Power of others, who are professed enemies, to overturn and destroy the Constitution and Establishment: And chargeth her*

* Exception had been taken, that the Word *are* might carry the Reflection to the Counsel and Solicitor assigned by the Lords to assist Dr. Sacheverell, who were also at the Bar.

Majesty, and those in Authority under her, with a general Male-Administration; and as a publick Incendiary, he persuades her Majesty's Subjects to keep up a Distinction of Factions and Parties, instills groundless Jealousies, and foment destructive Divisions among them, and excites and stirs them up to Arms and Violence: And, that his said malicious and seditious Suggestions may make the stronger Impressions upon the Minds of her Majesty's Subjects, he the said Henry Sacheverell does wickedly wrest and pervert divers Texts and Passages of holy Scripture.

This Article in general, is a Charge of Sedition under several Aggravations, and made good by almost every Part of the Sermon and Dedications, read before your Lordships in Evidence.

The avowed Design of the Sermon, is to represent the extreme Perils and Distresses of the Church and Constitution from False Brethren, that are in the Administration, and countenanced by it.

He represents the Church in the utmost Extremity, those Fences broken down, without which she is naked and unguarded, her Altars and Sacraments prostituted, herself deserted, betrayed, undermined, and persecuted with open Violence, bleeding of her Wounds, her Enemies openly calling for her Destruction.

The Nation, sunk into the lowest Degree of Corruption, swarming and over-run with Atheists, Deists, Socinians, Hypocrites, Villains, Rebels, Traytors, Correspondents with the Devil, nay, with Men that are themselves the worst of Demons.

The Government, so far from applying a Remedy, that all this is done openly, with Impunity, without Discouragement: Nay, the Persons from whom the Mischiefs arise, are suffer'd to form themselves into Seminaries, to propagate Atheism and other bellish Principles, are let into the Administration, they are in Places, Places are given them as the Reward of betraying their Parties, they engross all Places, they are Persons of Characters and Stations, nay, they are Chiefs.

Nor is this done in any Representation to those, that by making new Laws, or putting in Execution the old, might regularly cure the Mischiefs; but in a popular Harangue from the Pulpit: Not in Terms of Lamentation, not as Grounds of Humiliation, or in a Language that might become one that thought the only Arms of the Church to be Prayers and Tears; but with all Malice, Bitterness, Reviling, Insolence, endeavouring to raise in his Auditors the Passions himself puts on, and pointing out (as far as he dares) to Arms and Violence for a Cure, and not so much as offering any other.

These are the Colours in which he paints our Condition, and thus he chuses to shew the Zeal and Duty he professes to the best of Queens.

But since he pretends in great Measure to deny or evade the Charge, it may not be amiss to look a little more particularly into his Sermon, and take a View of the Scheme of it, and of several Passages therein.

The Crime he professes to shew the Mischiefs of in his Sermon, is false Brotherhood: The Method he proposes to treat it in is,

1. To describe the Crime, and to show who are False Brethren, and upon what Accounts; and he considers it both with Respect to the Church and to the State.

2. To show the Dangers: And,

3. The Guilt and Folly of this Sin. And,

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4. (That it may appear that all the Crimes and all the Treacheries he mentions are not mere Suppositions, but Realities, at this Time,) He undertakes, as a Consequence of all, to shew what mighty Reason we have at all Times, more especially AT PRESENT, to stick to the Principles of our Church and Constitution, and to beware of, and mark all those false Brethren who desert or betray them.

I believe the first Clause of this Article will so clearly be prov'd from the Passages that more directly concern the Second and the Third, that I desire, for saving your Lordships Time, to begin with those two Clauses, and then to return to the First afterwards.

I begin therefore with the second Clause, That the said Henry Sacheverell, in his Sermon and Books, doth falsely and maliciously Suggest, that there are Men of Characters and Stations in Church and State, who are False Brethren, and do themselves weaken, undermine, and betray, and do encourage and put it in the Power of others, who are professed Enemies, to overthrow and destroy the Constitution and Establishment.

To make this out, I beg Leave to observe, that in entering upon his second Head, that is, to shew the great Peril and Mischiefs of these False Brethren both in Church and State, he asserts, pag. 15. That they weaken, undermine, and betray in themselves, and encourage and put it in the Power of our profess'd Enemies to overturn and destroy the Constitution and Establishment of both. This therefore runs through his whole Discourse; and, being affirm'd of False Brethren in general, must be applicable to every sort of false Brother. If then there be any Persons of Characters and Stations whom he represents as False Brothers, then he has, in the Place mentioned, affirm'd of THEM, and undertaken to prove, that THEY weaken, undermine and betray, and put it into the Power of others to overturn and destroy the Constitution and Establishment.

And as to that, he comes under his third Head, pag. 21. to show the Malignity and Guilt of this Sin, in respect of the World, and begins it thus, (pag. 21, 22.) "What a vast Scandal and Offence must it be, to all Persons of Piety and Integrity, to see Men of Characters and Stations thus shift and prevaricate with their Principles, and starting from their Religion, upon any Occasion of Difficulty or Trial, and like the Disciples flying from and forsaking our Saviour, when his Life lay at Stake; to see Mens Opinions sit as loose almost as their Garments, to be put on or off for Convenience; what can unwary Persons conclude from this Tergiversation and Hypocrisy, but that all Religion is State Craft and Imposture? That all Godliness is Gain, and that the Doctrines of the Church lie not so much in her Articles, as her Honours and Revenues?"

This is a full Charge of False Brotherhood upon those Persons of Characters and Stations, and exemplifying in them the Malignity of that Crime, which is the Subject of his Discourse: The Consequence is plain, that he here charges them with False Brotherhood, and having before asserted, That all such False Brothers weaken, undermine, and betray, and put it into the Power of others to overturn and destroy the Constitution and Establishment; he has not only suggested but maintained, that there are Persons of Characters and Stations that weaken, undermine and betray, and put it into the Power of others to destroy the Constitution and Establishment.

In his Answer, put in before your Lordships to the Articles of Impeachment, he would divide the Charge in this Clause; and (1.) as to the suggesting that there are such *Persons* who are *False Brethren*; he says, That if he had said *there are Persons of Characters and Stations* that are *False Brethren*, not restraining it to the *bigbest*, it would not be either false, malicious, or highly criminal.

(2.) As to the weakening, undermining, and betraying in themselves, and putting it into the Power of professed Enemies to overturn and destroy the Constitution, he says, he has not suggested *that* of *Persons of Characters and Stations*; but the mention of those *Persons*, and the Expression of *weakening and betraying in themselves, and enabling others to destroy the Constitution*, are twelve Pages asunder.

(3.) He mentions some, which he thinks do weaken and betray the Constitution, but has not said any of *them* are *Men of Characters and Stations*.

In answer to these Glosses, I might say, that if this were meant, *not* of the *bigbest* Characters and Stations, nay though it were *true* too, the affirming this of them would be criminal, and in the Manner he does it, *highly* so. All subordinate Magistrates, of whatever Station, may be regularly complained of, and called to account; but the Meanest are not to be traduced and libelled, nor the Government upon their Accounts.

But this I offer. The Words, if not *restrained* to those of *bigbest* Characters and Stations, neither are they *restrain'd* to the *lowest*; and, in Truth, strike *all*, and so were *intended*, as other Parts show.

It is no Excuse, if he scandalizes Persons of the *bigbest* Characters and Stations, that he does not scandalize them *only*.

It is no Excuse, when he speaks opprobriously, in *general* Terms, of *Men of Characters and Stations*, without distinguishing to his *Auditory*, to distinguish upon his *Defence*, and pretend he meant only some few of the *meaner* Sort; that is, that when he was speaking of the Mischief and Malignity of this Crime, and showing how *Great* it was, his Assertion concerning *Men of Characters and Stations in general*, was meant *only* of *those*, in whom the Mischief and Malignity is *least*.

No, it is a general Arraignment of the Government throughout, and as such he must answer for it. And to put this out of Doubt, he has told us, Page 26. in Scripture Words, That *the Church's Adversaries are chief*.

For what he talks of several *Senses*, in which he says he takes *False Brethren* in the Sermon, 'tis not at all material in *what Sense* he charges those Persons with *False Brotherhood*, if in *Consequence thereof* he charges them with *betraying* the Church, and empowering its Enemies to destroy it. The charging them with being *False Brethren*, had been a *Fault*, as *that* is a Term of Reproach, which, with him, carries just as much Malignity as he pleases, even to *something analogous to the Sin against the Holy Ghost*, and rendring them the *worst of Demons*. But the *Stress* of this Accusation, is the *Treachery* they are charged with as *False Brethren*.

2. In the next Place, therefore, he denies that Part of the Charge; and for this *shew'd Reason*, that the two Expressions are twelve Pages asunder: An Answer I admire to see put in upon so solemn an Occasion! As though the *False Brotherhood* he shows the *Danger of*, and the *False Brother-*

hood he shows the *Malignity of*, had no Relation to one another, because twelve Pages asunder.

3. He mentions *some* that he affirms to be *Weakners and Betrayers*, &c. but says he does not suggest *those* to be *Men of Characters and Stations*. All the Inference to be drawn from that, is, either that there are, besides *those*, some *other* Weakners and Betrayers, that are *Men of Characters and Stations*; or that *some of those* are *Men of Characters and Stations*, though he hath not said so; which is no Excuse for him. For though he hath not describ'd *every Sort* of Weakner or Betrayers; and though he hath not told us *which Sort* of Weakner or Betrayers he ranks the *Men of Characters and Stations* under; yet he has in general charg'd *Men of Characters and Stations* with *False Brotherhood*, and as *False Brethren* to be *Weakners and Betrayers*, &c.

IN the next Place, I would lay before your Lordships the Proof of the third Clause of this Article, which says, *That Dr. Sacheverell charges her Majesty, and those in Authority under her, with a general Male-Administration*. Every Part of the Sermon makes out this, representing the whole Nation in the utmost Disorder and Confusion, and the Magistrates, instead of *applying* a Remedy, rather *increasing* the Distemper.

Page the 14th is a very home and direct Charge upon the Government. It comes under that Part of the Sermon, where he is describing *False Brethren* with Relation to the State, and when he has declared very largely what they *do*, and what they *bold*; he goes then to what they are *suffer'd to do*: He says, "These *false Brethren* in our Government do not singly, in private, spread their Poison; but (what is lamentable to be spoken) are *suffer'd* to combine into *Bodies and Seminaries*, wherein *Atheism, Deism, Tritheism, Socinianism*, with all the hellish Principles of *Fanaticism, Regicide* and *Anarchy*, are *openly profess'd* and taught, to corrupt and debauch the Youth of the Nation in all Parts of it, down to Posterity, to the present *Reproach* and future *Extirpation of our Laws and Religion*."

The *suffering* these Things is a direct Charge upon the *Administration*; and he in Effect declares it so, when he concludes, that this is to the *Reproach of our Laws and Religion*; that is, of those that do not *mend*, or do not *execute* the Law: And he brings it Home to the first Clause, when he declares the Consequence to be the *Extirpation of our Laws and Religion*.

The Passage I before read, Page 22. concerning Persons of Characters and Stations, likewise proves this: For, what can be a greater Charge upon the Administration, than to accuse the Ministry of putting into *publick Stations False Brethren*, that *betray* the Church, and *impower* others to *destroy* it? That the Expression there is so general, as to reach *all* in publick Stations, I have before observ'd; and that it is so *meant*, may be thus made plain. In the same Passage he is apprehensive that those Persons Behaviour should give Occasion for believing *Religion to be but State Craft*; that is, a Stratagem us'd by the State to serve its own Ends: "That the *Doctrines of the Church* lie not so much in its *Articles, as its Honours and Revenues*"; which Honours and most tempting Revenues are in the Hands of the Crown, and those that are byas'd by them, must be byas'd by the Crown and the Administration.

Page 23. "A *False Brother* is represented as *relinquishing his old Friends and Principles*, and be-
" *traying*

"traying his own Party for the little sordid Lucre of a Place or Preferment". Here is a plain Representation of a Villain, selling his Conscience; the Price is Place or Preferment, the Buyer that pays him that Price, must have the Disposal of those Places and Preferments; so that those False Brethren are not only suffer'd, but made such by the Administration.

That the False Brethren, which he mentions, as put into Places, are put in by our Governors, he plainly suggests, Page 18. when he bids the Governors consider whether they are fit to be intrusted, especially with the Guardianship of our Church and Crown: For to what Purpose is that qualified Admonition, if the Governors put such Persons into no Places at all? Admonitions to Temporal Governors, with respect to meer Matters of Government, tend only to affront 'em, if present, but can have no other Effect, when they are absent.

Let the Preface to the Derby Sermon, without any Observation or Comment upon it, conclude this Head: "Now when the Principles and Interests of our Church and Constitution are so shamefully betray'd and run down, it can be no little Comfort to all those, who wish their Welfare and Security, to see, that notwithstanding the secret Malice and open Violence they are persecuted with, there are still to be found such worthy Patrons of both, who dare own and defend them as well against the rude and presumptuous Insults of the one Side, as the base undermining Treachery of the other". For I omit to repeat what has been observ'd upon the third Article, or upon the former Clause spoke to by myself.

I RETURN now to the first Clause of this Article, which runs thus: "That he suggests that her Majesty's Administration, both in Church and State, tends to the Destruction of the Constitution."

This is made out from what has been said on the other two; for, if Men of Characters and Stations in Church and State, that betray our Constitution, and encourage and enable others to destroy it, come into their Places through the Administration; if the general Male-Administration of her Majesty and those in Authority under her, consist in Part, in preferring and encouraging, at least not discouraging those Persons that betray and destroy the Constitution; the necessary Consequence is, that all those fatal Mischiefs complain'd of arise from the Administration, which therefore plainly tends to the Destruction of the Constitution.

Besides, having involv'd all those, in this Description of False Brotherhood, who defend Toleration; and having declar'd the Church's Adversaries chief: Considering who is chief, and what Promises have been made for Continuance of the Toleration; his Insolence ought to be treated rather with Indignation and Contempt, and a just Punishment, than vouchsaf'd an Answer.

As to the next Clause; "And as a publick Incendiary, he persuades her Majesty's Subjects to keep up a Distinction of Factions and Parties, in stills groundless Jealousies, and foment destructive Divisions among them, and excites and stirs them up to Arms and Violence"; 'tis sufficient in short to say this:

What he advances against the Foundation of the present Establishment, and against the Administration, is as an Incendiary.

That he persuades Men to keep up Distinctions, and instils groundless Fears and Jealousies among

them, is plain, from the Drift of all he says; from his Language of forsaking old Friends and Principles, betraying their Party, which he makes to be the great Crime of those in Places, and goes to shew the Folly of it, pag. 23.

And though he pretends, in his Answer, that he invites Schismatics into the Church, it is only on those Terms, that they comply with his Notions to a Tittle: He makes no Allowance for human Frailty, for Prejudice or Ignorance, and in some Instances expressly disallows 'em; and those who are so weak as to fancy the Church in any Particular not to be in the right, though in all others they would sincerely and constantly conform to it, even they must continue Schismatics still: If, with these mistaken Opinions, they communicate with the Church, they are False Brethren, and as such to be abhorr'd: And yet if they do not, they are not to be tolerated.

Nay, whoever has so much Compassion for such a Cause, as to think it might be tolerated, is a false Brother too, as defending Toleration, which is giving up one Point of the Discipline of the Church, and encouraging the Schism.

For, though he seems in Words to approve of an Indulgence to Consciences truly scrupulous, yet in Reality he approves none; since he admits not any one to have a Conscience truly scrupulous that differs from him, but all such are False Brethren, Villains, and to be stigmatiz'd with all the other Names of Reproach he is so liberal of.

As to Fears and Jealousies, those are naturally produc'd by these Representations of the Dangers the Church and Constitution are in; and as those Dangers are meerly imaginary, those Fears and Jealousies are groundless.

As to his inciting her Majesty's Subjects to Arms and Violence, that he does it, is most manifest.

The spreading among the People such hideous Representations of an evil Government, such Outcries of the Church and true Religion being undermin'd, betray'd and expos'd by those in the Administration, naturally tend to Rebellion. And therefore at Common Law, as we find it express'd in our Law Books, to * bear the People in Hand (I give the very Words) that the King's Government was erroneous, heretical or unjust, whereby the Manner of the Government was arraign'd or impeach'd, was High Treason.

The Passion, Heat and Violence in this Sermon preach'd in publick, could be intended for nothing else but to raise the Passions of those that heard it.

The People are call'd upon to put on Resolution and Courage; they are assur'd the Cause at present requires the bravest Resolutions; he exhorts them to contend earnestly for the Faith; having elsewhere shewn against whom, against False Brethren, against the Enemies he had describ'd, such as have Places and Preferments, are Men of Characters and Stations; such as are Chief and at present prosper, and denounces Woe against the fearful Heart and faint Hands.

The Expression of standing by her Majesty with Lives and Fortunes, and of sacrificing them in her Service, being now become a familiar Phrase, for assisting her in War, those Expressions are affected.

In the Dedication of the Derby Sermon he extols those, who are for maintaining what he calls forsaken Truth, with their Lives and Fortunes.

And in the Sermon at St. Paul's, pag. 9, 10. the Readiness to sacrifice Lives and Estates in Vindica-

* In William's Case in 2 Rolls Reports, pag. 89, 90.

tion of the Church, is represented as so *Noble* a Resolution, that in Comparison to that, Obedience to her Precepts, that is, a *good Life*, is but as the *one thing necessary* in the Gospel, only an extraordinary pitch of Perfection, only as the selling all his Goods, and giving the Price to the Poor, was to an exact Observance of the whole Moral Law.

But in the Dedication of the *St. Paul's* Sermon he seems to *avow* this Design; he pretends not his Sermon to be Christianity, but *owns* it to be *Politics*, not *preaching Peace*, but *sounding a Trumpet*. For he states the Objection, *that the Pulpit is not a Place for Politics, and that 'tis the Business of a Clergyman to preach Peace, and not to sound a Trumpet*. What's his Answer? Does he deny the Objection to extend to himself? No, he admits it and justifies it by Pretence of a Divine Command, and treats the Maxim laid down in the Objection with Scorn, as contrary to the express Word of God.

In his Answer to this last Part of this Clause, he seems first to represent it as *inconsistent* with his *Position* of the utter Illegality of Resistance to the Supreme Power on any Pretence whatsoever, and with his *Professions* of Loyalty to her Majesty; and then attempts to *confute it* (as his Expression is) by a Passage in the *Derby* Sermon.

As for the latter, I think it rather a Justification of the Charge; for the Passage asserts, *That every Man has, by God and Nature, a Commission to ENGAGE the Enemies of the Constitution*; that is, (as he has painted them) the Queen and her Ministry.

The other is founded on a Supposition that he is never inconsistent, a very civil Compliment to himself, but as it happens, very false.

But to consider this Part of the Answer a little more particularly. As he has here managed the Matter, I own there is in *this Particular* no Inconsistency. We say, *he has stirred up her Majesty's Subjects to Arms and Violence*: He says, *he has declar'd all Resistance unlawful*; yes — all Resistance to the Supreme Power; but he has never declar'd Resistance to her Majesty unlawful. He maintains the utter Illegality of Resistance on any Pretence whatsoever to the *Supreme Power*, but no where says, that in the Supreme Power he *includes her Majesty*, or that it is *illegal to resist her*. The utter Illegality of Resistance to the Supreme Power upon any Pretence whatsoever, her Majesty's professed Enemies will come into, and labour for; meaning only to condemn the Resistance that *was* made against *King James the Second*, which brought about the Revolution, and any Resistance that *shall be* made against the *Pretender*, whenever he comes; and Dr. *Sacheverell* goes no further.

Those Enemies of her Majesty, have ever since the Revolution, made it their Business, to blacken it to raise Scruples in Peoples Minds about it, and to make the Administration odious: The same Methods are advanced by Dr. *Sacheverell* into the Pulpit; and if those Methods are to appear in the greatest Assemblies, on the most solemn Occasions; if the Revolution must be *attack'd* on a Day when her Majesty has appointed it to be *Commemorated*; if her Majesty's Reign is to be arraign'd in Publick, and an Appeal made to the Passions of the People; let it be attended with what *Professions* it will, it equally strikes at her Majesty and the Establishment; and the Commons could not but think themselves oblig'd, in Duty and Gratitude to her Majesty, and in Justice to the whole Nation, to call him that us'd 'em thus to a publick Account:

And let this Gentleman commend his own Loyalty, as much as he pleases, 'tis plain that in this Sermon he is doing the very same *Work*, and in the very same *Method*, with those that *disown Allegiance* to her Majesty.

My Lords, Permit me to observe a little his Management of this Text: Supposing the Doctor to be *right* as to his *Doctrine*, and that he believes himself to be so; and that he is *sincere* in his *Professions* of Loyalty to the Queen. For I am not now going to dispute or limit the Doctrine of Non-Resistance, which was the Business of those Gentlemen that spoke to the first Article.

By *False Brethren* in the Text of this Sermon were meant, those who *pretended* to be Christians, but really *were not*. Dr. *Sacheverell* seems so to understand it; and therefore to declare those to be *False Brethren in the CHURCH*, that pretend to be of the Communion of the Church of *England*, but are not; that live in its Communion, but own not its Doctrines and Authority. By like Analogy, *False Brethren in the STATE* are such, that perhaps swallow the Oaths to the Queen; or if they go not so far, yet take the Benefit of her Laws, her Courts, her Protection, yet deny her Allegiance, and are for another Prince. A just and well-managed Reproof of these had been a noble Topic for one that pretends all this Zeal for the Queen. But they are wholly pass'd by, they are not to be blam'd, there's no Danger from *them* either to Church or State. Who then, according to the Doctor, are *False Brethren in the State*? (He was hard put to it to substitute some others in their Place.) They must be only those who *one Way or other* oppose the Doctrine of *Non-Resistance upon any Pretence whatsoever*, whom he describes in several invidious Instances, and in all possible Terms of Reproach. This seems strange.

1. This being, as he states it, an Error in a Doctrine of the Church, the holding it is only one Branch, one Instance of *False Brotherhood in the CHURCH*; and therefore not so proper to stand for a distinct Head of *False Brethren in the STATE*.

2. The bare denying or not believing the Doctrine of *Non-Resistance*, supposing it true, does not denominate a Man a *False Brother in the STATE*.

Suppose then a Man own the Queen's Title, be satisfied with her Administration, in Love with her Reign, convinc'd that she has principally at Heart his Interest, and the true Interest of all her Subjects; believes that upon the Continuance and Quiet of her Government depends the Preservation of our Liberties, and those of all *Europe*, and accordingly obeys and serves her with Sincerity and Zeal, and thinks all Resistance to her utterly unlawful; is this Man a *False Brother in State*, a Rebel, a Traitor, because he thinks Resistance *was* lawful at the Revolution, and *may be* so whenever the same Breaches of the Constitution are repeated?

Is he a Rebel to *THIS QUEEN*, because there possibly may happen a Case, wherein he *may* resist another Prince, if that Prince *should* do what he's *sure SHE never will*?

At most, that Mistake only *exposes* such a Person more easily to be misled: He *may be* in more Danger of becoming a Rebel to a Prince he shall be dissatisfied with, but *is not* therefore a Rebel to a Queen he loves.

How then comes this single Instance of *False Brotherhood in State* to be insisted on, which at most shews, not that the Person *is*, but only that perhaps he *may become* a *False Brother*; and those Instances

stances pass'd over, where Persons plainly are False Brethren in State?

Further, This Doctrine being, as the Doctor says, a *fundamental Doctrine in State*, urged with *Warmth and Vehemence*, one would expect some *Inference* to be drawn from it: One would expect that he, who had so great a Zeal as the Doctor professes for her Majesty, and had so triumphantly established absolute Non-Resistance, would have fallen in so far with the *Business of the Day*, and have made so much use of his *Favourite Doctrine*, as to dissuade from Rebellion; and when he had taken Notice of these false Steps in the Administration, that he should have persuaded the People to make proper Applications for Redress, but to be careful not to let the *Faults of the Ministry* cause 'em to forget their *Duty to the Queen*. But there's not the least Exhortation to that purpose.

All this seems strange, taking it for granted that the Doctor is sincerely zealous for the Queen.

Give me Leave therefore to make another Supposition: Suppose this Zeal is but pretended to the Queen, but really for another, and that he thinks the other his rightful Prince; your Lordships will find, all consistent, every Expression, and the whole Procedure, exactly just.

In Consequence of that concealed Sentiment, tho' he dare not directly commend those who own the Pretender, yet neither will he reprove them as *False Brethren in the State*; they being, according to his Opinion, the only Persons who perform their Duty in it. Therefore the true Notion of False Brotherhood must be dropt; and instead of it, they that hold Resistance lawful in Cases of *Extremity*, and particularly in that of the *Revolution*, are to be fallen upon; for they are really Rebels and Traitors in his Sense, because they directly overthrow all the Title which the Disaffected here would fancy for the Pretender.

As long as the *Revolution* stands un-impeach'd, that Person can have no Title, let his Pretence be as favourable as he pleases: If the *Revolution* stand, the *Laws* which are founded upon it stand too, and those *Laws* concerning the *Right and Succession* of the Crown, are absolutely binding; and therefore whatever *Right* he could wish People to believe him to have, all that *Right*, all that *Pretence* of *Right* is as effectually barr'd, as all the *Right* which those who stand in the Course of Descent before the Princess *Sophia of Hanover* would have had but for the Act of Settlement, will be bound, whenever GOD, for our Sins, shall take from us her Majesty, without Issue.

This Principle therefore is *fundamental* to the Pretender; and, taking the Matter thus, accounts for all that Rage against those that dispute this Doctrine, as extended to the Case of the *Revolution*, for his so often repeating this to be the *Basis*, the *fundamental Principle* of the Constitution.

This shews clearly, why neither in the *Sermon*, nor *Defence*, he has once maintain'd the Illegality of *Resistance to her Majesty*.

This shews, why this *fundamental Principle* is so totally forgot to be press'd by him upon the People; no *Inference* from it, that those Mismanagements ought not to make them forget their *Duty to the Queen*; not one *Persuasive* to Obedience to her; not one *Admonition* against the Consequence of False Brotherhood in the State, that it was apt to make People rebel; no cooling the People, with telling 'em that Prayers and Tears were the only Arms of the Church; that they ought to do their own Duty, submit wholly to the Queen, and those in

Authority under her, and leave the rest to GOD. These were the natural Consequences of this Doctrine of Non-Resistance, so violently contended for, but not one of them pursu'd or mention'd.

And perhaps this made him chuse to describe the Case of our Church, p. 26. in the Words of the Prophet in the *Lamentations*, which are in *ch. i. ver. 4, 5.* (tho' not truly cited in his printed Sermons) *The Ways of Sion mourn for a time, and her Gates are desolate, her Priests sigh, and she in Bitterness, because her Adversaries are chief, and her Enemies AT PRESENT prosper.*

My Lords, That Book was wrote just after *Nebuchadnezzar's* taking *Jerusalem*; and the Condition of the *Jews then*, which is thought proper by him to give an Image of ours now, was this:

They were enslav'd, their King in a Foreign Country, stripp'd of his Crown, and the Prince then Reigning was an Oppressor, that had no other Title, but Possession and Force.

Thus has the Doctor, out of his tender Concern for her Majesty's Person and Government, thought fit to express his Sentiments.

THE last Part of this Charge is that of *Wresting and Perverting divers Texts and Passages of Holy Scripture*. This may not perhaps seem to proper for me to speak to, but being part of my Province, I shall apply to it without any Apology.

My Lords, As wicked and corrupt as Doctor *Sacheverell* would represent this Nation, he very well knew, that the Holy Scriptures are had in that just Veneration and Regard, that whatever is cited thence has a particular Influence upon the Minds of the People; whatever Story can be brought thence as a Parallel, whatever Expressions taken thence are made use of, to paint the Beauty, the Deformity, the Dangers of the Preacher's Subject, give a strong Impression, fire the Zeal of the People, alarm their Passions, and make 'em fancy they hear the Voice of GOD, when they hear His Words repeated.

This the Doctor knew, and your Lordships will see what use he makes of it.

When he speaks of the *Perils of the Church*, which her Majesty, your Lordships, and the Commons, could not see, the Scripture is to be search'd for a Story, that may be brought to match the Case, and to give an Opportunity, under other Names, to speak a bold Falshood concerning all these.

It happens, there is one remarkable Story in the Holy Scripture about a Mistake of Danger, but unfortunately it suits not the Case, as told there, however it gives a Handle, and he can make from it a Story to his Purpose.

Accordingly he says, *pa. 21.* "When *Elisha* the great Prophet of GOD was surrounded with an Host of Enemies that sought for his Life, his blind Servant beheld not the Peril his Master was in, 'till his Eyes were opened by a Miracle, and he found himself in the midst of Horses and Chariots of Fire.

This Story thus told is extremely happy for him; for hence the People are to understand him to be the inspired Prophet; and the Queen, Lords, and Commons, blind at least, tho' not his Servants.

But the Story in Holy Writ is directly contrary; and it was only the blind Servant fancied they were in Danger, when really they were not.

The Story is in 2 Kings, Chap. vi. and, as told there, is thus: The King of Syria, at War with Israel, being inform'd, that what he said in his Bed Chamber was told to the King of Israel by *Elisha*

Elisba the Prophet, resolved to seize *Elisba*; and hearing he was at *Dothan*, Ver. 14. (I now give your Lordships the very Words) *He sent thither Horses and Chariots, and a great Host, and they came by Night, and compass'd the City about.* Ver. 15. *And when the Servant of the Man of God was risen early, and gone forth, behold an Host compass'd the City both with Horses and Chariots: And his Servant said unto him, Alas, my Master how shall we do?* [This is the blind Servant, that the Doctor says, saw no Danger.] Ver. 16. *And he answer'd, Fear not, for they that be with us are more than they that be with them.* Ver. 17. *And Elisba pray'd, and said, Lord, I pray thee open his Eyes, that he may see. And the Lord open'd the Eyes of the young Man, and he saw; and behold the Mountain was full of Horses and Chariots of Fire.* The Doctor's Exposition is, That this Heavenly Guard, these Horses and Chariots of Fire, which were there only to defend the Prophet, were to destroy him; and from them arises the Danger, which the Doctor fancies the miraculous Opening the Servant's Eyes disclosed to him.

I think I may give the Doctor his Choice, what this proceeded from, whether from his not knowing this Passage, but taking it upon Hearsay, or his Resolution knowingly to pervert it.

The next Passage is, *pa.* 26. the Words of St. Paul, *Eph.* vi. with which, after a Discourse where all the social and good-natur'd Virtues are taught in the highest Perfection; where he had recommended, *Chap.* iv. Ver. 2. *Lowliness, Meekness, Long-suffering, forbearing one another in Love; endeavouring to keep the Unity of the Spirit in the Bond of Peace:* Where he had commanded, Ver. 31. *that all Bitterness, and Wrath, and Anger, and Clamour, and Evil speaking be put away, with all Malice:* And Ver. 32. that those to whom he writes, should be tender-hearted, forgiving one another, even as God for Christ's Sake had forgiven them: Ver. 27. *That had forbidden giving place to the Devil, but not to any other.* The Apostle concludes, that in this Spiritual Warfare, and that they might be able to withstand the Wiles of the Devil, they should put on the whole Armour of God; because they wrestled not against Flesh and Blood; but against Principalities, against Powers, against the Rulers of the Darkness of this World, against Spiritual Wickedness in High Places.

This Gentleman, after a Discourse full of Bitterness, Reviling, Wrath, Clamour and Evil speaking, forbearing no Man in Love, nor forgiving any that differs from him one Tittle; and having shewn other Devils incarnate, (*page* 23, 25.) the worst of Demons, other Powers, others in Places and Stations, against whom his Auditors were to contend earnestly; repeats those Words, not in the Spiritual Sense the Apostle used them, but (as the whole Subject and Drift of his Discourse shews) as an odious Description of the Government, in Scripture Words: And whether he meant the Armour in the Apostle's Spiritual Sense, any more than any of the other Words there, or whether he intended it a Literal Earthly Armour, which the Cause would make the Armour of God, I leave to your Lordships to determine. However, 'tis no Defence for him, what he says, That the Arms of Resistance to Princes, is no Part of the Spiritual Armour recommended by St. Paul; because he has plainly departed from St. Paul's Spiritual Meaning.

And that this is his Meaning, to paint here our present Circumstances in Scripture Language, is fur-

ther plain from what follows; That the Church is bleeding of the Wounds which she has received in the House of her Friends; borrow'd from *Zech.* xiii. Ver. 6. That the Ways of *Sion* may mourn for a Time, and her Gates be desolate; though her Priests sigh, and she in Bitterness, because her Adversaries are Chief, and her Enemies AT PRESENT prosper. I have before observ'd, from what Circumstance of the Jews this Image is borrow'd; and your Lordships will take notice, what Changes in the Expressions he has made, to render them more Emphatical.

My Lords, There can be no greater Perverting of Scripture, than to make use of the Language of the Holy Ghost, to revile our Neighbours; to scandalize the Government, and to raise Wrath, Sedition, and Rebellion in the People.

The last I shall mention, is that in the Dedication of the St. Paul's Sermon; where proposing it as an Objection, that it is the Business of a Clergyman to preach Peace, and not to sound a Trumpet in *Sion*; he affirms that to be expressly contrary to the Command of God; and to prove that Command, cites these Words, *Cry aloud, and spare not*, which are in *Isa.* lviii. 1.

My Lords, This I apprehend to be not only Perverting, but that to Men of Understanding it will seem ridiculing Scripture. To infer, that because they were to speak loud, they were to sound a Trumpet, seems ridiculous.

Or if he had cited the rest of the Words, *Cry aloud, and spare not; lift up thy Voice like a Trumpet, and shew my People their Transgression, and the House of Jacob their Sins*; he had indeed found the Word Trumpet, but little to his Purpose: For because the Prophet was to imitate a Trumpet in the Loudness, that the People might hear; was he to imitate it too, as it is an Instrument of War, that they might prepare themselves for Battel? Because he was loudly to tell them their own Sins, that they might repent; was he likewise to trumpet to them the Faults of the Government, that they might take up Arms, and redress them by Rebellion?

If he find any other Place in the Old Testament to command the Priests to sound a Trumpet, I shall refer him to the 10th of *Exodus*, where he'll find the Priests were literally to sound the Silver Trumpets in the Army, in the Field; but he'll not find, they ever founded it from the Pulpit.

My Lords, I shall offer nothing further to your Lordships on this Head, though there is room for it.

But there are Two Things in the Answer to this Article, I cannot omit taking Notice of.

The first is in his Answer to the first Part of this Article, that charges him with suggesting, That her Majesty's Administration, in Church and State, tends to the Destruction of the Constitution; where he takes great Comfort, that in this Article he is charg'd not with Suggesting and Maintaining, but Suggesting only; and hopes that bare Suggestions, or Insinuations, shall not involve an English Subject in the Guilt and Punishment of High Crimes and Misdemeanors. I don't envy him his Comfort, nor shall labour to take it from him, tho' it seems strangely founded: For tho' it is expressly said, that he charges her Majesty with a General Male-Administration; tho' the Accusation be positive, that as a Publick Incendiary, he persuades the Subjects to keep up Parties, foment Divisions amongst them, and stirs them up to Arms and Violence, and perverts divers Texts of Scripture; notwithstanding all these posi-

fitive Charges, yet the *first Expression* happening to be only, *Suggest*, and not *Maintain*, it seems he is very happy in it.

But, my Lords, this is an *extraordinary Step*; that let a Man cast never so many *Scandals* and *Reproaches* on the *Government*, tho' in never so publick a Manner, yet if it be done by way of *Suggestion* and *Insinuation*, and the Charges not expressly *maintain'd* and *avow'd*, there is no Crime in it, or not any *high* one. That is, in short, *Sedition*, and *Exposing* the *Government*, is lawful; only the *Manner* is to be taken care of. Don't do it *directly* and *avowedly*, for that would be dangerous; but do it by *Suggestions* that every body will *understand*, and which will have their *full Effect*, and all's *safe*: For those that come to judge you, are not to understand you, tho' every body else does.

My Lords, Here are two extraordinary *Claims of Right* before your Lordships, and of great Consequence, if you allow them; one, that the *Clergy* may found a *Trumpet in Zion*, in a *Military Sense*, and are not to be restrained to the preaching of Peace; the other, that every *Englishman* is at Liberty to *aspersion* the *Government* at Pleasure, by whatever *Suggestions* and *Insinuations* he pleases; and these made by a *warm Advocate* for *Passive Obedience*, the most *peaceful* and *submissive* Doctrine in the World.

My Lords, In the *Cafe de Libellis Famosis*, in the Fifth Report, there was a Prosecution for a Libel, not indeed set forth at large in the printed Book, (as was not fit) but thus far particularly taken notice of that it traduced and scandalized one Person dead, and him an *Archbishop* too, by *Descriptions* and *Circumlocutions*, and not in *Express Terms*; and no body ever doubted but it was *Criminal*. But tho' there should be a greater Strictness observed in respect of *private Persons*, yet when the *Queen* and *Government* are concern'd, when *All* lies at Stake, a Man ought to guard himself, and his Expressions, not to touch in the least there: And every Man that's *truly Loyal*, and desires the *Peace* of his *Country*, will do it. And knavish Designers against the Publick Peace, are not to be suffer'd to go on in overthrowing it, because they have contriv'd *crafty Ways* of doing it.

I mention this only to oppose the *present Claim*; though in our *Cafe*, the Reflections are *plain* and *full*.

The other is his Lamentation at the Close, which I cannot but take notice of, as an insolent Reflection on the *Honour* and *Justice* of the *House of Commons*. "Hard is the Lot of the Ministers of the Gospel, if when they cite the Word of God in their general Exhortations to Piety and Virtue, or in the Reproofs of Mens Transgressions, or when they are lamenting the Difficulties and Conflicts, with which the Church of Christ, while Militant here on Earth, must always struggle, the several Texts and Passages by them cited shall be said to have been by them meant of particular Persons and Things, and shall be consider'd in the most Criminal Sense, and be made (by such Construction) one Ground of an Impeachment for High Crimes and Misdemeanors.

My Lords, This was put into the Answer, not by way of Defence, but to make that Use which has been made of it, to print it before it came to be consider'd, and lay hold of that as an Handle, as has been done, to say Dr. Sacheverell has been prosecuted only for *doing his Duty as a Clergyman*, which is a scandalous Reflection.

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Is the Story of *Elisba*, as told by him, an Honest Citation of a Passage of Scripture?

Are *Enemies* that are *Chief*, and the *Adversaries* that at *present Prosper*, no particular Persons now in Being; though to the Scripture Expression he has added the Words, *At present*, for fear the Application should not be close enough.

Is this Sermon an *Exhortation to Piety and Virtue*? Or is it not manifestly a *Trumpet to Rebellion*? Is it a shewing the Audience their *own Faults*, that they may cure them, and amend their *Lives*? Or is it not plainly the *Exposing* the Faults of others, the *Faults of their Governors*, that they may base the *Persons*?

Even the Doctrine of *Passive Obedience*, is it here so warmly contended for, that People may be *dutiful* and *submissive*; or that they may be *enraged* against those that deny it? In short, Is there one *Christian Virtue* taught in it? Except your Lordships will honour with that Name the sticking, not to the *Church* and *Christianity*, but (according to the Doctor's own Expression in another Place) to a *Party*; and *Courage*, not only a *Passive*, (which he no where recommends) but an *Active* against the *Government*, to which the whole Discourse incites.

My Lords, The *Commons* have the greatest and justest *Veneration* for the *Clergy* of the *Church of England*, who are *Glorious* thro' the whole *Christian World* for their *Preaching* and *Writing*, for their *Steadiness* to the *Protestant Religion*, when it was in the utmost Danger. They look upon the *Order* as a *Body of Men*, that are the *Great Instruments*, thro' whose Assistance, the *Divine Providence* conveys *inestimable Advantages* to us. They look upon the *Church Establish'd* here, as the best and surest *Bulwark* against *Popery*; and that therefore all *Respect* and *Encouragement* is due to the *Clergy*: And it is with *Regret* and *Trouble*, that they find themselves oblig'd to bring before your Lordships in this manner one of that *Order*.

But when we consider Dr. Sacheverell, stripping himself of all the becoming Qualities proper for his *Order*, nay, of all that *peaceful* and *charitable* Temper, which the *Christian Religion* requires of all its *Professors*, deserting the Example of our *Lord* and *Master*, and of his *Holy Apostles*, and with *Rancour* and *Uncharitableness* branding all that differ from him, (tho' thro' *Ignorance*) with the Titles of *Hypocrites*, *Rebels*, *Traitors*, *Devils*; reviling them, exposing them, conducting them to Hell, and leaving them there; treating every Man that falls in his way, worse than *Michael* the Archangel used the *Devil*; coming himself more near the Character in *St. Jude*, (Part of which he would apply to others) *despising Dominion*, *speaking evil of Dignities*; like *raging Waves of the Sea* foaming out his own *Shame*; forgetting (when his Text and his Doctrine led to it) to recommend the *Peace of his Country*, in a Time when all *Europe* is in *War*, and nothing can preserve us from falling into the Hands of the *Grand Enemy and Oppressor*, but our *Unanimity* under her *Majesty*: Then labouring to sap the *Establishment*, and railing and declaiming against the *Government*; crying *To Arms*, and blowing a *Trumpet in Zion*, to engage his Country in *Seditions* and *Tumults*, and overthrow the *Best Constitution*, and betray the *Best Queen* that ever made a People happy; and this with *Scripture* in his Mouth!

The *Commons* look'd upon him by this Behaviour, to have sever'd himself from all the rest of the *Clergy*, and thought it their Duty to bring to

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Justice

Justice such a Criminal; and are in no Fear of being thought *Discouragers* of those who preach *Virtue* and *Piety*, because they, in the Supreme Court of Justice, *prosecute* him that preaches *Sedition* and *Rebellion*; or to have any *Design* to lessen the *Respect* and *Honour* that's due to the *Clergy*, by bringing him to Punishment that Disgraces the *Order*.

Mr. Secretary Boyle. MY Lords, I am commanded by the House of Commons to have a Share in Maintaining the Articles of Impeachment against Doctor *Sacheverell*; and it falls to my Lot to speak to this Fourth Article, which contains no less a Charge than Endeavouring to Excite and Stir up her Majesty's Subjects to Arms and Violence.

The Ground of this Accusation, is the Dedication of a Sermon preach'd at *Derby* at the last Assizes; and another Sermon preach'd at *St. Paul's* the Fifth of *November* last, a Day set apart to commemorate the Preservation of the King and Parliament from the Gunpowder-Treason; and to give Thanks to Almighty God for the Deliverance wrought by his late Majesty, in rescuing these Kingdoms from Popery and Arbitrary Power.

The whole Nation doth now enjoy the Benefit of that happy Revolution, and all the good Subjects of her Majesty are thankful for it. One would have thought, that on such a Day, that Matter should not have been so handled as only to be expos'd; and I am persuaded, that whoever goes about to asperse and vilify the late Revolution, would rejoice to see another.

I shall not trespass upon your Lordships Patience so far as to repeat the many Passages in the Sermon that make good our Accusation, they having been so fully laid before your Lordships already by a Gentleman that spoke before: And indeed there is the less Reason to defend into Particulars, since the whole Scope and Design of the Sermon is to instill groundless Jealousies into the Minds of People, and to cast the most virulent Reflections imaginable upon her Majesty's Administration.

One might suppose, from the Doctor's Discourse, that the Church of *England* was now suffering under the most severe Persecution; that the Laws were no longer in Force; and that the whole Government was unhinged. Aspersions more violent could not be used, if we lived in the Reign of the worst of Heathen Emperors, while we are Partakers of so many Blessings under the Government of the best of Queens.

The Prisoner at the Bar lays some Strefs upon the Word *Suggest*, as expressed in the Fourth Article, which has already receiv'd an Answer; and would insinuate that there are no plain Words in the Sermon to support the Charge. But if that Objection were true, which we are far from admitting, and the Consequences drawn from it were allowed, I must say, hard would be the Case of the Government, if Men might make the most odious Suggestions against it, and cast Reflections with Impunity, under the Shelter of some doubtful Expressions, and equivocal Sentences, at the same time that the Sense and Malice of the Reflections are plain to be understood, and can hardly be mistaken.

He doth indeed affect in his Answer, and in one Part of his Sermon, to profess great Duty to her Majesty; but let those Expressions be compared with the Calumnies that are heaped upon her Administration, and I conceive they will not mitigate his Crime, and will avail him no more than the Pretence that he makes to be for Liberty of Conscience,

when he condemns the Toleration. I believe these Excuses will equally weigh with your Lordships, and his Sincerity in both will equally appear.

My Lords, It is no new Thing among those who design to stir up Sedition, to bestow great Encumbrances on the Person of the Prince; it has been a common Practice, and the same Method was pursued in the late unhappy Times. The Incendiaries of those Days pretended that the Protestant Religion was in Danger under that Government, as the Enemies of our Constitution cry the Church is in Danger under this.

But, my Lords, every thing is in Danger from such seditious Discourses. What a Scene of Distraction and Wickedness is here display'd to the Understandings of the People, to excite and inflame them to Sedition and Rebellion? Who can sit still, if they are persuaded that *the Altars and Sacraments of our Church are prostituted to Hypocrites, Deists, Socinians and Atheists; and this done with Impunity, and without Discouragement?* What can be more provoking to all good Christians and good Subjects, than to be told that *People are suffer'd to combine into Bodies and Seminaries, wherein Atheism, Deism, Tritheism, Socinianism, with all the Hellish Principles of Fanaticism, Regicide, and Anarchy, are openly professed and taught.*

No Man can think he is long to enjoy his Religion, Liberties or Property, if he can be made to believe that *the Foundations of the Church are undermin'd, and the Government endanger'd, by filling it with its profess'd Enemies.* What is the Meaning of all this, but only to make out, that her Majesty's Administration, both in Ecclesiastical and Civil Affairs, tends to the Destruction of the Constitution? And what must be the Consequence of such an Opinion instill'd into the Minds of the People, but black and melancholy Thoughts, seditious Practices, and at last open Force and Violence?

The Priests must cry aloud and spare not, they must blow the Trumpet in *Sion*; and we are told there are those that have Lives and Fortunes to maintain such Truths as Doctor *Sacheverell* has laid down. What those Truths are, may be seen thro' the whole Course of the Sermon; they are such, my Lords, as we apprehend do not at all tend to the strengthening the present Government, tho' they may be serviceable towards setting up another.

This is not the Spirit of the Gospel, nor agreeable to the Principles of the Church of *England*; and we submit it to your Lordships Judgment, whether this Sermon is not Seditious, and whether the Prisoner at the Bar is not guilty of High Crimes and Misdemeanors.

Mr. Chancellor of the Exchequer. MY Lords, I am commanded by the Commons of *Great Britain* to bear my Part in the Management of the Impeachment against Doctor *Henry Sacheverell*, and particularly on this Article. My Lords, I believe, after what you have heard already, you will think there is little Need for me to say any thing on this Head; yet I shall take the Liberty to mention a few Particulars.

I cannot but take Notice, that in a Sermon preach'd on a Day appointed to commemorate the Blessings we enjoy by the late happy Revolution, there is not one particular Clause to shew forth those Blessings, or the Mischiefs that were then likely to come upon us. There is a little, indeed, upon the Gunpowder-Treason; but upon the Revolution there is nothing, nor doth he take Notice of the Dangers we were in before it, in order to raise the

the Devotion of the People, and their Thanks to God for their Deliverance. But all the Tenor of his Discourse is to show the Male-Administration of the Government, and the Dangers that have been coming upon the Church ever since the Revolution; so that it is plain, that he had no Thoughts of the Blessings of that Deliverance, nor any Dislike to the Conduct of those Times.

My Lords, This Sermon was preach'd in a Place well chosen to attempt Mischief in. He well knew that if he could raise an evil Spirit in this great City, it would do more Mischief than in another Place where he had often attempted it: But, God be thanked, he was disappointed; and he own'd himself in another Place, that he did not expect the Thanks of the Court of Aldermen for it.

I shall take Notice of his Dedication, where he carries on the same Design, and owns it on second Thoughts. He's not only warm in preaching the Sermon; but in his Dedication he shows with what Spirit he compos'd it: He says, *That if honest Gentlemen will sit still, and give up their Cause for want of Courage, or a just Sense of the dangerous Attempts of our Enemies, without the Spirit of Prophecy we may foretel what will become of our Constitution, when it is so vigorously attack'd from without, and so lazily defended from within.*

My Lords, I shall not explain the Meaning of those Words, *Sitting still, and Want of Courage*; but I cannot but take Notice of these Words, *The vigorous Attack from without, and the lazy Defence from within.* I would desire to know who the Doctor takes to be the Defender of the Faith; and who under that Defender is to protect the Church? It must necessarily be meant as a Reflection on her Majesty, and upon those that under her Authority are to take Care of the Church. The next Passage is a plain Confession of his seditious Intentions. He tells us his Business was not to preach Peace, but to sound the Trumpet. If a Minister will declare it, not to be his Duty to preach Peace, your Lordships will easily judge what his Intentions were.

I know it is the Business of those that are Profelytes to this Gentleman, to give out that we design to narrow our Obedience to her Majesty. But, my Lords, we are far from it; and own the greatest Duty and Submission to our Sovereign: But we cannot bear, that a Reflection should be cast upon the Resistance that was us'd at the Revolution; and we hope your Lordships will never admit a Question to be rais'd of the Legality of it.

My Lords, The Acts of Settlement of the Crown depend upon that Legality: If that be illegal, the others in Consequence are void; and tho' her Majesty has an hereditary Right to the Crown, yet I take those Acts to be her great Security; and I can make no Question, but that if the Foundations of those Acts were shaken, the Doctor would soon find another hereditary Right to resort to.

My Lords, The Toleration is certainly grounded upon the best Principles, upon a Principle of Religion and a Principle of Policy. I think every Body will allow, that nothing can establish Peace in a Kingdom so well, as the granting Ease and Quiet to Mens Consciences. If they pay due Submission to the Government, they ought not to be persecuted for their Religion: It is for her Majesty's Interest and Honour. For how can her Majesty be the Head of the Protestant Interest Abroad, if Protestants are not protected at Home?

It was the Observation of the Lord Clarendon, in his History, that some eminent Clergymen press'd King Charles the First to make Distinctions among

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Persons; and that by their Advice, his Ambassador in France was order'd not to go to the Hugonot Churches there, as he us'd to do. He lays it as an Imputation on those that gave the Advice; and makes this Remark, That it was with a Design of an Union with the Church of Rome; which prov'd of very ill Consequence to his Affairs at that Time.

My Lords, We take it, that it is contrary to the Duty of any private Man to find Fault with a Law in Being, or to declaim against the Reasonableness of the same; it is raising in the People an ill Opinion of the Lawgivers, and the Administration.

My Lords, There are some People, and I wish their Numbers do not increase, who will not allow the Church to be out of Danger, whilst the Civil Magistrate has the Government of the Church. These appear publicly; and in Print; they cancel the Queen's Supremacy, deny the Authority of the Laws, and erect a Church independent on the Civil Government. Of this Church I take the Doctor to be, and very properly for his Purpose; for here he may thunder out his Bulls and Anathema's without Controul: Here is a Field for him to open his Commission in, where he may sound his Trumpet, and not preach Peace.

But, my Lords, the Commons can never admit the Church, as established by Law, to be in any Danger during her Majesty's Administration; it being guarded by her Majesty's Piety and Care of it; by the Reverend Bishops, who are so diligent and watchful in their Functions; and which will always have the utmost Assistance of the Commons and your Lordships, to support and maintain. As for their independent Church, I hope it will ever be in Danger; and cannot but think that wholesome Severities were very proper to be apply'd to the Broachers of such seditious Doctrines; they are Popish Principles, and if they should obtain here, would certainly bring in Popery along with them.

My Lords, I cannot conclude, without taking Notice of a very unjust Reflection made upon the Commons in the Doctor's Answer, wherein he charges them with designing to restrain the Ministers of the Gospel from doing their Duty, in recommending Piety and Virtue to their Auditors. These are Doctrines so proper to come from the Pulpit, that those that recommend them, will always meet with the Countenance and Encouragement of the House of Commons. But when a Clergyman acts contrary to his Function, and instead of reproving Vice and Immorality, takes upon him to reproach the Government; when instead of preaching Peace, and Charity, and other moral Virtues, he takes upon him to raise Jealousies, foment Divisions, and stir up Sedition, 'tis high Time for the Justice of the Nation to put a Stop to it: As such a Person, we charge Dr. Sacheverell, and think we have made good our Charge, and cannot doubt your Lordships Justice upon the Offender.

And then the LORDS adjourned to their House above.

Thursday, March 2. The Fourth Day.

THE Lords coming down into Westminster-Hall, and being seated in the manner before-mentioned, Proclamation was made by the Serjeant at Arms as follows:

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Our

Our Sovereign Lady the Queen doth strictly Charge and Command all manner of Persons to keep Silence, upon Pain of Imprisonment.

Then another Proclamation was made: *Henry Sacheverell*, Doctor in Divinity, come forth, save thee and thy Bail, else thou forfeitest thy Recognizance.

The Doctor appearing at the Bar accordingly, with his Counsel as before:

Lord Chancellor. Gentlemen of the House of Commons, you may proceed in your Evidence.

Mr. Lechmere. MY Lords, Your Lordships adjourned Yesterday, when the Commons were proceeding on their fourth Article, a Share of which Service was appointed to me: The Proofs, we insist on, in Maintenance of this Part of our Charge, have been laid before you with great Exactness; and all the Enforcements they can well receive, have been already offer'd to you, by those Gentlemen, that have gone before me; so that I find myself acquitted from giving your Lordships much Trouble upon it.

The Charges contain'd in the precedent Articles, are particular and distinct; of so high a Nature in themselves, and of such eminent Consequence to her Majesty and her Government, that we have held ourselves obliged, to treat each of them, with all imaginable Clearness and Solemnity; and this, my Lords, from that true Zeal and necessary Concern, with which the Commons, upon this great Occasion, are so justly inspir'd, for the Honour of her Majesty, and the Prosperity of her Kingdoms.

The Subject of this Article is laid down in general Positions, some of which are the Result and Consequence of the former Articles; and this will make it necessary to remind your Lordships of the Passages produced in Support of them: The Application of them, to the several Branches of this Charge, is easy and obvious: The further Passages, that were Yesterday pointed out to you, are many in number, and the Assertions positive, scarce liable to any Constructions more innocent in themselves, or more favourable for the Prisoner, than what hath been put upon them: But tho' the more flagrant Parts of the Prisoner's Discourses have been distinguish'd to you, your Lordships can't fail of discerning that implacable Enmity that runs through the Whole: How little will your Lordships find in it of the Spirit of the Gospel, of the Temper of a Christian, or a good Subject, much less of a Messenger of Peace? No, my Lords, when the Heart is poisoned, the Corruption will be diffus'd throughout; when Principles are delivered from the Pulpit, that strike at the Root of the present Government, and our future Establishment, and are taught as fundamental Rules both of Law and Conscience; what Kind of Proofs, what Exhortations are to be expected from such a Preacher? Surely, such only, as you have heard from this Man, such only, as may create universal Dissatisfaction, will disquiet the Minds, and tend to pervert the Obedience of the Subjects; such only, as shall be most likely to cherish and cultivate those Seeds of Sedition, which, when sufficiently propagated, and brought up to their full Growth, can terminate in nothing less than a total Destruction.

My Lords,

I am now to acquaint you, That the Commons have gone through their Charge, wherein they have been heard by you with great Candour and Pati-

ence: And that imperfect View, which was the best I was able to give you, in opening the Charge, has been amply supply'd by the great Sufficiency of what has follow'd: And from thence, I think, I have good Grounds to say to your Lordships, that this Impeachment of the Commons in every Part of it, is substantially and effectually maintain'd.

And now, my Lords, craving Leave of the Doctor to borrow a Phrase which stands at the Head of the last Paragraph of his Sermon, *What is the Result* of this Proceeding hitherto? In opening the Charge, we consider'd him in the Condition of a Person accus'd; but the Proofs having been produc'd, and the Evidence being unquestionable, even from his own Mouth, and by the Endeavours of other Gentlemen, to whose Provinces the several Tasks have fallen, the false Colours of his Discourse being taken off, and his Scheme reduced to its true Consistency, give me Leave to represent him to your Lordships in a true Light, and in his proper Colours.

Your Lordships now see this Gentleman, under the Reign of the greatest and best of Princes, that ever wore a Crown, whose Title to the Throne stands upon a more solid and indisputable Foundation than that of any Prince upon Earth, guarded and defended by the best Laws in the World, and the intire Affection of all her true Subjects, and which none can draw in question with any other Design than to weaken its Support:

You see him, under an Establishment and Constitution, excellently contrived and adapted to answer all the good Ends of Government, and which has withstood the open Assaults of arbitrary Princes, and the more crafty Attempts of Papal Encroachments; and which, since the true Religion was established among us, has been preserved in despite of the Dangerous Endeavours of Papists, by dividing Protestants, to make Way for its Destruction: A Constitution, which happily recovered itself at the Restoration, from the Confusions and Disorders which the horrid and detestable Proceedings of Faction and Usurpation had thrown it into, and which after many Convulsions and Struggles, was providentially saved at the late happy Revolution; and by the many good Laws pass'd since that Time, stands now upon a firmer Foundation: Together with the most comfortable Prospect of Security to all Posterity, by the Settlement of the Crown in the Protestant Line.

Your Lordships have found this Person, at a Time when the Church of *England* as by Law establish'd, is in perfect Prosperity and Safety at Home, and in higher Reputation Abroad, than in any Age that has gone before it; at a Time when the Nation enjoys Peace and Tranquility, and all the good Effects of a prudent and successful Administration, demonstrated by the Harmony and unanimous Endeavours of all her Majesty's true Subjects to support it;

In the most solemn and publick Manner, leveling the most virulent Discourse against her Majesty's Title to the Crown, and against our present Establishment, and calculated to favour the Pretension of another.

Your Lordships find in it the same Principles reviv'd and avow'd in the same dangerous Extent by him, as in a late Reign by the profess'd Instruments of Popery and Arbitrary Power, and apply'd in Condemnation of the glorious Work of the late happy Revolution, which delivered us from them.

Your

Your Lordships have found him arraigning the Honour of her Majesty and her Parliament, aspersing her Administration both in Church and State, and with all imaginable Ardour and Vehemence stirring up Sedition, and exhorting to Rebellion; and that in the Name of Almighty God, as a Person commissioned from Heaven to that End, and in the most profane and prostitute Manner abusing and wresting Scriptures to those impious Purposes.

'Tis on those Grounds, that the Commons have charged the Crimes to have been committed by him with an Intent to undermine her Majesty's Government, and to stir up Arms and Violence: And do your Lordships want further Evidence of this? Let us remind you of the Rebellion that has been rais'd, and that High Treason that was committed, the last Night, by those Persons who abet the Prisoner!

I can't aggravate the Offence; your Lordships will duly consider the Height and Quality of it, you will think of a Satisfaction suitable to that, and to the just Expectation of the Commons.

My Lords,

The Nature and Length of this Proceeding having occasion'd many Interruptions, we are yet assur'd, that no Misconstruction will be permitted by your Lordships, of what may have fallen from any of us. We likewise take Notice to your Lordships, that the Commons have very readily acquiesced in your Appointment of Counsel to assist the Prisoner. Your Lordships informed us in the Beginning of the Cause, that you did this in great Benignity to him, in assigning him those Counsel which he himself had ask'd, and doubtless such as are according to his own Heart's Desire: And the Commons are assured, that those Gentlemen will understand that Regard which is due to the Nature of this Cause, and to the Dignity of a Proceeding wherein the Commons of *Great Britain* appear as Prosecutors.

The Commons conceive, they have Reason to take great Satisfaction from this Proceeding, whereby they have the Opportunity in the most solemn Manner, before the most August Judicature in the World, to assert the Freedom and Excellency of our Government, and the Justice of the present Establishment: This single Consideration shews your Lordships of what Malignity the Prisoner is capable, who has thus set himself to disorder and destroy so happy and so beautiful a Constitution.

We desire to put your Lordships in Mind of those Felicities, which in our Opinions, accompany this Prosecution; when we see so many of your Lordships the Judges of this great Cause, who had so great a Share in that Deliverance which we are now called upon to vindicate; so many others of your Lordships, the Sons of those Fathers, who joined in it; and who have the same Blood still running in your Lordships Veins. And when we consider that firm and steady Zeal which every one of your Lordships have shewn in Support of the present Settlement, what Doubt can we entertain of your most impartial Justice?

We further observe it, as the great Security of our Impeachment, That no Endeavours can prevail to prevent your Judgment upon it, nor any Means succeed to defeat its Effects.

And on t'other Hand, we have before our Eyes the many good Consequences, which that Part which the Commons have taken on themselves, will certainly produce; that Strength and Vigour

'twill add to the great Affairs of the Kingdom, and of all *Europe*, at this critical Juncture, when the World shall see that the Commons of *Great Britain*, who have been so unanimous in Defence and Support of the common Cause of Peace and Liberty Abroad, are thus zealous to find out and extirpate that malignant Humour, which alone can endanger it at Home; that whilst the common Oppressor feels the Effects of her Majesty's Arms, the intestine Enemies of the Nation, and of her Government, (in the Instance of the prisoner) may see and consider the Force and Weight of the highest Repentment of the Commons.

Those good Effects will receive yet greater Enforcements from your Lordships Judgment; which, when it becomes publick, will be an effectual Confutation, or an unanswerable Treatise against the pestilent Doctrines advanc'd by the Prisoner.

The Firmness of your Proceedings will give the same Steadiness and Vigour to all other Parts of the Administration, which will henceforward strive to imitate your Lordships in so great an Example; and 'twill strike due Terror on those Minds, in which the same destructive Errors have taken Root.

And, my Lords, What Comfort and Peace must it bring to all her Majesty's faithful Subjects, to see her Majesty's undoubted Title, the Wisdom of her Administration, and the Protestant Succession, so effectually supported by your Lordships Judgment?

My Lords, We have thought it necessary, in Discharge of the great Trust reposed in us by the Commons, to go through the whole Charge together, that your Lordships might have it intire. I am now only to add, That they do reserve to themselves the Liberty of replying to what shall be offered on behalf of the Prisoner, and of every other legal Advantage that shall arise to them in the Progress of their Impeachment.

Lord Chancellor. Gentlemen of the House of Commons, Have you gone through the Charge?

Mr. Lechmere. My Lords, we have.

Lord Chancellor. Then you that are appointed Counsel for Doctor Sacheverell, may proceed to his Defence.

Sir Simon Harcourt. My Lords, There having been already three whole Days spent by the Gentlemen of the House of Commons in Maintenance of their Charge; and this Day being so far spent, I am bound in Duty humbly to represent to your Lordships, that it will be impossible for us to go through the very first Article, so as to finish in any reasonable Time. My Lords, We humbly expect your Lordships Commands.

Lords. Go on, go on.

Sir Simon Harcourt. My Lords, We must receive your Lordships Commands. We think it of great Importance to go through the first Article at once, if your Lordships please to give us Leave.

Then the LORDS adjourned to their House above.

Friday, March 3. The Fifth Day.

THE Lords coming down into *Westminster-hall*, and being seated in the Manner before-mention'd, Proclamation was made by the Serjeant at Arms as follows:

Our

Our Sovereign Lady the Queen doth strictly charge and command all Manner of Persons to keep Silence, upon Pain of Imprisonment.

Then another Proclamation was made: *Henry Sacheverell*, Doctor in Divinity, come forth, save thee and thy Bail, else thou forfeitest thy Recognizance.

The Doctor appearing at the Bar accordingly, with his Counsel, as before:

Lord Chancellor. Gentlemen, you that are Counsel for the Prisoner, may proceed to his Defence.

Sir Simon Harcourt. MAY it please your Lordships, I am Counsel for Doctor *Sacheverell*, who stands impeached in the Name of all the Commons of *Great Britain* of High Crimes and Misdemeanors. The Crimes supposed to have been committed by him are contain'd in four Articles. I beg leave to postpone the three last, without mentioning any Thing of them, 'till we have all concluded what we have to offer and lay before your Lordships, as to the several Charges contain'd in the first; and endeavour'd to satisfy your Lordships, That notwithstanding what has been objected by the Gentlemen of the House of Commons against the Doctor, in Maintenance of that Article, he is an innocent Man. The first Article contains three distinct Charges; we shall proceed on them as they lie in Order. The first of them is, "That he suggests and maintains, that the necessary Means used to bring about the late happy Revolution were odious and unjustifiable". Your Lordships have been inform'd, that by this Expression of, *The necessary Means*, mention'd in the first Article, the Gentlemen of the House of Commons intend his late Majesty's glorious Enterprize for delivering this Kingdom from Popery and arbitrary Power, and the Subjects of this Realm well affected to their Country, joining with, and assisting him in that Enterprize. In a shorter Description, it has been explain'd, that these *necessary Means* were the Subjects Resistance to their unfortunate Prince then upon the Throne. Of this Resistance the Doctor has made no Mention in his Sermon. He has, indeed, affirm'd the utter Illegality of Resistance on any Pretence whatsoever to the Supreme Power; but it can't be pretended, there was any such Resistance used at the Revolution. The Supreme Power in this Kingdom is the Legislative Power; and the Revolution took Effect by the Lords and Commons concurring and assisting in it. Whatever therefore the Doctor has asserted of the utter Illegality of Resistance, his Assertion being applied to the Supreme Power, can't relate to any Resistance used at the Revolution; and consequently can't be an Affirmance, that such Resistance, or such necessary Means, were odious and unjustifiable. One of the learned Gentlemen, who spoke the third Day of this Trial, in Maintenance of the last Article, concur'd with me in this; and objected it to the Doctor, That he had guarded himself, by confining his Assertion to the Supreme Power; and that he had not averr'd the utter Illegality of Resistance to the Queen: But had he in express Terms affirm'd the Unlawfulness of such Resistance, yet by the same Arguments which have been used, the Doctor would have been told, he had been preaching a slavish Doctrine. My Lords, another Gentleman of the House of Commons (I think there were but two of them who took Notice of this Expression of the Doctor's of *the Supreme Power*) observ'd, that the Doctor had asserted the Illegality of Resistance to the Supreme Power on any Pretence

whatsoever; which Power he admitted was the Legislative; and declared, if the Doctor had really meant that Power, he should not have differ'd from him; and without doubt, your Lordships and all Persons will concur with him in this, that 'tis utterly unlawful to resist the Supreme Power. But that Gentleman being satisfy'd, that tho' the Doctor expressly mention'd the Supreme Power, which is the Legislative, yet he certainly intended the Supreme executive Power, concluded he was guilty of this Charge in the first Article; and mention'd it as an Instance of the great Mercy and Lenity of the House of Commons, that they had not proceeded against him for High Treason, as a *Parson* in one of the late Reigns was prosecuted for Words which he thought less offensive and dangerous than this Assertion preached by Dr. *Sacheverell*. And yet that Gentleman was pleas'd to say, That had a Dissenter, whose Affection to the Government was unsuspected, express'd himself as the Doctor did, the Gentlemen of the House of Commons would not have thought fit to have prosecuted him. That Case which was alluded to, I take to be the Case of Mr. *Roswell*, a Nonconformist Minister. He was indicted in the 36 Car. II. for Words spoke by him in a Sermon preach'd at a Meeting-house. 'Twas a Prosecution carried on through the Violence of those Times, and generally detested. He was convicted; but on cooler Thoughts, and Consideration of the Uncertainty in his Expressions, that they could not amount to such a Crime as he stood charged with, Judgment was arrested, and Mr. *Roswell* was discharg'd. Another learned Gentleman who open'd the Charge, was of Opinion, that the Doctor, in his Assertion of the Illegality of Resistance to the Supreme Power, does really neither mean the Legislative nor executive Power, but that he had the Pretender in his View. This is diving into the Secrets of his Heart, and searching into his Thoughts, which God only knows. This was urg'd, to avoid the strange Inconsistency, in concluding, that the Doctor was endeavouring to undermine the Government, by preaching up the utter Illegality of resisting it.

My Lords, If there be a double Sense, in either of which those Words are equally capable of being understood; if in one Sense the Doctor's Assertion be undeniably clear, but in the other some Doubt might arise, whether his Words be criminal or not, the Law of *England* is more merciful than to make any Man a Criminal, by construing his Words against the natural Import of them, in the worst Sense. This is the great Justice and Clemency of our Law, in every Man's Case. But some Persons are intitled to have a more favourable Construction put on all their Words and Actions, than others are; such as Persons acting in the Execution of their Offices, in Obedience to Authority, or by a Commission from the Crown; such Persons are look'd upon as under the immediate Protection and Care of the Law: How much more reasonable is it, that Ministers of the Gospel, who have their Commission from God, and speak in the Name of God, should have the most candid Interpretation made of whatever they say? This, I am persuaded, was one of the chiefest Reasons which in the Case of Mr. *Roswell* allay'd the Rage of that Reign; and at that Time obtained Mercy for him, though a Nonconformist Minister under a Conviction of High Treason. 'Tis a hard Fate attends this unhappy Gentleman, if he must inevitably lie under the Imputation of being thought an Enemy to the Revolution, and to our present happy Establishment on that Foundation. What

What Evidence will your Lordships expect he should produce to clear himself? He has shown his Submission to the Revolution, from the first Moment his Years made him capable of doing so. He has given all the publick Testimonies of his Fidelity and Affection to the last Reign, as well as the present, which the Government has at any Time requir'd from the most suspected Persons. He has taken the Oath of Allegiance, signed the Association, and took the Abjuration. 'Tis a miserable Case any Man is in, if after he has taken the Abjuration, the utmost which is requir'd, he shall still be told, he hath indeed abjur'd the Pretender, but hath not yet forgot him. If neither the Inoffensiveness of the Doctor's Behaviour, neither his Words, nor Oaths can satisfy; if after all these Demonstrations the Doctor has given of his Fidelity, he is still liable to be censured, what Satisfaction is it possible for him to give?

My Lords, If the Manner of this solemn Prosecution has not alter'd the Nature of Things, I hope I may insist, without putting in a Claim of Right in Behalf of all the factious and seditious People in the Kingdom to revile the Government at Pleasure, That by the happy Constitution under which we live, a Subject of *England* is not to be made criminal by a labour'd Construction of doubtful Words; or when that can't serve, by departing from his Words, and resorting to his Meaning. Too many Instances there were of this Nature before the late happy Revolution; but that put an End to such arbitrary Constructions.

I might trouble your Lordships on this Head with Multitudes of Authorities; but I shall mention only one: 'Tis an Authority of your Lordships, upon a Writ of Error, immediately after the Revolution; Sir *Samuel Barnardiston's* Case; and I beg Leave to refer to your Lordships Journal, May 14, 1689. 'Twas that Gentleman's Misfortune to be called in Question in the Reign of King *Charles* the Second (*Hill. Term* 1683.) for writing some Letters supposed to be seditious, and highly reflecting on the Government, and the publick Justice of the Nation at that Time. Upon his Trial he was represented as a seditious Man, and one of a turbulent Spirit; and being so painted by the Chief Justice who try'd him, tho' his Actions were inoffensive; notwithstanding his Innocence, a Verdict was obtain'd against him; and when he came to receive Judgment, not being look'd upon as an inconsiderable Man, nor as a Tool of his Party, but as one of the Heads of it, a Fine of ten thousand Pounds was set on him. I beg Leave to lay before your Lordships what you did in that Case. Your Lordships reversed that Judgment; and as a glorious Instance of your Justice, not contenting yourselves with the Right you had done in the Case then before you, at the same Time provided, as far as was possible, that no innocent Person, in After-Ages, might suffer Wrong. Your Lordships therefore, in an extraordinary Manner, order'd the Reasons of your Judgment to be entered in your Journal, and they are enter'd in the following Words: "First, The Information in this Case being grounded upon Letters, which in themselves were not criminal, but made so by Innuendo's, your Lordships declared, that Innuendo's, or suppos'd, or forc'd Constructions, ought not to be allow'd; for all Accusations should be plain, and the Crimes ascertained". My Lords, I hope it's unnecessary to my present Purpose, to read to you the second Reason; but as it was another Instance of your Lordships Justice, which ought never to be forgot, I

shall take the Liberty of doing it: It relates to the Fine of ten thousand Pounds. Tho' Sir *Samuel Barnardiston* was a Gentleman of a very considerable Estate, your Lordships declared, "Secondly, That this Fine of ten thousand Pounds is exorbitant, and excessive, and not warranted by legal Precedent in former Ages; for all Fines ought to be with a *Salvo contentamento suo*, and not to the Party's Ruin". These were your Lordships Declarations in that Case. If there be any Uncertainty or Doubt in the Doctor's Expressions, your Lordships, I hope, will put the most favourable Construction on them. What I have hitherto offer'd is, with Relation to these Words, *The Supreme Power*; but that which I take to be the main Objection in this Case, is, that the Doctor's Assertion of the Illegality of Resistance must be necessarily understood with Reference to the executive Power. And if it be utterly illegal, in any Case, upon any Pretence whatsoever, then 'twas unlawful at the Revolution; and from thence the Consequence is drawn, That the Doctor is guilty of this first Charge, of maintaining, *That the necessary Means used to bring about the happy Revolution were odious and unjustifiable*. This I take to be the Force of the Objection.

My Lords, I admit the Doctor has in general Terms asserted this Proposition of the Illegality of Resistance to the Supreme Power on any Pretence whatsoever; and yet I am not altogether without Hopes, but that I shall be able to satisfy even the Gentlemen of the House of Commons, whether that Expression be understood of the Legislative, or Executive Power, that he is an innocent Man, notwithstanding that Assertion.

My Lords, There is nothing further from our Hearts, nor is any Thing less necessary to the Doctor's Defence, than for us to dispute or to call in Question the Justice of the Revolution. We are so far from it, that we look on ourselves to be arguing for it, whilst we are endeavouring to show your Lordships, that the Resistance used at the Revolution is not inconsistent with the Doctrine of the Church of *England*, and with the Law of *England*; and that the Doctor uses no other Language than what they both speak. When your Lordships have laid aside what was urg'd the second Day, to show the Justice of the Revolution, and to aggravate the Doctor's Offence, supposing him guilty, this Matter will lie in a very narrow Compass; and I am in Hopes there will not appear to be so great a Difference as hath been represented, between the Doctor, in his Assertion concerning the Illegality of Resistance, and some of the Gentlemen of the House of Commons. I can't say, that I differ from many of them in their Notions of Allegiance, as stated the second Day of this Trial.

My Lords, The first Thing on which I humbly insist, supposing this general Assertion to relate to the Supreme Executive Power, is, that the Doctor has not in any Part of his Sermon apply'd it to the particular Case of the Revolution.

'Twas insisted on the first Day, That he had not only asserted the utter Illegality of Resistance to the Supreme Power, on any Pretence whatsoever; but also that he had expressly affirm'd, that the Revolution was not such a Case, as ought to be excepted out of his general Rule. This I deny: If such an Expression can be found in the Doctor's Sermon, I shall think no Punishment too great for him. 'Tis one Thing, expressly to affirm the Revolution is such a Case as ought not to be excepted out of the general Rule; and another Thing, not to make the Exception. The Apostle, who in general

neral Terms enjoins the Duties of Obedience and Non-Resistance to the Higher Powers, makes no Exception when he lays down those Precepts; nor (on the other Side) does he say, no such Case can ever happen, wherein Obedience is not to be paid, or Resistance not to be made. He is silent in that Matter; and the Doctor's Expression, in this Case, is agreeable with that of the Apostle. To prove the Doctor guilty of this first Charge, and that he had directly applied his General Rule of the Illegality of Resistance to the Supreme Power, to the particular Case of the Revolution, a learned Gentleman, (whose Province it was to maintain the first Article) on the second Day of this Trial, first stated to your Lordships the Page wherein the Doctor mentions the utter Illegality of Resistance, and read that Passage in the following Words: "The grand Security of our Government, and the very Pillar upon which it stands, is founded upon the steady Belief of the Subjects Obligation to an absolute and unconditional Obedience to the Supreme Power, in all Things lawful, and the utter Illegality of Resistance upon any Pretence whatsoever." And then, says he, the Doctor goes on, and says, "Our Adversaries think they effectually stop our Mouths, and have us sure and unanswerable on this Point, when they urge the Revolution of this Day in their Defence". This might very reasonably make an Impression upon your Lordships, not comparing those several Passages in the Doctor's Sermon, at the same Time that Objection was made. But I beg your Lordships will observe the Distance of these two Passages from each other, between twenty and thirty Lines, in which several distinct and intire Sentences are contain'd, to which that last Passage of *Our Adversaries*, &c. plainly relates. The next Method used to prove the Doctor guilty, was, by taking the Passage in itself, independently, from any other; and this I own to be the true way of considering it: And taking it thus, 'tis objected, If in no Case whatsoever 'tis lawful to resist, 'twas then unlawful at the Revolution. Such a Doctrine must be a slavish Doctrine. An unlimited Passive Obedience and Non-Resistance is a slavish Notion.

My Lords, Dr. *Sacheverell* does not contend for it; nor is there any Thing mentioned in his Sermon, of such an Obedience or Non-Resistance. There is but this small Difference between the Gentlemen of the House of Commons, who think this Expression so highly Criminal, and the Doctor, who still conceives it to be otherwise; whether, when the General Rule of Obedience is taught, the particular Exceptions, which may be made out of that Rule, are always to be expressed; or whether, when the General Rule is laid down, the particular Exceptions, which might be made out of that Rule, are not more properly to be understood or implied.

I humbly apprehend, my Lords, that extraordinary Cases, Cases of Necessity, are always implied, though not express'd, in the General Rule. Such a Case undoubtedly the Revolution was, when our late unhappy Sovereign, then upon the Throne, misled by Evil Counsellors, endeavour'd to subvert and extirpate the Protestant Religion, and the Laws and Liberties of the Kingdom. The general Rule ought always to be press'd; but the Exceptions of extraordinary Cases, of Cases of Necessity, are never particularly to be stated. To point out every such Case before-hand, is as impossible, as it is for

a Man in his Senses not to perceive plainly when such a Case happens.

Every Minister of the Gospel is sufficiently instructed from the Doctrine of his Church, from the written Laws of the Land, and the Law of God, to press the general Duty of Obedience; but such extraordinary Cases, wherein Resistance is lawful, wherein it becomes an indispensable Duty, are no where laid down. The same Apostle, who enjoins Obedience and Non-Resistance to the higher Powers, commands also Servants to obey their Masters, and Children their Parents, in all Things: Notwithstanding which general Precepts, many Cases may happen, wherein it may be not only unfit, but sinful for Servants to obey their Masters, or Children their Parents. And yet the Apostle never thought it proper to state, or mention those Cases, but contented himself to press the Duty of Subjection in general, leaving such Cases (when they happen'd) to justify themselves.

Such Cases, my Lords, with respect to Resistance against the Supreme Power, are no way fit to be consider'd, but in Parliament; and even the Parliament itself hath never yet thought fit otherways to consider them, than by way of Retrospect, to justify what had of Necessity been done in those Cases; but never went so far as to enumerate the Cases of that kind, which might happen for the future, wherein it might be lawful for the Subject to resist; nothing being more evident, than that the Subjects would be, some time or other, thereby tempted to exceed their just Liberty.

I beg Leave to close what I have humbly offer'd to your Lordships on this Head, with an Observation I borrow from Mr. *Pym*, at his delivering the Charge against Dr. *Manwaring*. Mr. *Pym*, speaking of the Dutchy of *Normandy*, observes, that that Dutchy having been oppress'd with some Grievances, contrary to their Franchises, made their Complaint to *Lewis* the Tenth; who, by his Charter, acknowledging the Right and Custom of the Country, and that they had been unjustly griev'd, did grant and provide, That from thenceforward they should be free from all Subsidies and Exactions to be imposed by him, and his Successors, yet with this Clause, *Unless when great Necessity required*: Which small Exception, Mr. *Pym* observ'd, had devour'd all their Immunities granted by that Charter. I think I may as reasonably conclude, That if Clergymen, or others, in their Sermons, Writings, or publick Discourses, instead of preaching up the general Rule of Obedience, are permitted to state the several extraordinary Cases, which may arise, the several excepted Cases which, notwithstanding the general Rule, are implied; such Exceptions will in time devour all Allegiance.

Having thus stated to your Lordships the Question between us, Whether such excepted Cases as the Revolution was, are not more proper to be left as implied, than to be express'd, when the general Duty of Obedience is taught; I shall endeavour to satisfy your Lordships, First, That the Doctor's Assertion of *the Illegality of Resistance to the Supreme Power on any Pretence whatsoever*, in general Terms, without expressing any Exception, or that any Exception is to be made, is warranted by the Authority of the Church of *England*: And, Secondly, That his Manner of Expression is agreeable to the Law of *England*.

First, That 'tis warranted by the Authority of the Church. Your Lordships were informed, on the first Day of this Trial, with how much Bra-

very

very even our Popish Ancestors asserted the Legality and indispensable Duty of Resistance, whenever they thought the Liberty of their Country requir'd it; but that at the Reformation, when Truth began to shine out, then it became evident, that this Notion of the Illegality of Resistance was a slavish Doctrine. The learned Gentleman undoubtedly pitch'd on a very proper Time to begin his Search after Truth; and from thence I shall endeavour to trace it.

One very early Authority I find; it was indeed in the Dawn of the Reformation, in a Book intitled, *A necessary Doctrine and Erudition for any Christian Man*; publish'd by the King's Command, 34 H. VIII. 'Twas a Treatise compos'd by the Direction of *Cranmer*, by *Ridley*, *Redmayn*, and other very great and learned Men. I find it highly commended in the *History of the Reformation*, Part 1. Book 3. Page 286. The Reverend Author of that History gives an Account how well the Reformers were employ'd, (*Ann. 1540.*) though not in the way of Convocation: That a select Number of them sat by Virtue of a Commission from the King, confirm'd in Parliament; and that their first Work was to draw up a Declaration of the Christian Doctrine, for the necessary Erudition of a Christian Man; and (*Pa. 293.*) that 'twas finish'd and set forth, with a Preface, written by those of the Clergy who had been employ'd in it, declaring with what Care they had examined the Scriptures, and the antient Doctors, out of whom they had faithfully gather'd that Exposition of the Christian Faith. In this Treatise I find these Passages. In the Exposition of the Fifth Commandment: "And by this Commandment also, Subjects be bound not to withdraw their Fealty, Truth, Love, and Obedience towards their Prince, for any Cause whatsoever it be; nor for any Cause they may conspire against his Person, nor do any Thing towards the Hindrance or Hurt thereof, nor of his Estate." In the Exposition of the Sixth Commandment: "Moreover, no Subjects may draw their Swords against their Prince, for any Cause whatsoever it be." The Reverend Father of our Church, to whom the Publick is so much indebted for that excellent History of the Reformation, and who has receiv'd the just Thanks of both Houses of Parliament for it, (*Page 291.*) declares those Expositions of the Commandments to be very profitable.

My Lords, Tho' the Treatise, in which I find these Expositions, was publish'd in a Popish Reign, yet (as an undeniable Evidence that the Doctrine of Non-Resistance, there taught, is a Protestant Doctrine) I shall shew your Lordships, the Reverend Author of the History of the Reformation has himself asserted it, in much stronger Terms, than Doctor *Sacheverell* has done. In *Edward the Sixth's* Time, the glorious Light of the Gospel shone out. The first Book of the Homilies, prepar'd by the Clergy, was then published by the Royal Authority; in which were three Parts of a Homily, or rather three distinct Homilies of Obedience: In one of which is the Passage mentioned in the Doctor's Answer. "Here, good People, mark diligently: It is not lawful for Inferiors, and Subjects, in any Case, to resist and stand against the superior Powers; for *St. Paul's* Words be plain, that whosoever withstandeth, shall get to themselves Damnation; for whosoever withstandeth, withstandeth the Ordinance of God." In Queen *Mary's* Reign, the Light of the Gospel was eclipsed, and the Darknes of Popery again over-

spread the Nation. Resistance to Princes being a Doctrine of the Church of *Rome*, your Lordships will not expect any authentick Evidence to be produced out of that Reign, in Maintenance of the Doctrine of Non-Resistance.

When Queen *Elizabeth* came to the Crown, the Truth of the Gospel shone forth in its full Lustre, and then six Homilies were added to the other three against Disobedience and wilful Rebellion; in which your Lordships will find many Passages, wherein the Duty of Non-Resistance is pressed and inculcated, in much stronger Terms than it hath been asserted by Dr. *Sacheverell*. In that glorious Reign, the Thirty-nine Articles of our Religion were agreed upon by the Archbishops and Bishops of both Provinces, and the Clergy in Convocation; by the 35th of which, the Homilies are declared to contain a *Godly and Wholesome Doctrine*, and are order'd to be read in Churches, by the Ministers, diligently and distinctly, that they may be understood of the People. In the thirteenth Year of that Reign, a further Sanction was given to the Homilies; the Thirty-nine Articles were then confirm'd, and every Person in Holy Orders, to be admitted to any Benefice with Cure, was required (by Act of Parliament made in that Year) to Subscribe and Read them in the Church, and declare his unfeigned Assent thereto.

My Lords, We have now a most gracious Sovereign on the Throne, as far surpassing her renown'd Predecessor Queen *Elizabeth*, in the effectual Support she gives to the Protestant Interest, and in her pious Care for the perpetual Security of the Church of *England*, as in all the other Successes and Glories of her Reign. In this Reign, a perpetual Sanction is given to the Books of the Homilies, by inserting in the Act of *Union* the Act made 13 *Eliz.* which confirms the Thirty-nine Articles; by the 35th of which, the Doctrine of the Church (taught in the Homilies) is approv'd; and declaring that Act, 13 *Eliz.* to be an *essential and fundamental Part of the Act of Union*: So that I may now conclude, the Doctrine of the Church of *England*, taught in her Homilies, must continue as long as the Union of the two Kingdoms, which I heartily pray may be to the World's End. On these Authorities do the Homilies of our Church subsist: And as they are thus ratified by the Articles and Acts of Parliament, the Doctor has the concurrent Authority of the Church and State, for what he has said concerning the Illegality of Resistance.

My Lords, Is this Doctrine of Non-Resistance taught in the Homilies in general Terms, in the same manner as Doctor *Sacheverell* has asserted it, without expressing any Exception? Do the Articles of our Religion declare the Doctrine taught in the Homilies to be a Godly and Wholesome Doctrine; and will your Lordships permit this Gentleman to suffer for Preaching it? Is it criminal in any Man to preach that Doctrine, which 'tis his Duty to read? The Doctor is not only required by the 35th Article to read this Doctrine diligently, and distinctly, that it may be understood by the People; but to shew your Lordships, the Doctrine taught in the Homilies did not die, nor was alter'd at the Revolution, I must observe to your Lordships, that the Rubrick of the Office appointed for the Fifth of *November*, by the late Queen of Blessed Memory, directs the Clergy on that Day, if there be no Sermon, to read one of these Homilies against Rebellion. Since the Doctor chose rather to preach, than to read a Homily on that Day;

how could he better comply with the Command of her late Majesty, than by preaching the same Doctrine as was contain'd in those Homilies he was commanded to read on that Day, if he did not preach? Does an Act of Parliament, inserted in the Act of Union, injoin him to subscribe to this Doctrine before the Ordinary, and declare his unfeigned Assent to it in his Parish Church? And shall he be condemn'd in Parliament, for asserting the Truth of it? I must admit, this 35th Article of our Religion is not by the *Toleration-Act* (I will give no Offence, by calling it by its true Name) required to be subscribed by any Persons dissenting from the Church of *England*, to intitle them to their Exemption from the Penalties mentioned in that Act. But that Act of Parliament no way varies the Case with respect to the Clergy; so that whatever Duty was incumbent on them before, is so still; and therefore I hope, your Lordships will not think this Gentleman has so highly offended.

As a further Proof that this Doctrine of Non-Resistance, as laid down by the Doctor in general Terms, without making any Exception, is the Doctrine of the Church of *England*, I shall shew your Lordships, that it has been so preach'd, maintain'd and avow'd, and in much stronger Terms than the Doctor has express'd himself, by our most Orthodox and able Divines from the Time of the Reformation. 'Twould be endless to offer your Lordships all the Authorities I might produce on this Occasion; but we shall beg your Lordships Patience to lay before you some Passages out of the learned Writings of several Reverend Fathers of our Church, of nine Archbishops, above twenty Bishops, and of several other very eminent and learned Men.

That your Lordships may not think this Doctrine died at the Revolution, I shall humbly lay before your Lordships the Opinions of three Archbishops, and eleven Bishops, made since the Revolution, which will fully shew the Doctrine of Non-Resistance is still the Doctrine of our Church; I would not willingly give Offence in naming them, I am sure I mean no Reflection, nor can it, as I think, be any Reproach to them: I find no other Doctrine in this Case taught by them, as far as I am able to judge, than what the Apostles taught before them. With your Lordships Leave, I will therefore presume to name them; Archbishop *Tillotson*, the two present Archbishops, Bishop *Stillingfleet*, late Bishop of *Worcester*, the present Bishops of *Worcester*, *Rochester*, *Salisbury*, *Ely*, *Bath and Wells*, *Lincoln*, *Exeter*, *St. Asaph*, *Carlisle* and *Chichester*. If I am able to shew your Lordships that all these Right Reverend Fathers of our Church have preached the same Doctrine the Doctor has, Are the same Words coming out of their Mouths to be received as Oracles of Truth, but spoke by the Doctor fit for Articles of Impeachment? I am sure it's impossible to enter into the Heart of Man to conceive, that what these Reverend Prelates have asserted, that any general Position they have laid down concerning Non-Resistance, is an Affirmance that necessary Means used to bring about the Revolution were *Odious* and *Unjustifiable*: Why then is Doctor *Sacheverell*, by having taught the same Doctrine, in the same Manner as they did, to be charged for having suggested or maintained any such Thing?

My Lords, I dare not suppose this Doctrine, thus establish'd by so many Reverend Fathers of our Church, to be erroneous. If an intemperate Expression of one single Archbishop above a Hundred Years since dead, is fit to be inserted in an Article

of Impeachment of High Crimes and Misdemeanors, what Punishment should I deserve, could I suppose the Doctrine taught by so many Archbishops and Bishops to be erroneous. But if I might hope to be excus'd, if I made the Supposition, that the Homilies of our Church contain false Doctrine, and that so many of the Right Reverend Fathers of our Church are capable of erring, or being ignorant in the Doctrine of their Church, I humbly propose it to your Lordships, whether a Clergyman who errs after such great Examples, might not reasonably have hop'd for a more moderate Correction, than an Impeachment! Had this slavish Doctrine of Non-Resistance been first branded with its indelible Mark of Infamy, and the Right and indispensable Duty of Resistance to Princes plainly shewn; had all the slavish Notions of the Common Law which we find dispers'd throughout our Law-Books, which give Countenance to this Doctrine of Non-Resistance, been first weeded out of them, and some few Acts of Parliament, intirely agreeable with this slavish Doctrine, been first repealed; had the People been set right in the Notions of their Obedience, and the Ministers of the Gospel been instructed by Act of Parliament what Doctrine they ought to preach, and what not; had all these Things been first done, and the Doctor had afterwards err'd, your Lordships might have then look'd upon him, as an obstinate Offender.

The next Thing I beg Leave to consider is, the Law of *England*; whether the Doctor's Assertion of the utter *Illegality of Resistance to the Supreme Power on any Pretence whatsoever*, in general Terms, is agreeable to the Law of *England*. I hope I need not again explain myself as to this Particular, I mean, that as the general Rule is always taught and inculcated by the Church, so has it always been declared by the Legislature, without making any particular Exception; and if this Rule holds both in Church and State, this Gentleman is strangely unfortunate, if he can't be comprehended under one or other of them.

My Lords, whatever may at any Time heretofore have been thought proper to be done by Parliament; whatever Measures, in Cases of the last Necessity, may at any time have been taken by the People in general, for preserving their Liberty, or asserting the Rights of their Country, and keeping themselves from Slavery; yet in no Age can any Instance be shewed, not in the Reigns of those Princes who have been depos'd, that this Doctrine, of the Right of Resistance, as it has been term'd, was ever permitted to be asserted by any particular Person. A memorable Case to this Purpose happened in the Reign of King *Edward the Second*: An Act of Parliament pass'd in the fifteenth Year of that Reign, intitled, *Exilium Hugonis de Spencer Patris, & Filii*. The two *Spencers* were banished by that Act; and the first Article in that Act against them is, "That they had affirm'd and publish'd in Writing, that Homage and Oath of Allegiance were due more by reason of the Crown, than by reason of the Person of the King; and that if the King did not demean himself according to Reason, in the Exercise of his Government, his Subjects might remove him; And that since that Removal could not be by Course of Law, they might therefore remove him by Force." The Time when this Act pass'd, and what afterwards happened, is remarkable. The Act, very soon after the making it, was repeal'd, and 'twas thought necessary in that Reign the People should assert that Right, and thereupon the King was depos'd. But your Lordships will

will find in his Successor's Reign, they were so far from casting any Blot on the Act of Exile, that in the 1 *Edw. 3.* by one of their first Acts, the Repeal of the Exile was annulled, and the Act of Exile confirm'd. It is true, that in the 21st Year of *Rich. 2.* the Act made the 1st *Edw. 3.* for annulling the Repeal of the Exile, was repeal'd, and the Reversal of the Act of Exile confirm'd; but in the 1st of *Hen. 4.* the whole Parliament held the 21st *Rich. 2.* and all the Proceedings in it, for their Extravagance, were annulled, and from thence the Act of Exile of the two *Spencers* continued untouched. I must humbly observe to your Lordships, that though there were two Repeals of the Act of Exile, yet neither of them mention'd the Matter contain'd in the Articles as insufficient, but the Reasons assign'd in the Acts of Reversal are, that "in the Proceedings against the *Spencers*, the great Charter was not observ'd, that the Prelates were not present, and did not assent thereto; and some other Defects in Form". What Opinion our greatest Lawyers have since had of this Act of Exile, sufficiently appears, *Co. 7. 11. Calvin's Case*, the Words are these: "In the Reign of *Edw. 2.* the *Spencers*, the Father and the Son, to cover the Treason hatch'd in their Hearts, invented this damnable and damn'd Opinion, That Homage and Oath of Allegiance was more by Reason of the King's Crown (that is, of his Politick Capacity) than by Reason of the Person of the King; upon which Opinion, says the Lord Chief Justice *Coke*, they infer'd most execrable and detestable Consequences. First, If the King do not demean himself by Reason in the Right of his Crown, his Lieges are bound by Oath to remove the King. Secondly, Seeing that the King could not be reformed by Suit of Law, that ought to be done by Force: All which were condemned by two Parliaments, one in the Reign of *Edw. 2.* called *Exilium Hungonis le Spencer*; and the other 1 *Edw. 3. cap. 1.*". I barely mention these Acts to show, that however applicable the Case of the Revolution might be to that of King *Edw. 2.* yet that those very Persons, by whom the King was depos'd, thought it so high a Crime in the two *Spencers*, to take on them to publish such Positions, as to deserve Banishment. The next Law I beg Leave to mention, is the 25 *Edw. 3. cap. 2.* By which, *the levying War against the King in his Realm* is declared, in general Terms, to be *High Treason*, without an Exception whatsoever: This is an Instance of what I am contending for, that the Law, in all Cases concerning our Allegiance, lays down the general Rule, without making any Exception. So the Oath of Obedience (as injoin'd 3 *Ja. 1. 4.*) all Persons are to swear to defend the King to the utmost of their Power, against all Conspiracies and Attempts whatsoever, which shall or may be made against his Person, Crown or Dignity. The Oath is in general, without any Exception express'd in it; and no Man will presume to say, that Oath, which was taken from the 3 *Ja. 1.* till after the Revolution, was not true. But the Answer to be given is, what I give in this Case, that Cases of Necessity, such as the Revolution, were implied, they are improper to be express'd; and why ought not the like Implication equally to be allow'd in the general Assertion made by Dr. *Sacheverell*? By the Act made 12 *Car. 2. c. 30.* for Attainder of the Regicides, it is declared, that *by the undoubted and fundamental Laws of this Kingdom, neither the Peers of this Realm, nor the Commons, nor both together, in Parliament, or out of Parliament, nor the People, collectively, or representatively, nor any*

other Persons whatsoever, ever had, have, hath, or ought to have, any coercive Power over the Kings of this Realm.

My Lords, I can't apprehend this Act to be repealed: If it be not, I beseech your Lordships, let Dr. *Sacheverell* be tried by it; and that you will be pleas'd to consider, whether the Doctor's Assertion concerning Resistance, hath out-gone the Declaration in this Law.

Your Lordships hear how fully the fundamental Law of the Kingdom is declared by this Act: The Doctor has only said, *'Tis illegal to resist the Supreme Power on any Pretence whatsoever.* The Expression at the End of that Declaration may possibly be observ'd, that it extends only to a coercive Power over the Person of the King; I know not what Inference may be drawn from thence, but certainly there is nothing in the Doctor's Sermon but what may be abundantly justified by the Declaration in that Act.

The Militia Act, the 13th and 14th *Car. 2. c. 3.* for ordering the Forces in the several Counties of this Kingdom, contains a Declaration as strong as the former: By that Act 'tis declared, That *neither both or either of the Houses of Parliament can, or lawfully may, raise or levy any War, offensive or defensive, against his Majesty, his Heirs, or lawful Successors.* When I perus'd this last Declaration in the Recital of the Acts, I read carefully to the End of it, to look for the Exception, but could find none. If there be no Exception in that Act; but that it stands as a general Declaration of the Law; if neither, nor both the Houses of Parliament can or may raise or levy War, offensive or defensive, against the King, is it a high Crime and Misdemeanor to assert in general Terms that Resistance to our Prince is unlawful? Pray, my Lords, compare the Doctor's Assertion in his Sermon with the Declaration in this last Act of Parliament.

By the Corporation Act, 13 *Car. 2. sess. 2. cap. 1.* all Mayors, Aldermen, Common-council Men, and other corporate Officers there enumerated, are required to take an Oath, That *it is not lawful upon any Pretence whatsoever to take Arms against the King.* By the Militia Act, which I have already mentioned, the same Oath, That *it is not lawful on any Pretence whatsoever to take Arms against the King,* is required to be taken by every Peer of the Realm, before he is capable of acting as a Lieutenant or Deputy Lieutenant; and by every Commoner of England, before he can be capable of acting as a Lieutenant, Deputy Lieutenant, Officer or Soldier in the Militia. By the Act of Uniformity, 13 & 14 *Car. 2. cap. 4.* all Ecclesiastical Persons, and many others under the several Denominations in that Act, are required to subscribe to the Truth of that Assertion, That *it is not lawful on any Pretence whatsoever to take Arms against the King.* This is the Language of our Law, and the like do the Apostles use in their Precepts touching Obedience and Non-Resistance to the Supreme Power.

But here I ought to observe, an Objection has been made to these several Acts, that by an Act made in the second Year of the late King and Queen, 'tis enacted, "That from thenceforth the Oath in-joined to be taken or subscribed, by the several Acts I have mentioned, should not be required to be taken by any Person whatsoever; and that the former Acts of Parliament, as to that Oath, are thereby repealed". 'Tis a very tender Repeal, my Lords, if it be one; but admit it to be one, it seems to have been argued from thence by a learned Gentleman, with whom in many Things he said

I no Way differ, that this Doctrine of Non-Resistance was become the more unlawful, because that Oath was not to be taken from thenceforward.

My Lords, As the Corporation Act required the Swearing, 'twas not lawful to take up Arms against the King, so does it direct the Subscribing to the unlawfulness of the Solemn League and Covenant; now by the same Argument, the Solemn League and Covenant may be proved to have been a lawful Oath.

I beseech your Lordships to consider, whether the Repeal of this Oath can have any Weight with your Lordships. 'Twas a general Assertion, to which all the Peers and Commoners, in the Employments I have mentioned, were to swear; there is no Exception in the Oath, but what is implied in it. Was not the Proposition as true before it was sworn, as after? Was it therefore true because 'twas sworn; or was it sworn because it was true? Did the Swearing it make it true; or the Truth make it fit to be sworn? If it was true when it was sworn, the Proposition was equally true before, and since. I believe, since the Oath was taken by so many Peers and Commoners, no Man will pretend to question the Truth of the Proposition.

My Lords, I have gone thro' the several Laws I shall lay before your Lordships on this Occasion; and let me once more humbly beg your Lordships, that you will be pleased to compare the Doctor's Assertion in his Sermon, concerning the Illegality of Resistance, with them; whether it be stronger than the Declaration of the undoubted and fundamental Law of the Kingdom, in the Act against the Regicides; than the Declaration in the *Militia Act*; than the Oath required to be taken by so many Acts of Parliament; than the Declaration in the 25th of *Edward III.* All the Doctor has said, is, *That Resistance to the Supreme Power is illegal, on any Pretence whatsoever.* All the Peers and Commoners of *England*, under the Characters and Employments I have mentioned, have sworn to the Truth of it; the 25th of *Edward III.* declares it to be High Treason; and your Lordships have heard what *St. Paul* says.

My Lords, I began this Discourse, relating to the Doctrine of the Church and the Laws of the Land, with the most sincere Protestation, That it was far from my Intention to offer any Thing inconsistent with the Justice of the Revolution: I think the Justice of it consistent with our Laws, the Exceptions to be made being always implied. And surely none can shew themselves truer Friends to the Revolution, than those who prove that the Revolution may stand without impeaching the Doctrines of our Church, or any fundamental Law of the Kingdom. Dr. *Sacheverell* being impeached for not making the Exception, when he laid down the general Rule; I beg Leave to turn the Case, and suppose he had made it. Had he been stating the Case of a Revolution, on a Day when he press'd the Illegality of Resistance, on a Day when, if he did not preach, he was obliged to read one of the Homilies against Rebellion, in which there is no Exception; Had he been picking Holes for the Subject to creep out of his Allegiance, and had he been cited before his Diocesan; might he not have been questioned, by what Authority he presumed to preach in that Manner? Whether he found such Doctrine taught by the Apostles, by the Homilies, or by any of the Reverend Fathers of our Church? Might he not have been told, it was his Duty, in Imitation of those great Examples, to press the general Duty of Obedience, and the Il-

legality of Resistance, without making any Exception whatsoever? Had he been questioned before the Temporal Power, for preaching in the Manner he has done; had an Indictment been framed against him on his general Assertion, and brought before the twelve Judges; I humbly apprehend, not one of them would have declared he went too far. But had he been making Exceptions out of the general Rule of Obedience, especially if he had been tried by such Judges as were before the Revolution; might he not have been told, 'Twas easy to discern what Spirit he was of, of what Party he was, and what he aimed at, what he intended; That he had not been preaching in Defence of the late Revolution, to shew the Justice of it; but that he was covering the Treason of his Heart, and under Pretence of justifying one Revolution, he was labouring to bring about another. He, who knew how far the Design had gone of landing the Pretender but two Years since; what else could he mean, by picking Holes in the Rules for our Obedience?

I have but a Word or two to add to the other Charges of this Article. The Gentlemen of the House of Commons were pleased to observe, That tho' there were four Articles, the Substance of them all centred in the first. The second Charge in this Article is, *That his late Majesty in his Declaration, disclaimed the least Imputation of Resistance.* It is not, I hope, a sufficient Ground for an Article of Impeachment, if the Doctor has expressed himself in an obscure Manner. I must confess, I can't easily comprehend him myself; but it may be any Man's Misfortune to express himself in such a Manner, as to make it decent and fit for him to explain himself: And I hope the Doctor has explain'd himself, so as to show, that tho' he may have spoken improperly, he has yet spoken innocently. The Gentlemen of the House of Commons declare, by Resistance they mean the Resistance of the Subjects to their Sovereign: But Resistance, where the Doctor mentions his late Majesty to have disclaimed it, cannot have that Meaning. He was a Sovereign Prince, and might resist whom he pleased. Perhaps the Passage in the Doctor's Sermon may be capable of different Constructions, but the Doctor has taken Care to prevent all Manner of Mistakes that might possibly arise from thence: He has not only (as was observed by one of the Gentlemen of the House of Commons) made a marginal Reference, to show what he meant; which might have been done when he apprehended that Expression would be found fault with; but he has in the Sermon itself quoted what the Parliament did, in burning a Treatise which related to the King's having conquered the Kingdom.

My Lords, it was ask'd, What had he to do to take Notice of that Matter? What led him to justify the late King? Was there ever any Body living that imputed any such Thing as Conquest to him? My Lords, If there never was but that one Imputation endeavoured to be cast on his Memory, as I never heard of any other, surely then he did well to wipe off that Imputation; and that this has been laid to his Charge, I must refer to the Journals of both Houses of Parliament. Your Lordships resolved the Assertion of King *William's* and Queen *Mary's* being King and Queen by Conquest, was injurious to their Majesties rightful Title to the Crown, inconsistent with the Principles on which this Government is founded, and tending to the Subversion of the Rights of the People: And

on the 25th of *January* 1692. your Resolution being communicated to the Commons, was unanimously agreed to.

The last Part of this Article is, *That to impute Resistance to the Revolution, is to cast black and odious Colours on his late Majesty and the said Revolution.* My Lords, There are these words in the Doctor's Sermon, of *casting black and odious Colours on his late Majesty and the Revolution*: They are in the Close of a Sentence, which immediately precedes the Expression of his late Majesty's disclaiming the least Imputation of Resistance. It is impossible to mistake the Place; your Lordships will examine it; and from thence let him take his Fate, Whether that Passage is applicable to what went before it, or to what follows after. Those Words of *casting black and odious Colours*, are so far from referring to *his late Majesty's disclaiming the Imputation of Resistance*, that they conclude the Sentence which went before it; in which the Doctor mentions *New Preachers, and New Teachers, that broached abominable Positions, That the People have a Right to cancel their Allegiance at Pleasure, to call their Sovereign to Account; and who pretend to justify the horrid Murder of the Royal Martyr King Charles the First, and endeavour to screen themselves, and their vile Notions, under the Revolution.* The Doctor having mentioned these New Preachers and their Doctrine, goes on: *Our Adversaries think they effectually stop our Mouths, and have us sure and unanswerable on this Point, when they urge the Revolution of this Day in their Defence. But certainly they are the greatest Enemies of that, and his late Majesty, and the most ungrateful for the Deliverance, who endeavour to cast such black and odious Colours upon both.* I pray, my Lords, What does this refer to? Don't it clear the Revolution against the Venom of those Miscreants, who publish such villainous Assertions as these? But 'twas objected by a learned Gentleman, What has a Minister to do to meddle with these Things? If any Man offend against the Temporal, or Ecclesiastical Law, the Courts are open; the Magistrates are to punish.

My Lords, I don't find, if this Doctrine holds, that he must preach against any Thing: If he must not preach against any Thing which may be prosecuted, either in the Temporal or Ecclesiastical Courts, he must not preach against any Offence that is forbid by the Ten Commandments. Perhaps it will be urged, that there are no such People as these New Preachers, and New Teachers; that he is raising a Phantom, and then throwing it down; he is only imagining Cases, of which there are no Instances; that there are no such Men, who endeavour to justify the Murder of King Charles, or defend it by the Revolution. We will show there are too many Instances of such Persons, who make no scruple to publish these Positions, and cast Reflections on the Queen and her Government, whom the Doctor has been defending. He is not the Person he has been represented; he hath no disloyal Thoughts about him: Sure I am, he would rather die in her Majesty's Defence. We shall show your Lordships, that there are such as run most vile Comparisons between the Revolution and the most execrable Murder of King Charles the First, and can find no better Difference between them, than this abominable Distinction of a *Wet Martyrdom* and a *Dry One*.

Mr. Dodd.

MY Lords, I am likewise a Counsel for Dr. Sacheverell; and I

cannot but think, by the same Arguments that have been used to maintain these Articles, any Book or Sermon, be it never so innocent, may be represented to be a Libel.

The Gentlemen Managers of the House of Commons, with Submission, have scarce any three of them agreed in any one principal Point; only in this most of them have agreed, That the Doctor is a Criminal before he is condemned. He has been in the whole Debate (generally speaking) so called; the usual Expression having been, The Criminal at the Bar: This (as it is not usual in other Places) would have been a great Discouragement to us that are his Counsel, and great Discouragement in his Defence, but that we consider that the Judgment is your Lordships, and that by your Justice he must stand or fall. It has been represented, as if this Sermon had been perused and approved by Lawyers; but this is only suggested, (as other Matters have been) yet there is not the least Proof thereof. We have had different Facts charged upon us; sometimes we are taxed for having said too much, and sometimes for having said too little, and not mentioning Things that were the proper Subject of the Day.

My Lords, we apprehend these Matters are objected for want of observing the Sermon itself; for as it was preached on the Fifth of *November*, so your Lordships will find an Account given for a Leaf together, setting forth the horrible Design of the Powder Plot. Your Lordships will also find, both in the Body and Conclusion of the Sermon, Notice taken of our Deliverance on this Day.

There have been some Acts of Parliament cited by the Gentlemen Managers for the House of Commons; that of the 25th *Henry* 8. about the Supremacy, which we apprehend is not to the present Purpose. It only asserts the Supremacy, that is, the Independency of the Crown, which was usurp'd by the Papal Authority; for surely King *Henry*, the Eighth, was a Prince that would as little bear the Doctrine of Resistance, as any Sovereign that ever wore the Crown of these Kingdoms.

There have been many Things said by the Gentlemen of the House of Commons that we heartily agree with them in. The Revolution was a Case we all agree out of the general Rule; and so in every Thing we say, we hope your Lordships will understand it. We neither do nor can understand it; it is against our Judgment and Interest to think otherwise. We are hearty well Wishers to the Revolution, and to the Happiness of *England*, that is in a great Measure built upon it. We agree the Law of the Land is the Measure of the Prince's Authority, and the Peoples Rights; that in the Case of the Revolution, when the Laws were overturned, Popery was coming in upon us, and Property signified nothing: The People of *England* being invited by his late Majesty, did resort to the last Remedy, even that of Necessity; and that Necessity did induce Resistance, and justify 'em in it; and upon that Foot the Revolution succeeded. We totally deny that the Doctrine of Non-Resistance, as laid down by the Doctor, and as asserted by him, was intended for the Pretender, or any other but her Majesty and her Government; or can be construed a thwarting the Revolution: His Assertions are general; those general Assertions will have their particular Exceptions.

Sure it has not, nor can be made out, that we had an Eye in favour of the Pretender in any Part of this Discourse. Now it has been by some of the Gentle-

Gentle-

Gentlemen admitted to us, that the Doctrine in the Main is right; but, say they, you had your Thoughts, your Eyes on the Pretender. Now this is so very contrary to what the Doctor has asserted in his whole Sermon, that I hope there is no Ground for it: For the Doctor (as a dutiful Subject) takes Notice that her Majesty is the last of the Lineal Descent, as the Relict of the Royal Family; which quite disowns the Pretender and his Right. And can any one imagine, that in such Expressions he could have an Eye to the Pretender? For if there be any Pretence of Title in the Pretender, it must be as a Descendant of that Family. But he takes Notice, that her Majesty is the only one left of that Family in a Lineal Descent; and I think that is enough to acquit the Doctor of having an Eye to him beyond the Water.

Having, my Lords, made these Remarks, I shall now consider the Articles as they lie before your Lordships. In the Preamble to the Articles, there is Notice taken of three Acts of Parliament. The first is the *Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown*. The second is the *Act for preventing Vexatious Suits against Such as acted in order to bring in their Majesties, and for their Services*. The third is the *Act for paying the States General of the united Provinces their Charges for his Majesty's Expedition into this Kingdom, and for other Uses*. These are the three only Acts that are cited in the Preamble of these Articles: I shall say but a Word to each of them. As to the Act called *The Bill of Rights*, I don't find that that Act meddles with the Points of Resistance or Non-Resistance; the whole Ground and Tenor of that Act is upon the Abdication. It settles the Crown upon the Vacancy of the Throne. It is said, *Whereas the late King James the Second having abdicated the Government, and the Throne being thereby vacant, &c.* There is no other Fact stated; there is no Mention of Resistance. But the Throne being vacant, the next Head in that Act says, *That King James having abdicated the Government, and their Majesties having accepted the Crown, did become lawful King and Queen, &c.* These are the only Passages in that Act as to this Matter: It has preserved the Liberties of the Subject; established several Rights which are their antient Inheritance; told the People that the Throne was vacant; and being so, that their late Majesties were lawful and rightful King and Queen, as undoubtedly we all agree they were.

My Lords, The next Act mentioned, is the *Act for preventing Vexatious Suits against such as acted in order to the bringing in their Majesties, or for their Service*. This goes further than the Bill of Rights; but whoever reads it, will find, it is but the same Act in Effect, that was enacted in the Reign of Edward III. after Edward II. was deposed. It is a meer Act of Indemnity, an Act of Pardon for Officers Civil and Military. It only exempts them from Prosecution, that having been Transgressors against the strict Rules of the Law, were subject to private Actions; and no less could be done than to exempt them from such Prosecutions; and therefore that Law pardons all Actions of Trespas that were committed upon that Occasion.

My Lords, The next Act taken Notice of is, *That for paying the States General*. That, I don't see, takes any other Notice; but is only for paying the Dutch 600,000 l. for their Assistance to his Majesty at his coming into this Nation, for our Deliverance from Popery and Arbitrary Power.

Then the Preamble charges the Doctor with *Preaching and Publishing the Sermon and Dedication; and that is said to be done with a wicked, malicious and seditious Intention, to undermine and subvert her Majesty's Government, and the Protestant Succession as by Law established; to defame her Majesty's Administration; to asperse the Memory of his late Majesty; to traduce and condemn the late happy Revolution; to contradict and arraign the Resolutions of both Houses of Parliament; to create Jealousies and Divisions among her Majesty's Subjects; and to incite them to Sedition and Rebellion*. These are the Corollaries that are drawn from the Preamble of the Articles of Impeachment; and these are the Facts which must make these Articles criminal, or they can't be so at all. These Facts we utterly abhor and deny, and say we are not guilty of them; and hope it will so appear to your Lordships.

My Lords, I shall now come to the first Article itself, and shall shortly speak to the three Divisions of this Article: It consists of three Heads. The first is, *That the Doctor suggests and maintains, that the necessary Means used to bring about the happy Revolution were odious and unjustifiable*. The second is, *That his late Majesty, in his Declaration disclaimed the least Imputation of Resistance*. And the third is, *That to impute Resistance to the Revolution, is to cast black and odious Colours upon his late Majesty and the Revolution*.

As to the first, *That he suggests, that the necessary Means used to bring about the Revolution were odious and unjustifiable*; My Lords, we can't have a better Answer to this, than utterly to deny that we have made any such Assertion: We have not done it in Words, nor in any Words that will bear that Construction. We insist, that as it can't be proved out of the Sermon, so neither out of any other Action of his Life, or any other Sermon by him preach'd. We say, that in no Part of his Sermon he has affirmed any Thing of the *necessary Means used to bring about the Revolution*; that was a Point not fit for the Doctor to meddle with, the Legislature had taken Care of that. On the contrary, we have all along endeavoured in that Sermon to clear the Revolution and his late Majesty (and we hope we have done it effectually) from the black and odious Colours which their greatest Enemies had endeavoured to cast upon them. To this Part of the Article we have pleaded Not Guilty. We have denied the Fact; it has not been prov'd upon us; the Sermon don't prove it, nor does the Dedication prove it; but they prove quite the contrary, as by several Paragraphs of the Sermon compared together will appear.

The second Division of this Article is, *That his late Majesty, in his Declaration, disclaimed the least Imputation of Resistance*. This Fact we do acknowledge, if it be understood as the Doctor explains it, and proves it by the Declaration itself. We take it to be very just and true; the Resistance the Doctor mentions, being such a Resistance as tends to Conquest only, as by the Words plainly appear, which are printed, and referred to in the Sermon. It can have no other Consideration, or Meaning, as will appear to any that read that Part of the Sermon with any Candor, or any Ingenuity. The Doctor has taken Care to express it in Words, that there might be no Room for Exception. *His Highness declares in Opposition to those who give it out, that we intend to conquer and enslave these Nations, that we have thought fit to add a few Words to our Declaration:*

tion : It is not to be imagined that either those who have invited us, or those who are already come to assist us, can join in a wicked Attempt of Conquest, to make void their own lawful Titles to their Honours, Estates and Interests. And undoubtedly it is so. He did not come to conquer and enslave us, but to make us a free People ; to preserve and restore our Religion, Laws and Liberties ; which, my Lords, with humble Submission, has been the Sense of the Nation ; and Notions of a different Kind, and such Assertions in printed Sermons, have been animadverted upon.

Now if the Doctor, having his Eye in that Expression on the Matter of Conquest that others had insinuated, and that the late King did disclaim any such Pretence, did express the same by Resistance, the Expression, we hope, is applicable to the Subject-matter that was before him, and ought not to be wrested or turned to any other Purpose. Nothing can shew more his Meaning than his own Quotation : He refers to King William's Declaration, to justify him in that Matter.

The next Head is, That to impute Resistance to the said Revolution, is to cast black and odious Colours upon his late Majesty, and the said Revolution. This we likewise utterly deny to have maintained ; we have said no such Thing quite thro' the Sermon ; we have not taken upon us to meddle with that Point : It was an improper Subject for him to meddle with. The Doctor neither affirms, nor says any Thing of those that impute Resistance to the Revolution ; but those which the Doctor intended, and which are plainly meant, if the preceding Words must be the Words to which the Subsequent and Conclusion of the Sentence relates, then they are Persons of dangerous Dispositions, that place the Power in the People ; that pretend to a Power to call their Sovereign to an Account at their Will and Pleasure ; Positions that stand condemn'd by the Laws of the Church and State, and then vouch the Revolution in Defence of these Principles. These are the Persons mentioned and intended by the Doctor, whose Principles and Practices cast black and odious Colours upon the Revolution.

My Lords, The Doctor, we own, in his Sermon, has asserted this general Proposition, viz. *Absolute Obedience in all Things lawful to the Supreme Power ; and the utter Illegality of Resistance of the Supreme Power upon any Pretence whatsoever* And this being the Article, if we understand some of the Gentlemen of the House of Commons aright, on which the whole Impeachment turns ; and that if we were clear of this Article, there would be no Reason to follow us upon the others ; it gives us an Occasion to enlarge a little further upon this Point.

My Lords, Non-Resistance in general we do assert as a Rule ; yet we agree there is an Exception implied in that Rule, and that Exception, we say, was the Case of the Revolution. When this general Rule has an Exception in it, it must be in a Case of the utmost Necessity implied, and is not expressed, stated, or determined in any Law or Act of Parliament that I know of, except in the Particular herein after-mentioned.

My Lords, This Doctrine is agreeable to the Scriptures ; is taught by the Church of England in her Homilies, Articles and Injunctions ; by her Bishops and Fathers ; and in all Admonitions we have had from the Bishops and Pastors of the Church, from Time to Time. I shall not name them, some of them have been named. We shall produce Sermons preached before her Majesty, your Lord-

ships, and the House of Commons, on the most solemn Occasions, where this Doctrine has been fully asserted, even beyond what the Doctor has laid down. Both your Lordships and the Commons have returned Thanks to the Bishops and Clergy that have preach'd them ; and therefore we can't apprehend ourselves to be worthy of this Reprehension. We shall produce them in Evidence, and vouch Authorities before the Reformation, and in the Infancy of it : The Homilies which are allow'd by the Church, and established by several Acts of Parliament.

This we take to be agreeable to the Laws and Statutes of the Realm. The Law makes it High Treason, for particular Persons to resist the Supreme Power.

The *Spencers* in *Edward* the Second's Time asserted, That if the King did not govern well, the People might remove him, and that by Force ; but that was condemn'd by two Acts of Parliament, in *E. II.* and *E. III.*'s Reign. The Act of 25 *E. III.* that famous Act that has been the Standard for Treason for many Ages, is agreeable to the Doctor's Assertion ; and when there were Breaches made in that Law in Queen Mary's Time, those Acts were again repeal'd : Now I need not repeat, that to resist the executive Power, and the Person of the King, by that Act, is compassing his Death, and levying War against him. They have always looked upon it, that resisting the King is levying War, it is a compassing and imagining the Death of the King ; I shall therefore say no more on that particular Act of Parliament, but come to later Times.

In the Act of 12 *Car. II. cap. 30.* it is declared, That it is the undoubted and fundamental Law of this Kingdom, that neither the Peers of this Realm, nor the Commons, nor both together, in Parliament or out of Parliament, nor the People collectively or representatively, nor any other Persons whatsoever, ever had, have, or ought to have any coercive Power over the Persons of the Kings of this Realm. Here is a Declaration as full as can be, I am sure as full as the Doctor's Sermon ; and yet this Declaration, I do agree, must have an Exception in a Case of the utmost Necessity : And I hope there is as much Reason to allow the Doctor an Exception, as in this Act of Parliament.

The next Act is the Corporation Act, 13 *Car. II.* in which all the Officers of Corporations are directed to swear, *That they do believe, that it is not lawful, upon any Pretence whatsoever, to take Arms against the King.* Here is as full a Declaration to be made by all the Magistrates of Corporations, as general Words can carry, and yet I would be understood in every one of these, that there is an Exception of Necessity ; but whether the Doctor was a proper Judge of that Necessity, I shall take Notice by and by.

The next is the Militia Act, 13 and 14 *Car. II.* and there is the same Declaration to be made by every Lord Lieutenant, Deputy Lieutenant, Officer and Soldier, *That it is not lawful, upon any Pretence whatsoever, to take Arms against the King.* And the Preamble of that Act is stronger, for in the Preamble of that Act it is declared, *That both or either of the Houses of Parliament, cannot nor lawfully may raise or levy any War, offensive or defensive, against his Majesty, his Heirs, or lawful Successors.*

The next Act is the Act of Uniformity 13 and 14 *Car. II.*

The next is the Act for Select Vestries, which enjoins all Deans, Parsons, &c. to make this Declaration, *That it is not lawful, upon any Pretence whatsoever, to take Arms against the King.*

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The next Act is the Act of Association, whereby *all Persons are engaged to stand by and assist one another against all his Majesty's Enemies*, without any Limitation.

The next is the Act which establishes the Abjuration Oath, 13 & 14 W. III. which was taken in the late Reign, and the Acts of 1 & 6 of her Majesty's Reign, whereby *all Persons in Office are to swear to defend the King and Queen, to the uttermost of their Power, against all Traiterous Conspiracies and Attempts whatsoever, which shall be made against her Person, Crown or Dignity*. And that these Words may have the plain Sense put upon them, *They are to declare that they make that Recognition, Acknowledgment, Abjuration, Renunciation, and Promise, heartily, willingly, and truly, upon the true Faith of a Christian*. Now this Resistance can't be agreeable to this Abjuration, for to resist is not the way to defend.

My Lords, We think that the Doctrine of Non-Resistance, as a general Proposition, is warranted by the Laws of the Land; and when there is an Exception implied therein, must only be determined by the Wisdom of the Nation, and not by any one Doctor or private Person whatsoever. The Doctor's Proposition is about Non-Resistance of the Supreme Power, and we have no Reason to take a greater Weight upon us than the Words of our Sermon; and whatever Construction may be put upon it, in Relation to the Executive Power, yet the Proposition holds as to the Supreme Power, which is all the Doctor has asserted. The Supreme Power is the Queen and Parliament, and to this Supreme Power the Doctor has pres'd the utter Unlawfulness of Resistance; and I have not heard it said by any that it is lawful to resist the Queen in Parliament. Here is the Strength of the Nation, and here there ought to be a Standing Obedience, otherwise it is setting up the People to be Judges, and not the Collective Body of the People assembled in Parliament.

My Lords, in a particular Case of the utmost Necessity; what Construction must be made as an Exception out of the General Rule, must be left to Time and Circumstances (when such a Case shall happen) to determine, and must be determined by the Wisdom and Strength of the Nation, if ever such a Case should happen, which I hope never will more.

There is indeed one Exception made in one particular Case in the Bill of Rights, where it is Enacted, *That if the King or Queen shall be reconciled to the See of Rome, or profess the Popish Religion, or marry a Papist, then such Person shall be excluded to inherit the Crown, or have Regal Power in the Realm, and that the People shall be absolved of their Allegiance*. And this I take to be the first stated and determin'd Exception to this general Rule that ever was made in any Act of Parliament.

My Lords, We think the Government can scarce be just to itself, that don't encourage and command this Obedience, this Non-Resistance. This is a Rule profitable to all Governments, let the Nature of them be what they will; it is for the Peace and Quiet both of Church and State. It would be wise Work to have the Exception to this Rule stated by every one that comes into a Pulpit. I know not whether it would not be High Treason in them to do it, sure I am, it would be a high Crime: And if these Points are doubtful or disputable (as at least must be agreed) sure they are no Grounds for an Impeachment.

What Doctrines should a Minister of the Church of England preach, if not those that are delivered in the Scriptures, and in the Doctrines of the Church? Must he search another Rule than the Scriptures, the Laws and the Fathers of the Church, have laid down? Must he tell the People, that the Doctrine of Non-Resistance of the Supreme Power is the Doctrine of the Church of England? Or must he limit this Rule, and state the Exceptions to it? Sure this would be very strange for the Doctor to do: He must tell them Resistance is unlawful, but there is an Exception to that Rule; but what that Exception is, I must not tell you, but you must find it out as you can. Is not this to pick Holes in the Duty and Allegiance of the Subject, and would look like the Blind leading the Blind.

My Lords, We think it would be a very strange thing for a Minister of the Gospel to distinguish in this Case: It would not be allowed him, it would be an Offence for any Preacher to do it. He must preach the general Proposition, he must inculcate the General Rule, and he must preach in the Words that the Laws of God, and of this Land, have delivered it in; he must not vary it, to find Meanings to help the People, like a good Casuist, to distinguish themselves out of their Allegiance.

Now so far we apprehend is the whole Sermon of the Doctor's to be understood, as not raising the Foundations of the Government, not inciting to Rebellion, but preaching Obedience to the Laws of GOD and Man. It is a great Misfortune for the Doctor to be represented as preaching this Doctrine for the Sake of the Pretender. We think, at least, it may be a Comfort to him, that there is not a Syllable of Proof or Truth in it; and that on the contrary, the Doctor disclaims all Right in the Pretender, by asserting and acknowledging her Majesty's Right, and expressing a passionate Concern, that her Majesty is the Relict of the Royal Family.

We have given all the Assurance of our Fidelity the Law demands, we have taken the Oath of Abjuration, and been always submissive to her Majesty, and the Laws of the Nation, given all the Security of our Allegiance and Loyalty that the Government required.

The Doctor fully declares his Meaning in this Sermon: Does he not all along submit to the Government, and pray for the Queen and Government? He has done it in several Places of his Sermon, particularly in one Place, which will carry a great Weight in it. *What* (says he) *I have thus freely spoken, I hope is as much without Offence, as it proceeds from a tender Concern for her Majesty's Person, and a hearty Zeal for the Safety of our Church and Constitution*. Surely after this Declaration, in Common Justice, there ought to be no Construction of a Man's Meaning made by Inference. Here is a full Declaration, that what he has done he has done in Service and Zeal to her Majesty and the Constitution in Church and State.

When there is not through the whole Sermon any plain Words to ground such a Construction, when there is not the least Proof offer'd, but only by such forced Constructions, when different Words are pick'd out from different Places, and Words so distant are join'd together to make up Sentences; and then Arguments framed, and Conclusions drawn from those Sentences to make good the Impeachment, we think it is much too hard, and hope it never will be endured, to pick Part of a Line here, and six or eight Lines after to pick part of another, and to join the Conclusions of one Sentence, and

the Beginning of another; this would be to confound all Reason and Understanding whatsoever. This we take not to be a right way of Reasoning, nor a proper Evidence to maintain an Impeachment, and we hope your Lordships will therefore acquit the Doctor of this Article.

Mr. Phipps. **M**Y Lords, I am also assigned by your Lordships to be one of the Counsel for Doctor Sacheverell, who, I beg Leave to say, I cannot yet think to be a Criminal; and, when we have been heard, I hope your Lordships will not think him such.

I do admit, as the Case is stated by the Gentlemen who are the Managers for the Commons, that it is a Cause of very great Moment, and is worthy of your Lordships Determination, because it deserves the greatest Deliberation; it being a Cause as considerable in its Consequences to her Majesty, the Church, and these Kingdoms, as ever came before your Lordships. And therefore, since it has been the Doctor's Misfortune to incur the Displeasure of the House of Commons, and to lye under the Weight of an Impeachment by that Great and Honourable Body, it is his greatest Comfort (next to his being Innocent) that he has the Honour to have your Lordships for his Judges, and the Opportunity of so publick a Vindication of his Innocence; for he does not doubt to give your Lordships, and all by whom we have the Honour to be heard, full Satisfaction, that he is not Guilty of any of the Crimes charged upon him in any or either of the Articles.

My Lords, we agree with the Managers, that his late Majesty, when Prince of Orange, did, with an armed Force, undertake a glorious Enterprize for delivering the Kingdom from Popery and Slavery. We admit, that divers Subjects well affected to their Country joined with and assisted him in that Enterprize; and that the Enterprize being crowned with Success, the late happy Revolution took Effect, and was Established. We also admit, that the blessed Consequences of the Revolution are the Enjoyment of our Religion and Laws, the Preservation of her Majesty's Person, the many Advantages arising by her Majesty's wife and glorious Administration, the Prospect of Happiness to future Ages by the Settlement of the Succession, and the Union of the two Kingdoms.

But there are other Matters suggested in the Preamble, in which we differ with the Gentlemen of the House of Commons; for it is therein alledged, *That Doctor Sacheverell preached and published his two Sermons with a malicious and seditious Intention, to undermine the Government and Protestant Succession, to defame her Majesty's Administration, to Asperse the Memory of his late Majesty, and Traduce and condemn the Revolution, to Arraign the Resolution of both Houses of Parliament, to create jealousies and Divisions among her Majesty's Subjects, and to incite them to Sedition and Rebellion.* And all this we totally deny.

The Offences charged upon the Doctor are of a very high and heinous Nature, and the greater the Crimes are with which a Man is charged, the clearer and plainer ought the Evidence to be to maintain and make good that Charge. And to make the Doctor a Criminal within these Articles, every Branch of the Articles must be proved as they are laid. It must be proved that he preach'd and publish'd these Sermons with such wicked, malicious and seditious Intention, as is alledged in the Preamble; and the Proof ought to be plain and positive; for

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the Laws of England have so guarded the Persons and Properties of the Subjects, that their Lives, Liberties, or Estates, cannot be subject to Forfeiture, or Restraint, by uncertain or conjectural Evidence, by strain'd or unnatural Inferences, Insinuations, or Innuendo's. And altho' I could cite many Authorities and Determinations in the Courts of *Westminster-Hall*, wherein the Judges have express'd their Dislike and Detestation of convicting Men of Offences, either Capital or Criminal, by Innuendo's or Inferences; yet I forbear to trouble your Lordships with any of them, because I have an Authority Superior to them all to warrant what I have said, and that is the Determination and Resolution of your Lordships in Sir Samuel Barnardiston's Case, which having been read by Sir Simon Harcourt, I forbear to trouble your Lordships with a Repetition of it.

The next thing therefore to be considered is, Whether the Sermons were preached with such malicious and seditious Intention as is asserted in the Preamble, and if there be such plain, direct and positive Proof, as is by your Lordships Determination, in Sir Samuel Barnardiston's Case, declared to be necessary.

But before I come to speak to any particular Article, I beg Leave to observe something, which though it hath not been made a particular Charge against the Doctor in any one Article, yet it has been urged and insinuated almost by every one of the Managers of the House of Commons to enforce every Article, and that is, *That notwithstanding the Doctor's Expression of Loyalty to the Queen, yet his Intention is to bring in the Pretender.*

It has been objected, as I apprehended (and I beg Pardon if I am mistaken) "That the Doctor confines his Doctrine of Passive Obedience and Non-Resistance to a *Jure Divino* King or Queen, and that from thence it was easy to understand against what Queen the Doctor excites the People to take up Arms." If the Queen, who has an Hereditary Right, and also a Right confirmed and established by Act of Parliament, cannot be said to be a *Jure Divino* Queen, I do not know who can. I did not think that the Doctor, who asserts the Hereditary Right of the Queen, could be charg'd with an Intention to bring in the Pretender. I am in your Lordships Judgment, whether the denying her Majesty's Hereditary Right be not the most likely way to bring him in: For I submit to your Lordships, whether the denying the Hereditary Right of the Queen, be not to suppose an Hereditary Right in somebody else; and whether that does not leave a Way open (when the Queen's Enemies are strong enough) to bring in that Person in whom the Hereditary Right is supposed.

It is asserted, "That the Doctor's pretended Zeal is for her Majesty, but his real Zeal is for the Pretender: It is hard to say a Man means contrary to what he speaks, and that, though he declares that the Safety, Rights and Establishment of her Majesty's Government, with those of the Church, are the things which he so earnestly contends for, and are his only Aim and Intention; and tho' he prays that God will preserve her Majesty, for the Comfort and Support of the Church and Nation, yet it is suggested that his chief Aim and Design is to dethrone her Majesty, to set the Crown upon the Head of the Pretender, and to establish Popery, or at least a Church independent on the State. And altho' he preaches up Passive Obedience and Non-Resistance under her Majesty's happy Administration, yet it is objected he stirs up the People to Rebellion, and

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I do agree these Things have been urged with great Ingenuity, but what Proof, what Evidence is there of any of these Matters thus suggested?

My Lords, by the Law of *England* Men are not to be harangued out of their Lives, Liberties or Estates, but, as I have observed, it must be plain and positive Proof alone that can subject them to a Forfeiture: And I submit to your Lordships, where a Man affirms a Thing in his Sermon, if an Averment by any Body else that he means quite the contrary, be a sufficient Evidence to convict a Man of High Crimes and Misdemeanors.

There is another Matter which I confess puts me under a great Difficulty, to determine which way to apply our Defence to the first Article, and that is the different Construction which the Gentlemen of the House of Commons have made of that Part of the Doctor's Sermon on which the first Article is founded. The Gentlemen that spoke to the first Article (if I apprehend them right) affirm, "That the Doctor asserts an unlimited Obedience, and the utter Illegality of Resistance to the Queen, as the Supreme Executive Power, and that such an Assertion was a Reflection upon the Revolution, which was brought about by the Resistance that was given to the late King *James*." And all their Arguments on the first Article were grounded on this Assertion. But a very learned Gentleman, who spoke Yesterday to the fourth Article, was pleased to object, "That tho' the Doctor asserted the utter Illegality of Resistance to the Supreme Power, yet he had no where asserted the utter Illegality of Resistance to the Queen, thereby leaving himself at Liberty to resist the Queen, and bring in the Pretender."

Now the Question is, which of these Constructions we must believe; if the Construction made by the Gentlemen who spoke to the first Article be true, then the Doctor has taken that Care of her Majesty's Person which he ought, by asserting the utter Illegality of Resisting Her, and hath not left himself at Liberty to take up Arms against her Majesty to bring in the Pretender; and so the great Objection made against the Doctor by the learned Gentleman who spoke to the fourth Article falls. But if his Construction prevails, there is no Reflection on the Revolution, and the first Article falls to the Ground; for the reflecting on the Revolution can be only by asserting the Illegality of Resistance to the Queen, as the Supreme Executive Power; because the Resistance which brought about the Revolution was made to the late King *James* only, and not against the Legislature: But whichever of these Gentlemen your Lordships shall be of Opinion is in the Right, I beg Leave to say, that this may certainly be concluded and inferred, That the Construction of that Sentence must be very doubtful, in which such learned Men differ, and consequently cannot be a Charge sufficient and certain enough to ground a Conviction for High Crimes and Misdemeanors. These Matters being submitted to your Lordships Judgment, I come next to consider the Articles themselves, and shall humbly propose to your Lordships Consideration what I have to offer in Answer to them, and shall take Notice of the several Branches of the respective Articles, which the Doctor mentions in his Answer to them.

As to the first Branch of the first Article, which charges, the Doctor does *Suggest and Maintain*,

that the necessary Means used to bring about the happy Revolution were Odious and Unjustifiable; the Doctor denies there are any such Expressions in his Sermon at *St. Paul's*: And I beg Leave to say, that there is not one Paragraph or Sentence in his Sermon that can support this Charge; the Necessary Means used to bring about the Revolution not being once mentioned in his Sermon; and therefore I at first doubted whether I had the right Sermon; for I could no more find that Sentence in the Doctor's Sermon at *St. Paul's*, than one of the learned Managers could find a Text of Scripture, quoted by the Doctor, in his Bible.

One of the Gentlemen who spoke to this Article, was pleased to admit, that the Words charged in this Part of the Article are not in the Doctor's Sermon, but said there are Words that are *tantamount*: so that this Branch is to be proved by Innuendo's, and yet they have not been pleased to let us know what those Words are which do amount to the same Signification, and we deny there are any such Words.

The last Part of the first Article (for I shall consider that next, because it relates to the Revolution) charges, that the Doctor *does Suggest and Maintain, that to impute Resistance to the Revolution, is to cast Black and Odious Colours upon his Majesty and the Revolution*. In answer to which I must beg Leave to take Notice, that the Words of the Sermon are here transpos'd and misplac'd; for the Doctor does not say, that *to impute Resistance to the Revolution is to cast black and odious Colours upon his Majesty and the Revolution*; but he says, that *to urge the Revolution to justify the Doctrine of Dethroning and Murdering of Princes, is to cast Black and Odious Colours on his Majesty and the Revolution*; for the Doctor in Page 11, says, that "the New Preachers and New Politicians pretend to have a Power to cancel their Allegiance at Pleasure, to call their Sovereign to an Account for High Treason, to Dethrone and Murder him for a Criminal, as they did the Royal Martyr by a Judiciary Sentence, and that to justify this Doctrine, they urge the Revolution of this Day: But (says he) *they are the greatest Enemies of that, and his late Majesty, and the most ungrateful for the Deliverance, who endeavour to cast such Black and Odious Colours upon both*; so that what he says is no more than that to justify the calling the Sovereign to an Account for High Treason, and the Dethroning and Murdering of him, by the Revolution, is to cast Black and Odious Colours upon both. And is there any Body that has any Respect for the glorious and happy Revolution, that has any Regard for the Preservation of our Constitution, can say less? Can there be a greater Reflection on the Revolution, than to urge That in Vindication of the Rebellion in Forty-one, as if the Cases were alike?

I humbly submit it to your Lordships, if there be any Thing in his Sermon that can be construed to reflect on the Revolution, if the Words be taken according to the Natural and Genuine Sense of them; nor can it be thought the Doctor would cast the least Reflection upon it: Can it be imagined, that he who is a Member of *Magdalen College* in *Oxford*, should so soon forget the Attempts that were made on their Liberties, and would reflect on the Revolution, by which not only he and the rest of the Fellows of that College, but all the Colleges in both the Universities, nay, all her Majesty's Protestant Subjects, now enjoy their Religion, Rights and Liberties? That he who is a Church-of-Eng-
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land-Man should Calumniate the Revolution, by which the best Established Church in the World is preserved from Popish Superstition and Idolatry? That he who contends so earnestly for the Preservation of our Constitution, should cast Black and Odious Colours on that, by which alone the Succession is settled and secured in the Protestant Line, and her Majesty is now Lawfully and Rightfully seated on the Throne of her Royal Ancestors, on which the Doctor prays, and I hope we all join with him, *that she may long continue for the Support and Comfort of this Church and Nation?* No, my Lords, it is not the Revolution in 1688, but the Revolution in 1648, that he endeavours to blacken, and the Principles by which that was brought to pass, those Principles which made Rebellious Subjects take up Arms against one of the best Princes that ever Swayed the Sceptres of these Kingdoms; those Principles which brought that Pious Martyr to the Block, banished the Royal Family, and set an Usurper upon the Throne; this is the Dethroning, this is the Murdering which he means: And can any Colours be too Black, any Colours too Odious for such Crimes? No doubt, my Lords, they cannot; and therefore instead of charging the Doctor with reflecting on the late happy Revolution, I hope your Lordships will be of Opinion he vindicates it in the highest Degree, when he distinguisheth it from that in 1648, and shews what a wide Difference there is between them.

As to that Part of the first Article which says, *That his late Majesty, in his Declaration, disclaimed the least Imputation of Resistance*; If the Doctor had not explained himself, it is humbly submitted how far he is justified by his Majesty's Declaration. The Declaration says, *We have thought fit to go over to England, and to carry with us a Force sufficient, by the Blessing of God, to defend us from the Violence of evil Counsellors; and that his Expedition is intended for no other Design but to have a free and lawful Parliament*: So that this Expedition was to have a free Parliament, and his Forces were to defend him from the Violence of Evil Counsellors, in carrying on that glorious Design; and when the late King James Abdicated the Government, what Resistance was it to supply the Vacancy, by settling his late Majesty on the Throne?

In Construction of Words and Sentences, if any part be ambiguous, and may be taken in a double Sense, it ought in Favour of Life and Liberty to be taken in the best Sense. But the Author declares what his Sense is, what he means by it, there it cannot be taken in any other Sense than that: And this is the Doctor's Case; for he shews, both in his Sermon, and by a Note printed at the Bottom of the Page, that by Resistance he means such Resistance as tended to a Conquest: And is he not justified in that by his Majesty's Declaration, wherein he disowns the wicked Attempt of Conquest? And by the Vote of both Houses of Parliament, who so highly resented the Design of making that Expedition a Conquest, that they ordered a Pamphlet which attempted to prove it such, to be Burnt by the Common Hangman?

And therefore, if the general Words would have carried such a Reflection, yet the Clause which explains it, being printed with it, prevents such a Construction; for there is no Reason to apprehend any Danger from the Poison, when the Antidote is administered at the same Time. Thus, my Lords, I take it, I have answered every Branch of this Article, and shewn, that there are not any Expressions in the Sermon, that can Warrant or Support any Part

of it: But, from what I observed from the Gentlemen who are the Managers, and spoke to this Article, the great Foundation and Stress upon which this Article depends, is in the Sentence in Page 11. of the Doctor's Sermon, where he says, *The Grand Security of our Government, and the very Pillar upon which it stands, is founded upon the steady Belief of the Subjects Obligation to an absolute and unconditional Obedience to the Supreme Power in all things lawful, and the utter Illegality of Resistance upon any Pretence whatsoever*. But I take it, the Charge in this Article can never be supported by any Words in this Sentence; for it is Evident, that the absolute and unconditional Obedience, which he says Subjects are obliged to, is to the Supreme Power in all things lawful; and the utter Illegality of Resistance upon any Pretence whatsoever, (being in one and the same Sentence) must be intended to be of the Supreme Power in all Things lawful; so that it is no more than if he had said, 'Tis utterly Illegal, upon any Account whatsoever, to resist the Supreme Power in Things lawful. Can any Aphorism be truer than this, viz. *That where the Thing commanded by the Supreme Power is lawful, the Resistance given to it must be unlawful?* And this is all the Doctor hath asserted in this Paragraph.

If I may have Leave to cite a foreign Author, Puffendorf says, *The Supreme Power is that in which the Legislature is vested; for he says, Human Laws are the Decrees of the Supreme Power, concerning Matters to be observed by the Subjects for the good of the State*. And one of the learned Managers, who spoke to this Article, admits it to be so. And then the Doctor's Assertion is, *That the Security of our Government, and the very Pillar on which it stands, is founded upon the steady Belief of the Subjects Obligation to an Absolute and Unconditional Obedience to the Laws made by the Queen, Lords and Commons, in Parliament assembled, and the utter Illegality of Resisting such Laws on any Pretence whatsoever*. And if this be not so universal a Truth, as not to admit any Exception, is humbly submitted to your Lordships: And this is an Answer to all that hath been said against us on the first Article. For all the Gentlemen have founded their Discourse on a Supposition, that the Doctor preached up an Absolute Unconditional Obedience to, and the utter Illegality of Resistance of the Queen; whereas he preaches up the Illegality of Resisting the Supreme Power, and that in all Things lawful.

Suppose it could be collected, that by the Supreme Power the Doctor meant the Supreme Executive Power, which is the Queen; yet the Doctor cannot be thought by this to reflect on the Revolution, or to condemn that Opposition given to King James.

For can it be imagined, that he condemns the Opposition given to that Prince in the Dispensing Power, in committing the Bishops, depriving Men of their Freeholds and Liberties, by Ecclesiastical and other unlawful Commissions, and endeavouring to establish Popery, by introducing a foreign Power? I say, Can it be imagined the Doctor condemns that Opposition, when he urges the Illegality of Resistance to the Supreme Power in all Things lawful? If those Proceedings of King James were lawful, then the Doctor condemns the Opposition given to them; but those Proceedings being Illegal, the Opposition given to them is no where condemn'd by the Doctor, nor hath this Paragraph in his Sermon any Relation to it.

To carry this yet further; suppose that the urging the Illegality of Resistance on any Pretence whatsoever had been a Substantive Clause, and had no Relation to, or Dependence upon any other Clause or Sentence; or suppose such a general Assertion can be collected from any Part of the Doctor's Sermon, yet it must be taken only for a general Proposition: And if such general Propositions are true in the General, and to a common Intent, tho' they are subject to particular Exceptions, yet it is submitted, whether the Doctor is not well warranted in asserting such a general Proposition, without mentioning the particular Exception? For all general Rules have Exceptions; and yet the Person that cites them, seldom or never mentions the Exceptions; for whenever such general Propositions are urged, the Exceptions are always understood and implied. And there was less Reason to mention the Exception in this Case, because it is so universally known: It had the Concurrence of the whole Nation, and was so often established and approved by the Legislature.

And the Doctor intirely concurs with the Gentlemen of the House of Commons, that the Revolution is an Exception; and is not Adversary to one of the learned Managers, who was pleased to admit, it was the only Exception from this general Rule. And I submit to your Lordships, if the naming that Exception, would not be a greater Reflection on the Revolution, than the Preaching that Doctrine in general Terms, without naming it; for to name it now, since the Revolution, would be to suppose, that it was not implied and understood as an Exception out of that general Proposition, before the Revolution; and then the Exception is to be warranted by the Revolution; which is to infer, that no Resistance was lawful 'till the Revolution: Whereas we say, that such an extraordinary Case as that of the Revolution, was always implied as an Exception out of that general Doctrine, and so the Doctrine justifies the Revolution.

And therefore, the Doctor urging this Doctrine of Non-Resistance in such general Terms, as all other general Propositions are usually urged, it is humbly submitted, whether he can for this be esteem'd guilty of High Crimes and Misdemeanors; especially since this very Doctrine hath been affirm'd in such general Terms, by learned Men in all Ages, by our Church, and by the Legislature; of which I'll beg Leave to give some few Instances.

When the Duke of Monmouth was to be executed, his present Grace the Archbishop of Canterbury, the present Lord Bishop of Bath and Wells, the then Bishops of Ely and Bath and Wells, were appointed by the King to attend his Grace. They press'd him to make a particular Confession of his Crime, and to acknowledge himself guilty of Rebellion: His Answer was, *He died a Protestant of the Church of England.* They replied, *My Lord, If you be of the Church of England, you must acknowledge the Doctrine of Non-Resistance to be true.*

Archbishop Tillotson, in his Letter writ to my Lord Russell, July 20, 1683. offers these Considerations concerning the Point of Resistance. "(1.) That the Christian Religion doth plainly forbid the Resisting of Authority. (2.) That in the same Law which establishes our Religion, it is declared, It is not lawful upon any Pretence whatsoever to take up Arms against the King.

Bishop Saunderson, in his Works, Pag. 522. says, *No Conjunction of Circumstances whatsoever, can*

make that Expedient to be done at any Time, that is of itself, and in the Kind, unlawful. For a Man to take up Arms (offensive or defensive) against a lawful Sovereign, being a Thing in its Nature simply, and de toto genere, unlawful, may not be done by any Man, at any Time, in any Case, upon any Colour or Pretence whatsoever.

Thus your Lordships observe, how much higher these great and learned Men carried this Doctrine, than Doctor Sacheverell hath done in his Sermon: And Multitudes of Instances there are, which shew, that it hath been the concurrent and universal Opinion of all the learned Men of our Church, in all Ages, that Resistance of the Sovereign Power is not lawful upon any Pretence whatsoever. And what Punishment, what Censures have been inflicted upon, nay, what Fault has been found with any of them to this Day? One of the learned Gentlemen, to enforce the Legality of Resistance, was pleased to urge the original Contract, as the Foundation of the Prerogative of the Crown, and the Liberties of the People; and to assert, that if the Supreme Executive Power invaded the Rights of the People, the Contract was dissolv'd, and the People discharg'd from their Allegiance. I will not be positive, as to the very Words, but I take this to be the Purport of them.

When the original Contract was made, that learned Gentleman did not think fit to inform us. Was it before *Magna Charta*? If so, why not compriz'd in it? All the Liberties the Subjects then laid Claim to, being included in that Act; and 'tis much, a Thing of that Moment, and which was the Source and Spring of all their Liberties, should not be so much as mentioned in it. I never met with it in any of our Law Books, in my little Experience. — I never heard it urg'd in any Court before. Was it before the Statute of 25 *Edw. III*? I never knew it pleaded to any Indictment for High Treason, nor objected, to enervate or take off the Force of that Statute: And our Law Books being silent in it, I think it is too tender a Point for us, who are no Members of any Part of the Legislature, to meddle with. And therefore, 'till the Legislature have declar'd what the original Contract is, and determin'd what Act of the Supreme Executive Power shall amount to a Dissolution of that original Contract, and discharge the Subjects from their Allegiance; I must beg Pardon, if I think, that as to Resistance in general, the Law stands still upon the Foot of the 25th of *Edward III.* and that all Resistance, except in the Case of the Revolution, is still Treason within that Act.

But to give some further Instances, in Vindication of the Doctrine of Passive Obedience and Non-Resistance. Archbishop Tillotson, in his Letter to the Lord Russell, says, *The Doctrine of Non-Resistance is the Doctrine of all Protestant Churches:* I may add, it was the Doctrine of Christ and his Apostles: It was the Doctrine in *David's* Time; for it was this Doctrine that restrained *David* from offering Violence to King *Saul*, tho' that King sought to take away his Life. It was that holy Man's Opinion, that he could not *lift up his Hand against the Lord's anointed, and be guiltless.* Can it be done now with greater Innocence than it could then? Is the Person of the Lord's anointed now less sacred than it was then? Or have the People now a greater Liberty to resist, than *David* had then? My Lords, one of the learned Gentlemen said, that in Respect of the Patriarchal Right, it is
a Do-

2 Doctrines as old as *Adam*, and I will not pretend to carry it further.

The next Thing therefore to be consider'd, is, Whether this Doctrine, that is of so great Antiquity, has had any Alteration, whether it hath been preach'd, or urg'd in any other Terms since the Revolution, than it was before. Bishop *Beveridge*, in a Book call'd *Private Thoughts upon Religion*, Pag. 247, 249, 250. says, *Upon any seeming real Default or Defect of our Sovereign, we are to be more earnest in our Prayers and Intercession for him; but upon no Account to fight or rebel against him.* This Book had her Majesty's Royal License, and was countersigned by a noble Lord, eminent for Learning, and her Majesty's principal Secretary of State; I mean, the Right Honourable the Earl of *Sunderland*.

I beg Leave to cite next a learned Gentleman, whose Affection to the Government, and Understanding in Antiquity, no body can doubt: 'Tis Dr. *Kennet*, who in his Sermon preach'd before the House of Commons, January 30, 1705, says, *This is the true Foundation of that common Axiom, The King can do no Wrong; because there is no Right nor Remedy against his Royal Person.* And in the same Sermon he says, *It was declarative of our original Constitution, (which one would think should be the original Contract, unless the original Contract and the original Constitution differ) that our Legislature, upon Occasion of this Day would have it express'd, that by the undoubted and fundamental Laws of this Kingdom, neither the Peers of this Realm, nor the Commons, nor both together, in Parliament, or out of Parliament, nor the People, collectively or representatively, nor any other Persons whatsoever, ever had, have, or ought to have, any coercive Power over the Persons of the Kings of this Realm.* And I think it is evident, where there can be no coercive Power, there cannot be any Resistance. This was but in the Year 1705. And was the original Contract found out since? If not, then it is plain, the Commons did not think this Doctrine to derogate from that Contract, or to reflect upon the Revolution; for the Doctor had the Thanks of the Commons for his Sermon, and their Order to print it.

I do most readily concur with the learned Gentlemen of the House of Commons, that that Reverend Bench is fill'd with Fathers of the Church, who are as great an Ornament to it for Learning and Piety as any of their Predecessors, and are most justly famed for their religious Moderation; and therefore Instances of their asserting this Doctrine since the Revolution, will have the greatest Weight with your Lordships, and tend the most to the Satisfaction of that honourable House, upon whose Impeachment the Doctor is brought hither.

The Bishop of *St. Asaph*, in his Sermon on the 30th of January, 1699, preached before the Lord Mayor, Pag. 18, says, *It is plain, that a Government can't possibly subsist for any Time, where any Kind of Violence is allow'd against the Magistrate: Government is at an End, where Rulers are expos'd to popular Assaults.*

The Bishop of *Lincoln*, in his Sermon preach'd before your Lordships the 30th of January, 1708, pag. 15, 16, 17, says, *Where-ever that Supreme Power and Authority is lodg'd, or in whomsoever it resides, we are bound to pay either an active or passive Obedience, must either do what it requires, or suffer what it inflicts. This is, without Controversy, the standing Doctrine of Christianity, and has been confirm'd by the Practices of the best Christians in all*

Ages of the Church. My Lord Bishop likewise cites the Words of the Statute of the 12th of *Charles II.* which were mentioned by Dr. *Kennet*; your Lordships were pleas'd to thank my Lord Bishop for this Sermon, and desired him to print it.

My Lord Archbishop of *York*, in his Sermon preached before your Lordships in 1700, has stated this Doctrine so fully and clearly, that it is not capable of the least Contradiction or Doubt: His Grace expresses himself thus: *That there is such a Submission due from all Subjects to the Supreme Authority of the Place where they live, as shall tie up their Hands from opposing or resisting it by Force, is evident from the very Nature and Ends of Political Society; and I dare say, there is not that Country upon Earth, let the Form of their Government be what it will, (Absolute Monarchy, Aristocracy, or Commonwealth) where this is not a Part of the Constitution. Subjects must obey Passively, where they cannot obey Actively, otherwise the Government would be precarious, and the publick Peace at the Mercy of every Malecontent; and a Door would be set open to all the Insurrections, Rebellions, and Treasons in the World. Nor is this only a State Doctrine, but the Doctrine also of Jesus Christ; and that a necessary and indispensable one too, as sufficiently appears from those famous Words of St. Paul's, Rom. xiii. 1, 2. which are so plain that they need no Comment: So that so long as this Text stands in our Bibles, the Doctrine of Non-Resistance or Passive Obedience must be of Obligation to all Christians.*

Is not this Doctrine confirm'd by our Church in her Homilies, and injoin'd to be read on certain Days in the Church? Are not these Homilies allow'd by the Articles? Are not these Articles establish'd by the 13th of *Eliz.* Chap. xiv? And is not that very Act confirm'd and made perpetual by the Act of Union made in the fifth Year of her Majesty? Is it not likewise ratify'd and establish'd by the Legislature, by the Act of the 12th of *Charles the Second*, cited in the Sermons of the Bishop of *Lincoln* and Dr. *Kennet*; by the Act of the 13th of *Charles the Second*? For that Act of the 13th of *Charles the Second*, Chap. iv. obliges all Ministers, &c. to subscribe a Declaration: The first Part whereof was this, *I A. B. do declare that it is not lawful upon any Pretence whatsoever to take up Arms against the King.* Was not that Declaration to be sworn to by all Officers of Corporations, by the Corporation Act; by all Lieutenants, Deputy Lieutenants, and all Officers and Soldiers of the Militia, by the Militia Act? And can any Man doubt the Truth of that Doctrine, which the Legislature has obliged the greatest Part of the Nation so solemnly to subscribe and swear to? We have collected many more Instances of this Kind, which we will offer to your Lordships in the Course of our Evidence.

Thus your Lordships observe how this Doctrine hath been preach'd and maintain'd by Archbishops, Bishops, and eminent Divines, confirm'd and establish'd by the Church; and by the Legislature: And is this Doctrine alter'd; or hath it receiv'd any Diminution or Restriction by the Revolution? I will not presume to say, but are in your Lordships Judgment, on the Consideration of the several Sermons before mention'd, preach'd and publish'd with the respective Approbation of both Houses of Parliament since the Revolution. I beseech your Lordships, How many Revolutions have there been in this Kingdom, and yet this Doctrine always continued the same; and I submit, whether we have not the Authority

thority of your Lordships on this very Point; for in a Sermon preach'd before your Lordships on the 30th of January, 1702, by my Lord Bishop of Carlisle, his Lordship expresses himself thus. *Our Foundations, 'tis to be hoped, are not shaken by the Weight of those many great and extraordinary Revolutions that have passed upon us. The All-wise Providence of God has frequently of late (and, as some of us always thought, very graciously) exchang'd our Governors; but if we ungratefully alter our Notions of the Divine Right of Government, and throw off our antient and primitive Rules of Obedience, we shall make an unworthy Return for the Mercies we have received.* I hope I may have your Lordships Leave to conclude your Lordships are of the same Opinion, since my Lord Bishop had your Lordships Thanks for his Sermon, and your Desire to print it. I also presume to offer it to your Lordships Consideration, whether this very Doctrine be not establish'd and injoin'd under the Obligation of an Oath, by the Legislature, in the Reign of his late Majesty, and of her present Majesty; I mean in the Abjuration Oath, in which Oath there is this Clause, *viz. And I do swear that I will bear Faith and true Allegiance to her Majesty, and her will defend to the utmost of my Power against all traiterous Conspiracies whatsoever, which shall be made against her Person, Crown and Dignity.* I believe it will not be deny'd by any Lawyer, that taking up Arms against her Majesty is High Treason, by the Statute of the 25th of Edward the Third; and therefore the Parliament having injoin'd all Persons in Office, &c. to defend her Majesty against all traiterous Conspiracies and Attempts, shew, that it was their Opinion, that the taking up Arms and resisting her Majesty, upon any Pretence whatsoever, is unlawful; because wheresoever Resistance is lawful, the Defence must be unlawful.

I would only beg Leave to add, that the Punishment inflicted by our Law in this World for Resistance, and the Judgment denounc'd against it in the next, sufficiently evinces the Illegality of it. Taking up Arms and resisting against the Queen, by the Statute of the 25th of Edward the Third, is High Treason; the Punishment of which is to be Drawn, Hang'd and Quarter'd. And in what Condition they are to be in a future State, St. Paul informs us: For he says, *They that resist shall receive to themselves Damnation.* And surely no Body will contest the Truth of that Doctrine, the Breach of which is attended with such dismal Consequences. I hope, therefore, since this Doctrine has been so universally preached and approved, the Preaching of it now shall not be thought to reflect on the Revolution, more than it has done hitherto, since her Majesty's happy Accession to the Throne; and more than it did in the Reign of his late Majesty, who was the glorious Instrument of that happy Revolution. Was not his Majesty appriz'd of the necessary Means by which the Revolution was brought about? Had not his late Majesty as tender a Regard for the Honour of the Revolution, as any Body else can be suppos'd to have? No Body can doubt it: And yet this Doctrine was preach'd in his Time, in as general Terms as the Doctor has preach'd it; and not only without Objection, but with the Approbation of his Majesty, and both Houses of Parliament. And if all this will not vindicate the Doctrine; yet, I hope, it will at least excuse the Doctor from being a Criminal.

Can he be a Criminal for preaching that Doctrine which has been asserted by so many Archbishops, Bi-

shops, and other eminent Divines, not only with Impunity, but even with the Approbation of both Houses of Parliament? That Doctrine which is injoin'd by our Church, ratify'd, confirm'd and establish'd by the Legislature, and which is the Doctrine of all the Protestant Churches in the World, which was the Doctrine of our Saviour himself, and which hath been the Doctrine ever since Adam, and will continue so as long as there is a Bible upon Earth?

Can a Man be a Criminal for preaching the Doctrine of Passive Obedience and Non-Resistance, tho' without Restriction and Limitation, while we are so happy as to have her Majesty to reign over us, upon whose Life the Welfare and Happiness of these Nations depend, as much (I hope I may be excus'd if I say more) than the Welfare of any Nation ever did upon the Life of any Prince whatsoever since the Foundation of the World? And therefore we are sure your Lordships will not lessen her Security; and the rather, because it is impossible, during her Majesty's Life, any Invasion or the least Attempt should be made upon that Religion, that Liberty and Property, for the Preservation of which she run so great a Hazard.

This is what I humbly offer to your Lordships, on Behalf of my Client, on this Head. And tho' I have mention'd these Instances, to show in what general Sense the Doctrine of Passive-Obedience has been preached, and that if the Doctor had asserted it in such general Terms, he could be no more a Criminal than others; yet it must be always understood, that he does not assert it in such general Terms, but only asserts the utter Illegality of Resistance to the Supreme Power in all Things lawful.

Before I quit this Article, I would take Notice, it has been objected, that it is highly improper and unseasonable for Divines in their Pulpits to meddle with Matters of this Nature: In Answer to which, I would (besides the Injunction that the Apostles have laid on their Successors, to put People in Mind of being subject to Principalities and Powers) humbly offer to your Lordships Consideration, a bold and seditious Paragraph in a Pamphlet printed in 1705, call'd, *The Review*; which hath this Paragraph, *If the next Parliament should pursue the Steps of the last, the Nation, in my Opinion, will be so much nearer that Crisis of Time, when English Liberty being brought to the last Extremity, must open the Magazine of original Power.* The same Author, speaking of the Family of the Stuarts, calls it *the Line of all the World, fam'd for Blood, and that had ravaged the best Families of the Kingdom.* And in another Paragraph he says, *In short, if Jure Divino comes upon the Stage, the Queen has no more Title to the Crown than my Lord Mayor's Horse: All the People are bound by the Laws of God to depose her as an Usurper, and restore their rightful and lawful King, James the Third.* If therefore to defame the whole Line of her Majesty; to assert that the Pretender has an hereditary Right to the Crown; if telling the People, if they do not like the Parliament, they must have Recourse to the Magazine of original Power, be not sounding a Trumpet to Rebellion, and does not make this Doctrine seasonable and necessary to be preach'd at this Time, we submit it to your Lordships. And therefore, I humbly hope, that instead of laying a Brand of indelible Infamy on this Doctrine, your Lordships, for the Preservation of her Majesty, and her Successors, and for the securing the Peace of the Kingdom, will convey this Doctrine as intire, and

and in as full Force, down to Posterity, as it was transmitted to your Lordships by your Noble Progenitors.

And as to what one of the Honourable Gentlemen concluded with, *viz.* That your Lordships would direct what Doctrine the Ministers should preach.

If there be any Doctrine in the Bible not proper to be preach'd; if there be any Doctrine, except that of the Deity, of greater Antiquity than this, which commences from *Adam*, or is more useful or necessary for the Preservation of the Government, then we submit this Doctrine should be let alone. Upon the whole Matter, I am in your Lordships Judgment, if upon Consideration of what hath been said, your Lordships can be of Opinion, that the Doctor is guilty of the High Crimes and Misdemeanors contain'd in the first Article.

Mr. *Dee.* **M**AY it please your Lordships, After so much has been said, and so well press'd by the Gentlemen that have gone before me, of the Doctrine of Non-Resistance (which is so well established by the Opinion of the Fathers of the Church, and founded on the Laws of the Land) I should think myself very unmannerly to spend your Lordships Time, in repeating it in worse Words. I beg Leave only to make a few Remarks: First on some Generals, and then to add a few Words, and draw an Inference or two from one Law that has not yet been taken Notice of.

My Lords, We readily join with the Gentlemen who managed on Behalf of the House of Commons, in desiring your Lordships to assert Fundamentals; and desire your Lordships to consider the antient legal Constitution of the Kingdom. This we readily comply with them in, and doubt not but your Lordships will do it.

My Lords, There was some Notice taken of the Time and Place where this Sermon was preach'd; and it was said by one of the Gentlemen, that it was an improper Time, because it was a Doctrine fit only to be preach'd in the Reign of a bad Prince, but not of a good one. My Lords, indeed I am at a Loss to understand that: I think, if at any Time, it is seasonable when we have so gracious a Princess upon the Throne, much rather than in the Reign of a Tyrant or Usurper.

My Lords, This Doctrine has been made appear to your Lordships to be consonant to the Laws of God, and the Laws of the Land; and when we have laid before your Lordships our Proofs that have been opened, I hope your Lordships will allow we have proved our Case.

The Gentlemen of the other Side said they had proved their Articles: But how? In no other Way than by reading the Sermon, which we hope shall be permitted to speak for itself.

My Lords, It was said, that the Municipal Laws of the Land signify nothing only in Times of Peace. What the Meaning of that is, I know not, unless that the Laws must be silent in the Time of War; but the Way to maintain Peace, and to prevent Blood and Wars at Home, is to preserve our Laws.

My Lords, It has been likewise urg'd as a Maxim, *That there can be no Right, but there must be a Remedy to preserve it.* And thereupon it was hinted, as if there were some secret Right vested in the People to do something they did not think fit to name. That Saying, My Lords, I take to be a Maxim in the Law, and to relate only to legal Matters, and the Meaning of it to be, That when any Man has a Property, the same Law that gives

Property, gives him a Remedy, if the same be invaded. But I never understood that Maxim to be meant of a Remedy by Force; and I am sure, in most Cases, such a Remedy is worse than the Disease.

My Lords, We would not be thought (I am sure no Gentleman of our Side would be thought) in the least to reflect on the Revolution mentioned in the Impeachment; nor does any Thing, as we think, that the Doctor has said in his Sermon, in the least look that Way. The general Position of the utter Illegality of resisting the Supreme Power, does (as it has been observ'd already) imply in it a Condition, (which perhaps may extend to some other Cases;) and, as we say, extends to that of the Revolution.

One of the Managers instanced in the fourth Command, which in general forbids any Work to be done on the Lord's Days; and yet, says he, Works of Necessity and Mercy are allowed to be done on that Day, and are an implied Exception. The like we say of the implied Exception to the general Doctrine laid down by the Doctor of the Illegality of Resistance.

My Lords, Certainly there is no Room to suppose any Reflection to be made on his late Majesty; for surely his Majesty wanted no Excuse for his coming hither; nor could he be guilty of any Thing that we properly call Resistance. He was a Sovereign Prince, and might do what he thought fit. He owed no Allegiance to any one, so could not be said to resist, in the Sense Resistance bears in the Doctor's Sermon, which is the Resistance by Subjects to the Supreme Power.

My Lords, I now beg Leave to mention the Act of the second Year of King *William* and Queen *Mary*, intitled, *An Act for a general Pardon*; by the last Clause whereof it is provided, *That nothing in that Act shall extend to pardon, or discharge any one for counselling or procuring the raising War against their Majesties, after the 13th Day of February, 1688, unless such Person shall before the 26th of July take the following Oath.* Then follows the Oath of Allegiance. From hence I beg Leave to make an Inference or two: First, That it was the Sense of the Legislature at that Time, that those Persons that contrived or abetted the raising War against their Majesties after they came to the Crown, were guilty of a High Crime, and stood in need of a Pardon. So that if any Thing had shaken the Doctrine of the Illegality of Resistance, here Resistance is made as criminal as it was before. Secondly, It appears by that Clause to be the Opinion of the Legislature, that by the Oath of Allegiance, as it is now framed, this Doctrine of the utter Illegality of Resistance is firmly established. For, my Lords, To what Purpose should that Oath be made the Condition of a Pardon for having resisted, unless they thought that Oath laid an Obligation on the Persons taking it not to do so again?

My Lords, That Construction which some of the Managers for the Commons put on the Doctor's Sermon, that this Notion of Non-Resistance could only be applied to some Body beyond sea, we think to be very hard and strained: I am sure it don't appear from any Thing the Doctor has said in his Sermon; but the contrary plainly appears; for the Doctor doth assert her Majesty's hereditary Right, and yet doth not reflect on the Revolution; for though he speaks of her Majesty's hereditary Right, he does not any where say, that she has no other than an hereditary Right in her. And it was owned by one of the Gentlemen that managed for the House of

Commons, that his late Majesty had a single Right by the Act of Settlement; but that her Majesty has a twofold Right, a Right according to the Act of Settlement, and an Hereditary Right too.

My Lords, There has been a great deal of Time spent, therefore I shall only make this one Remark further, that is, That the learned Managers for the House of Commons have drawn very many Inferences, by their Skill and Ingenuity, from Passages in the Doctor's Sermon, which I believe none of your Lordships can think the Doctor ever thought of, when he was composing his Sermon, or delivering it in the Pulpit.

Doctor Henchman. MY Lords, I am likewise assign'd Counsel for Doctor Sacheverell; but if he has been represented by the learned Managers in his proper Colours, if he has been set before your Lordships in a true Light, and with his Mask off, I must beg Leave to say, that nothing less than the Commands of this Honourable House could prevail with any one to appear in his Defence. If he is a Mover of Sedition, and an Underminer of the Protestant Succession and present Establishment; if he has fomented destructive Divisions, and excited his Fellow-Subjects to Arms and Violence, and has taken all Advantages to vent his Seditious Notions in the most publick Manner, I must humbly think that no Body would dare to open his Mouth in his Behalf in the Face of the Government, and before the united Legislature of the whole Kingdom. I protest for myself I would not do it, and I believe I may say the same for all the Gentlemen that have spoke before me.

My Lords, the general Part of these Articles has been already largely spoken to, and I shall therefore apply myself directly to the first Article, and the first Branch of that Article, which has been made the Ground of this whole Accusation, *viz. That he does suggest and maintain that the necessary Means used to bring about the late happy Revolution were Odious and Unjustifiable.* I must own this is a Charge of a very high Nature, and has been aggravated to the utmost by the great Pains that the Gentlemen of the Honourable House of Commons have taken, and the elaborate Speeches that have been made on this Head.

My Lords, The Justice of the Revolution is too plain to need any Vindication, every one of us is sensible of the happy Effects of it; and therefore for any one to cast black and odious Colours on it, would be, as has been truly said by the honourable Managers, *a Reflection on his late Majesty, and must bring a foul Imputation on her present Majesty and Government*; which, if the Revolution be Unjustifiable, must be an Usurpation, and all her Subjects Rebels.

My Lords, The Clause made use of to prove this Part of the Article, is in the 11th Page of the Sermon at *St. Paul's*, and has been often read; *The grand Security of our Government, and the very Pillar on which it stands, is founded upon the steady Belief of the Subjects Obligation to an Absolute and Unconditional Obedience to the Supreme Power in all Things lawful, and the utter Illegality of Resistance upon any Pretence whatsoever.* This, my Lords, is the Ground of the Commons Impeachment, because here they say the Doctor condemns all Resistance, and in that the Resistance which was necessary to be made use of at the Revolution.

Whether what is here laid down be agreeable to the Doctrine of the Church of *England* is not

my Province to determine, neither shall I now mispend your Lordships time in establishing this Doctrine; that has been already sufficiently done, and the Doctor himself abundantly vindicated, from the Doctrine of *St. Paul* himself, from the express Doctrine of the Church of *England* set forth in her Homilies, from the Writings of Bishops and Divines dead and living, from the known and unrepal'd Laws of the Land, and from the Reasonableness of laying down a general Rule without any Exception. What farther Vindication can be necessary? Or how can a good Subject of the Realm, and a true Son of the Church, better make his Defence than from the Laws of the one, and the Doctrine, of the other? But because the great Objection has been, That this Doctrine is here laid down without any Limitation or Exception at all; and being myself of a different Profession from the Gentlemen that have spoke before me, I shall take a different Way in Vindication of this Passage, and beg Leave to follow the Method prescrib'd by one of the learned Managers of the House of Commons. It was said by one of them, *Ex ore suo judicabitur.* My Lords, let him speak for himself, and then it will be seen if this Passage may not be justified by the very same Methods that have been made use of to accuse him. If nothing will satisfy the Gentlemen of the House of Commons but an Exception, an Exception they shall have, and that out of his own Mouth. It is in the 10th Page, and the beginning of that very Paragraph, where the whole Foundation of this Accusation is laid. But I don't well know whether I may venture to mention it, lest it should subject him to a Prosecution in the Spiritual Court, or the Censure of his Diocesan; but if it may help to acquit him from this Impeachment, I will advise him to run the Risque of any Prosecution elsewhere.

The Clause is this, *But, Secondly, Men may be denominated False Brethren, with relation to the State, Government, or Society of which they are Members. The Constitutions of most Governments differing according to their several Frames and Laws upon which they are built and founded, it is impossible to lay down any one universal Rule, as the Scheme and Measure of Obedience, that may square to every one of them.*

My Lords, This is an observable Instance of this Gentleman's good Temper and Moderation; nothing can be said more like a good Christian, and a good Subject, and a Man of Temper: He is not here for bringing all Things to his own Rule, but every Government must stand upon its own Foundation, and be govern'd according to its own Rules. But he goes on; *Only this Maxim in general, I presume, may be Established, for the Safety, Tranquility, and Support of all Governments, That no Innovation whatsoever should be allowed in the Fundamental Constitution of any State, without a very pressing, nay, unavoidable Necessity for it.*

My Lords, In these Words there is a plain Exception made, whenever the Case of an unavoidable Necessity shall happen. No Body will deny but that the Revolution was such an unavoidable Case, and of Necessity, and what can't be reflected on, but with great Satisfaction, and Thanks to GOD for bringing it about. But it seems very strange that this Exception should stand so very full and plain in the very Front of that Paragraph from which the learned Managers have chiefly drawn this Accusation, and yet never be so much as once taken notice of by them. Passages at a much greater Distance have been connected in order to Accuse him; and there

there can be no Reason given why the subsequent Passage in the same Paragraph should not be explained by this; why, what in the Beginning is said of all Governments in general, should not be extended to that Part where he speaks particularly of our own Constitution. This, no doubt of it, he had in his Thoughts, and will, I hope, sufficiently vindicate him from this Charge.

I shall trouble your Lordships no longer on this Head, but only observe, that the Doctor in his Answer has put himself upon his Defence, That this Doctrine is agreeable to the Doctrine of the Church of *England* and the Laws of the Land, and we are ready to produce his Vouchers, and make it evident to your Lordships.

Sir Simon Harcourt. My Lords, If we have not already tired your Lordships, there is this wide Difference between the Managers for the House of Commons and us; they desire your Lordships to trust them, and to take their Words in every thing; we humbly beg your Lordships to take our Words in nothing, but that you will give us Leave to lay before you the Testimonies for every thing we have open'd; but they being very long, we humbly submit it to your Lordships, whether it will be proper for us now to produce them. The first Evidence we desire to read is, Some godly and wholesome Doctrine contained in the Homilies; we have my Lords, for your Lordships Ease, collected them by a Person that is ready to swear to them. We humbly submit it to your Lordships, whether it shall be read out of the Writing, or whether the Books themselves shall be produced; we shall observe your Lordships Commands, and proceed which way your Lordships please.

M. Dodd. My Lords, We are ready to observe your Lordships Directions in this Matter: We have collected the Passages out of the Homilies, the Articles, the Sermons, and Acts of Parliament; and have a Person ready to make Oath that they are truly collected. But if there be any Objection, we are ready to refer to the Books themselves, and have them all here ready to produce.

Mr. Phipps. If your Lordships please, the Witness may be sworn.

Then Mr. Trap was Sworn.

Lord Chancellor. If you offer any Thing in Evidence, you must take the same Method that the Gentlemen of the House of Commons did; it must be proved, and then delivered in at the Table, and there read.

Sir Joseph Jekyll. My Lords, we have given the Gentlemen that are Counsel for the Prisoner no Disturbance in any thing they have said during their Defence, so that we might come to a Determination as speedily as possible in this Trial; otherwise every Body must think, we had Reason to object to some Things that have been said by the Counsel. That which they are now going to do, is what we think proper to deliberate upon; and, according to former Precedents, we desire to withdraw, and we will attend your Lordships again presently.

Mr. Smith. My Lords, I beg Leave to speak one Word. We have endeavoured to behave ourselves before your Lordships, according to the Duty we owe to the House of Commons, and to your Lordships: We think there is something offered, that is fit for us to consider of. We don't propose more, than for the Managers to withdraw for a few Minutes; for we think we have something to offer to your Lordships.

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Accordingly the Managers withdrew; and then the Lords adjourned to their House above: And in a short time their Lordships being returned, and seated as before, and the Managers being returned to the Place appointed for them at their Lordships Bar; Proclamation for Silence was made by the Serjeant at Arms.

Sir Joseph Jekyll. My Lords, the Managers withdrew for two Reasons; the one, to consider of several Expressions that fell from the Counsel at the Bar, which we had Reason to take Exceptions to; the other was, to consider of the Evidence they offer to your Lordships. For the first; The Managers are so desirous that no Interruption should be given to the Doctor's Counsel in his Defence, that they at present take no notice of it, but reserve that Matter to be taken notice of at such other Time as they shall think proper. As to the Second, The Managers being unwilling the Doctor should be depriv'd of any Thing that his Counsel can fancy is Material for his Defence, they are contented to let them go on in the Way they propos'd; but, to save your Lordships Time, we admit the Books, Sermons and Pamphlets, to be as they have open'd them.

Sir Simon Harcourt. My Lords, We humbly pray they may be read, but we have not open'd the tenth Part of them.

Mr. Dodd. We have collected them, to save your Lordships Time; but we have not open'd them, because we reserv'd them to be read.

Mr. Phipps. My Lords, The Witness is sworn. Is that a true Copy of what it refers to?

Mr. Trapp. I did compare them with the Originals: It is a Transcript from the Original.

M. Phipps. Are they intire Paragraphs?

Mr. Trapp. They are most of them intire Passages.

Lord Chancellor. Gentlemen of the House of Commons, do you object to the Evidence?

Sir Joseph Jekyll. No, my Lords.

Then the LORDS adjourned to their House above.

Saturday, March 4. The Sixth Day.

THE Lords being seated as usual, and the Commons in a Committee of the whole House, and the Managers at their Lordships Bar: the usual Proclamations being also made;

And *Dr. Sacheverell* appearing at the Bar:

Lord Chancellor. Gentlemen, You who are Counsel for Doctor *Sacheverell* were proceeding to your Evidence, and had offered some Papers which you desired to be read in Evidence; and the Gentlemen of the House of Commons did agree to let them be read, as you desired.

Mr. Dodd. My Lords, We pray those Papers may be read.

Mr. Phipps. My Lords, The Defendant does in his Answer assert, "That the Doctrine of the Illegality of Resistance to the Supreme Power, is contained in the Homilies, and approved by many of the Divines of the Church of *England*:" We desire now to have those Homilies, and the Sermons of those Divines, read.

5 A

Sir

Sir Joseph Jekyll. My Lords, The Gentlemen that open'd for the Doctor, were pleas'd to mention some Homilies, and other Books, one intitled, *A Necessary Doctrine and Erudition for any Christian Man*; which they desir'd might be read; and said, They had collected the Passages out of them, in a Paper which they offer'd to your Lordships. We have look'd into that Paper, and find Extracts out of *Gazettes*, and other Papers. We are willing to let them read the Homilies, and that other Book call'd, *The Erudition of any Christian Man*; but when they come to the others, we pray they may produce the Books or Papers themselves.

Mr. Dodd. My Lords, We shall observe it accordingly.

Mr. Phipps. We pray we may begin with the Book intitled, *The Erudition for any Christian Man*.

Clerk reads the Paper Abstract.

'A Necessary Doctrine and Erudition for any Christian Man; set furthe by the King's Majesty of England, &c. Anno 34 H. VIII.

In the Exposition of the Fyfte Commandment.

Fol. 113. 'And by this Commandment also, Subjects be bounde not to withdrawe their said Fealtie, Trough, Love, and Obedience towards their Prince, for any Cause whatsoever it be; ne for any Cause they may conspire against his Person, ne do any Thing towards the Hindrance or Hurt thereof, nor of his Estate.

In the Exposition of the Syxte Commandment.

Fol. 187. 9. 'Moreover, no Subjects may draw their Swords against their Prince; for any Cause, whatsoever it be.

Mr. Dodd. If your Lordships please, that we may now read several Passages in the Homilies.

Clerk reads.] The Second Part of the Sermon Of Obedience, Pa. 110.

'Whereby Christ taught us plainly, that even the wicked Rulers have their Power and Authority from God; and therefore it is not lawful for their Subjects to withstand them, altho' they abuse their Power.

Ibid. p. 113. 'But nevertheless, in that Case we may not in any wise withstand violently, or rebel against Rulers, or make any Insurrection, Sedition or Tumults, either by Force of Arms, or otherwise, against the Anointed of the Lord, or any of his Officers; but we must in such Case patiently suffer all Wrongs and Injuries, referring the Judgment of our Cause only to God.

The Third Part of the Sermon of Obedience, Page 114.

'Yee have heard before, in this Sermon of good Order and Obedience, manifestly prov'd, both by the Scriptures and Examples, that all Subjects are bounden to obey their Magistrates, and for no Cause to resist, or withstand, or rebel, or make any Sedition against them, yea altho' they be wicked Men.

First Part of the Sermon against wilful Rebellion, Page 589.

'What shall Subjects do then? Shall they obey valiant, stout, wise and good Princes; and condemn, disobey, and rebel against Children being their Princes, or against undiscreeit and evil Governors? God forbid! For, first, What a perillous Thing were it to commit unto the Subjects the Judgment which Prince is wise and godly, and his Government good, and which is otherwise;

'As tho' the Foot must judge of the Head! An Enterprize very heinous, and must needs breed Rebellion.

Ibid. p. 590. 'And whereas indeed a Rebel is worfe than the worst Prince; and Rebellion worfe than the worst Government of the worst Prince: that hitherto hath been.

Second Part of the Sermon against wilful Rebellion, Page 600.

'Now let David answer to such Demands, as Men desirous of Rebellion do use to make: Shall not we, especially being so good Men as we are, rise and rebel against a Prince hated of God, and God's Enemy; and therefore like not to prosper either in War or Peace, but to be hurtful and pernicious to the Commonwealth? No, saith good and godly David.

Ibid. p. 601. 'But, say they, we shall not rise and rebel against so unkind a Prince, nothing considering or regarding our true, faithful and painful Service, or the Safeguard of our Posterity? No, saith good David.

Ibid. 'Shall we not rise and rebel against our known, mortal, and deadly Enemy, that seeketh our Lives? No, saith godly David.

Ibid. 'Shall we not assemble an Army of such good Fellows as we are, and by hazarding of our Lives, and the Lives of such as shall withstand us, and withal hazarding the whole Estate of our Country, remove so naughty a Prince? No, saith godly David.

Ibid. 'What shall we then do to an evil, to an unkind Prince, an Enemy to us, hated of God, hurtful to the Commonwealth, &c? Lay no violent Hand upon him, saith good David; but let him live, until God appoint and work his End, either by natural Death, or in War, by lawful Enemies, not by traiterous Subjects.

Ibid. p. 602. 'If King David would make these Answers, as by his Deeds and Words recorded in the Holy Scriptures indeed he doth make, unto all such Demands concerning Rebelling against evil Princes, unkind Princes, cruel Princes, Princes that be to their good Subjects mortal Enemies, Princes that are out of God's Favour, and so hurtful, or like to be hurtful for the Commonwealth."

Mr. Dodd. If your Lordships please now, that we may read the thirty fifth Article of the Church of England, which approves these Homilies.

Mr. Phipps. We open'd, that these Homilies were approv'd of by the Articles of the Church of England, as containing sound and wholesome Doctrine: We pray the thirty fifth Article may be read.

Clerk reads.] Article the thirty fifth. Of Homilies.

'The Second Book of Homilies, the several Titles whereof we have joined under this Article, doth contain a godly and wholesome Doctrine, and necessary for these Times; as doth the former Book of Homilies, which were set forth in the Time of Edward the Sixth. And therefore we judge them to be read in Churches by the Ministers, diligently and distinctly, that they may be understood of the People. The Names of the Homilies. 1. Of the right Use of the Church. 2. Against Peril of Idolatry. 3. Of repairing and keeping clean of Churches. 4. Of good Works; First, of Fasting. 5. Against Gluttony

‘ tony and Drunkenness. 6. Against Excess of Apparel. 7. Of Prayer. 8. Of the Place and Time of Prayer. 9. That Common Prayers and Sacraments ought to be ministered in a known Tongue. 10. Of the Reverend Estimation of God’s Word. 11. Of Alms-doing. 12. Of the Nativity of Christ. 13. Of the Passion of Christ. 14. Of the Resurrection of Christ. 15. Of the worthy Receiving of the Sacrament of the Body and Blood of Christ. 16. Of the Gifts of the Holy Ghost. 17. For the Rogation-Days. 18. Of the State of Matrimony. 19. Of Repentance. 20. Against Idleness. 21. Against Rebellion.

Mr. Phipps. By the Statute of 13 Eliz. these Articles are confirmed: I believe the Gentlemen of the House of Commons will allow of it.

Mr. Dodd. They are confirmed by the Act of Uniformity; and we think we need not spend your Lordships Time in reading it.

Sir Jos. Jekyll. My Lords, We told them, that we were willing to admit all they open’d; and then we admit this.

Mr. Dodd. If your Lordships please, we will go on with the Abstract.

Mr. Phipps. The Gentlemen say, that they admit us to read what we open’d. Now what we are going to read next, we did not open; and therefore we submit it to your Lordships, whether we shall read out of the Abstract, or produce the Book itself?

Sir Jos. Jekyll. My Lords, We desire to know what it is they would read?

Mr. Phipps. It is Bishop Overall’s Convocation-Book.

Mr. Dee. If your Lordships please, we shall produce the Book; because there are some broken Passages collected, and there may be some Objection, if the Book be not produced.

Mr. Phipps. My Lords, We hope the whole Canon which is mentioned in this Book, tho’ it is recited by Parcels, shall be read,

Clerk reads.] ‘ And therefore —

Sir Jos. Jekyll. My Lords, They are reading a Passage out of this Book. We might object, That a Printed Book is no Proof of a Canon; and that they ought to make a Legal Proof of it. But that which we object, is, That they begin in the Middle of a Sentence: Your Lordships observe, the Clerk begins with the Words, *And therefore*. I pray, he may read at the Beginning of a Sentence.

Mr. Phipps. My Lords, Where the Clerk began, was the Beginning of that Canon; but it being at the End of another Canon, is the Reason that it begins *And therefore*.

Clerk reads.] ‘ And therefore, if
Bishop Overall, p. 107. ‘ Man shall affirm under Colour of
Can. 1. ‘ any thing that is in the Scriptures,
‘ either that the Doctrine of Grace in

‘ the *New Testament* doth more abo-
‘ lish the Rules of Nature, or Moral Law of God,
‘ than it did in the *Old*; or, that thro’ Faith the
‘ said Law was not rather established, than in any
‘ sort impeach’d; or, that because as many as be-
‘ lieve are redeem’d, and made free from the
‘ Curse of the Law, they are therefore exempted,
‘ and free from the Obedience of the Law; or,
‘ that by the Incarnation of our Saviour Christ,
‘ Obedience to the Fifth Commandment, touching
‘ Honours due to Parents and Princes, was in any
‘ sort impeached, the rest of the Law being esta-
‘ blished; or, that our Saviour Christ having un-

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‘ dertaken the Fulfilling of the whole Law, (as far
‘ forth, at the least, as ever Mankind was bound to
‘ have fulfilled it) came short in this one Law, by
‘ exempting himself from any Obedience due to
‘ the Civil Magistrate; or, that he, having tied
‘ himself according to the said Commandment, as
‘ well to the Obedience of the Civil Magistrate, as
‘ the Obedience which was due to his Parents, did
‘ not, whilst he liv’d in the World, fulfil the Law
‘ wholly concerning them both; or, that he did any
‘ way, or at any Time, encourage the *Jews*, or any
‘ other, directly or indirectly, to Rebel, for any
‘ Cause whatsoever, against the *Roman* Emperor, or
‘ any of the Subordinate Magistrates; or, that he
‘ did not very willingly, both himself pay Tribute
‘ to *Cæsar*, and also advise the *Jews* so to do; or,
‘ that when he willed the *Jews* to pay Tribute to
‘ *Cæsar*, including therein their Duty of Obedience
‘ unto him, he did not therein deal plainly and sin-
‘ cerely, but meant secretly that they should be
‘ bound no longer to be obedient unto him, but
‘ until by Force they should be able to resist him;
‘ or, that he did not utterly and truly condemn all
‘ Devices, Conferences and Resolutions whatsoever,
‘ either in his own Apostles, or in any other Per-
‘ sons, for the using of Force against Civil Autho-
‘ rity; or, that it is, or can be more lawful for any
‘ private Persons, either of *St. Peter’s* Calling, or
‘ of any other Profession, to draw their Swords
‘ against Authority, though in their rash Zeal they
‘ should hold it lawful so to do, for the Preserva-
‘ tion of Religion, than it was for *St. Peter* for
‘ the Preservation of his Master’s Life; or, that
‘ by Christ’s Words above-mention’d, all Subjects
‘ (of what sort soever) without Exception, ought
‘ not, by the Law of God, to perish with the
‘ Sword, that take and use the Sword, for any
‘ Cause, against Kings and Sovereign Princes, un-
‘ der whom they were born, or under whose Juris-
‘ diction they do inhabit; or that seeing our Sa-
‘ viour Christ would not have the *Samaritans* to be
‘ destroyed with Fire from Heaven, altho’ they
‘ were at that time divided in Religion from the
‘ *Jews*, and refused to receive him in Person, it is
‘ not to be ascribed to the Spirit of Satan for any
‘ private Men to attempt by Gunpowder, and Fire
‘ from Hell, to blow up and destroy their Sove-
‘ reigns, and the whole State of the Country where
‘ they were born and bred, because in their Con-
‘ ceits they refused some part of Christ’s Doctrine
‘ and Government; or, that Christ did not well,
‘ and as the said Fifth Commandment did require,
‘ in submitting himself as he did to Authority, al-
‘ though he was first sent for with
‘ Swords and Staves, as if he had *Matt. xxvi. 55.*
‘ been a Thief, and then afterward
‘ carried to *Pilate*, and by him (albeit he found no
‘ Evil in him) condemn’d to Death; or, that by
‘ any Doctrine of Example which Christ ever taught,
‘ or hath left upon good Record, it can be prov’d
‘ Lawful to any Subjects, for any Cause of what
‘ Nature soever, to decline either the Authority
‘ and Jurisdiction of their Sovereign Princes, or
‘ of any their lawful Deputies and inferior Magi-
‘ strates ruling under them: He doth greatly
‘ err.

Mr. Phipps. My Lords, We opened, that from the Time of the Reformation this had been the Doctrines of the Church. We desire to begin, and shew it was Archbishop Cranmer’s Opinion: In *Strype’s Memorial of Archbishop Cranmer*.

Clerk reads.] 'The second Exhortation is, That next unto God you obey your King and Queen willingly and gladly, without Murder or Grudging, and not for Fear of them only, but much more for the Fear of God. Knowing that they be God's Ministers, appointed by God to rule and govern you; and therefore whoso resisteth them, resisteth God's Ordinance.

Mr. Phipps. My Lords, We now offer a Declaration of Bishop Ferrar, Bishop Hooper, Bishop Coverdale, and about nine other Bishops, which is in Fox's History.

Clerk reads.] 'Humbly requiring, Vol. III. p. 101. 'and in the Bowels of our Saviour Jesus Christ, beseeching all that fear God, to behave themselves as obedient Subjects to the Queen's Highness, and the superior Powers which are ordained of God, under her; rather, after our Example, to give their Heads to the Block, than in any Point to rebel, or once to Mutter against the Lord's anointed.

Mr. Dodd. If your Lordships please, he may read the Names of those Persons that have subscribed it at the End of it.

Clerk reads.]

The 8th Day of May,
Anno Dom. 1554.

'The Names of the prison'd Preachers subscribing to this Declaration, Robert Menaven, alias Robert Ferrar, Rowland Taylor, John Philpott, John Bradford, John Wigorne, and Glouc. Episcopus, alias John Hooper, Edward Crome, John Rogers, Laurence Saunders, Edmund Lawrence, J. P. T. M. — To these Things abovesaid do I Miles Coverdale, late of Exon, consent and agree with these nine afflicted Brethren, being Prisoners, mine own Hand.

Mr. Phipps. My Lords, The next we offer is the Opinion of Bishop Jewell, in his Defence of the Apology for the Church of England, in Answer to Mr. Harding.

Clerk reads.] 'We teach the People as St. Paul doth, to be subject to the higher Powers, not only for Fear, but also for Conscience. We teach them, that whoso striketh with the Swerde by private Authority, shall perish with the Swerde. If the Prince happen to be wicked, or cruel, or burthenous, we teach them to say with St. Ambrose, *Arma nostra sunt Preces & Lachrymæ, Tears and Prayers be our Weapons.*

Mr. Dodd. My Lords, The next is Mr. Hooker, in his Ecclesiastical Polity.

Clerk reads.] 'That Subjection which we owe to lawful Powers, doth not only import, that we should be under them by Order of our State, but that we shew all Submission towards them, both by Honour and Obedience. He that resisteth them resisteth God. And resisted they be, if either the Authority itself, which they exercise, be denied; as by Anabaptists all secular Jurisdictions; or if Resistance

be made but only so far forth as doth touch their Persons, which are invested with Power; (for they which said *Nolumus hunc regnare*, did not utterly exclude Regiment; nor did they wish all Kind of Government clearly removed, which would not at the first have David to govern;) or if that which they do by Virtue of their Power, namely, their Laws, Edicts, Services, or other Acts of Jurisdiction, contrary to the blessed Apostles most holy Rule, *Obeys them who have the Oversight of you*, Heb. xiii. 17. be not suffered to take Effect; or if they do take Effect, yet is not the Will of God thereby satisfied neither, as long as that which we do is contemptuously or repiningly done, because we can do no otherwise. In such sort the Israelites in the Desert obey'd Moses; and were, notwithstanding, deservedly plagued for Disobedience. The Apostle's Precept therefore is, *Be subject even for God's Sake; be subject not for Fear, but of mere Conscience, knowing, that he which resisteth them, purchaseth to himself Condemnation.*

M. Gen. Stanhope. My Lords, since Hooker's Ecclesiastical Polity is before your Lordships, and they have read that Part, I pray that from pag. 444. to the latter End of pag. 446. may likewise be read.

Mr. Dodd. We submit it to your Lordships, whether it is proper to break into our Defence? or whether the Gentlemen of the House of Commons will read what they think proper when they come to reply? Your Lordships know the Course in other Courts is to give our Evidence intire.

Sir J. Jekyll. My Lords, The Indulgence of the Managers, to let the Doctor's Counsel go into this Evidence, is very great; (for I believe such sort of Evidence was never known before in any Court of Justice whatsoever;) but surely, as they have called this Witness, for so I may term the Book they were reading, we may be at Liberty to cross-examine that Witness; perhaps the Place we desire to have read, may explain the Passages read by them.

Mr. Phipps. My Lords, We submit to it.

M. Gen. Stanhope. Pray what Edition is that Book?

Clerk. It is printed in 1705.

M. Gen. Stanhope. My Lords, If we should be mistaken in the Edition, I hope we shall not be hindered in our Reply from reading those Passages in the Edition which I have consulted.

Clerk reads.] 'Again, on whom the same is bestowed at Mens Discretions, Fol. 444. they likewise do hold it by divine Right. If God in his revealed Word hath appointed such Power to be, altho' himself extraordinarily bestow it not, but leave the Appointment of Persons to Men; yea, albeit God do neither appoint nor assign the Person; nevertheless, when Men have assigned and established both, who doth doubt but that sundry Duties and Affairs depending thereupon, are prescribed by the Word of God, and consequently by that very Right to be exerted? For Example sake, the Power which Roman Emperors had over foreign Provinces, was not a Thing which the Law of God did ever institute; neither was Tiberius Caesar by especial Commission from Heaven therewith invested; and yet Payment of Tribute unto Caesar, being now made Emperor, is the plain Law of Jesus Christ unto Kings by human Right; Honour by very divine Right is due. Man's Ordinances are many Times proposed as Grounds in the Statutes of God. And

And therefore, of what Kind soever the Means be whereby Governors are lawfully advanc'd to their States, as we by the Laws of God stand bound meekly to acknowledge them for God's Lieutenants, and do confess their Power his; so by the same Law they are both authoriz'd and requir'd to use that Power, as far as it may be in any State available to his Honour. The Law appointeth no Man to be a Husband; but if a Man hath betaken himself unto that Condition, it giveth him Power and Authority over his own Wife. That the Christian World should be ordered by the Kingly Regiment, the Law of God doth not any where command; and yet the Law of God doth give them, which once are exalted unto that Place of Estate, right to exact at the Hands of their Subjects general Obedience in whatsoever Affairs their Power may serve to command; and God doth ratify Works of that Sovereign Authority, which Kings have received by Men. This is therefore the Right whereby Kings do hold their Power; but yet in what Sort the same doth rest and abide in them, it somewhat behoveth farther to search; where, that we be not enforced to make over large Discourses about the different Conditions of Sovereign or Supreme Power, that which we speak of Kings shall be in respect of the State, and according to the Nature of this Kingdom, where the People are in no Subjection, but such as willingly themselves have condescended unto for their own most Behoof and Security. In Kingdoms therefore of this Quality, the highest Governor hath indeed universal Dominion, but with Dependency upon that whole intire Body, over the several Parts whereof he hath Dominion; so that it standeth for an Axiom in this Case, the King is *Major singulus, universis Minor*. The King's Dependency we do not construe as some have done, we are of opinion, that no Man's Birth can make him a King; but every particular Person advanced to such Authority hath, at his Entrance into his Reign, the same bestowed on him as an Estate, in Condition, by the voluntary Deed of the People in whom it doth lie, to put by any one, and to prefer some other before him better liked of, or judged fitter for the Place; and that the Party so rejected hath no Injury done unto him; no, altho' the same be done in a Place where the Crown doth go *de jure*, by Succession, and to a Person which is capital, and hath apparently, if Blood be respected, the nearest Right. They plainly affirm, in all well appointed Kingdoms, the Custom evermore hath been, and is, that Children succeed not their Parents 'till the People, after a Sort, have created them a-new; neither that they grow to their Fathers as natural and proper Heirs, but are then to be reckoned for Kings, when at the Hands of such as represent the King's Majesty, they have by Sceptre and a Diadem received as it were the Investiture of a Kingly Power: Their very Words are, "That where such Power is settled into a Family or Kindred, the Stock itself is thereby chosen, but not the Twig that springeth of it. The next of the Stock unto him that reigneth, are not through nearness of Blood made Kings; but rather set forth to stand for the Kingdom: Where Regal Dominion is hereditary, it is notwithstanding (if we look to the Persons which have it) altogether elective". To this Purpose are selected Heaps of Scriptures concerning the solemn Coronation or Inauguration of *Saul, David, of Solomon*, and others, by the Nobles; Antients,

and People of the Commonwealth of *Israel*: As if these Solemnities were a Kind of Deed, whereby the Right of Dominion is given; which strange, untrue, and unnatural Conceits, set Abroad by Seedsmen of Rebellion, only to animate unquiet Spirits, and to feed them with Possibility of aspiring to Thrones, if they can win the Hearts of the People, what hereditary Title soever any other before them may have; I say, unjust and insolent Positions, I would not mention, were it not thereby to make the Countenance of Truth more orient; for unless we will openly proclaim Defiance unto all Law, Equity and Reason, we must (there is no Remedy) acknowledge, that in Kingdoms, hereditary Birth gives Right unto Sovereign Dominion; and the Death of the Predecessor puts the Successor by Blood in Seisin. Those publick Solemnities before specified, do but serve for an open Testification of the Inheritor's Right, or belonging unto the Form of inducting him into Possession of that Thing he hath Right unto. Therefore, in case it doth happen, that without Right of Blood, a Man in such wise be possessed, all these new Elections and Investings are utterly void; they make him no indefeasible Estate, the Inheritor by Blood may dispossess him as an Usurper. The Case thus standing, albeit we judge it a Thing most true, that Kings, even Inheritors, do hold their Right in the Power of Dominion, with Dependency upon the whole Body Politick, over which they have Rule as Kings; yet so it may not be understood, as if such Dependency did grow; for that every Supreme Government doth personally take from thence his Power, by way of Gift, bestow'd of their own free Accord upon him at the Time of his Entrance into the said Place of his Sovereign Government. But the Case of Dependency is that first original Conveyance when Power was deriv'd from the Whole into one; to pass from him unto them, whom out of him, Nature, by lawful Births, should produce, and no natural or legal Inability make incapable. "Neither can any Man with Reason think, but that the first Institution of Kings is a sufficient Consideration; wherefore their Power should always depend on that from which it always flows: By original Influence of Power from the Body unto the King, is the Cause of King's Dependency in Power upon the Body". By Dependency we mean Subordination and Subjection; a manifest Token of which Dependency may be this: As there is no more certain Argument that Lands are held under any as Lords, than if we see that such Lands, in Defect of Heirs, fall unto them by Escheat: In like Manner, it doth follow rightly, that seeing Dominion, when there is none to inherit it, it returneth into the Body; therefore they which before were Inheritors thereof, did hold it with Dependency upon the Body: So that by comparing the Body with the Head, as touching Power, it seemeth always to reside in both; fundamentally and radically in the one, in the other derivatively; in one the Habitat, in the other the Art of Power. May a Body Politick then at all Times, withdraw in whole or in part, the Influence of Dominion, which passeth from it, if Inconveniences do grow thereby? It must be presumed, that Supreme Governors will not in such Case oppose themselves, and be stiff in detaining that, the Use whereof is with publick Detriment. But surely without their Consent, I see not how the Body by any just Means should be able to help itself, saving when Dominion doth escheat; such things therefore must be thought upon

upon beforehand, that Power may be limited e'er it be granted; which is the next Thing we are to consider.

Mr. Dodd. We now produce Bishop *Andrews's* Sermons.

Clerk reads.] 'To deprive or depose them? Sure where the worst is reckoned that can be of them, *Clamunt ad Dominum* is all I find, 1 Sam. viii. 18. No *Per* to do it but he. By him, and by none but by him, they be; by him, and by none but by him, they cease to be.

Mr. Phipps. We desire to read another Passage out of Mr. *Hooker*, in a Treatise of Church Government.

Clerk reads.] 'A Treatise of Church Government: To which is added a Treatise of the Regal Power, and of the Novelty of the Doctrine of Resistance, published by Dr. *Bernard* in his *Clavi Trabales*.

Lord Chancellor. This is a Collection of the Works of several Persons; so that it don't appear whose Works these are that you are reading.

Mr. Phipps. That which we offer to be read is Mr. *Hooker's*, and is left out of the Book which was printed before.

Clerk reads.] 'There is a Supreme Head of Justice whereunto all are subject, but itself in Subjection to none; which Kind of Pre-eminence, if some ought to have in a Kingdom, who but the King shall have it? Kings therefore no Man can have lawful Power and Authority to judge; if private Men offend, there is the Magistrate over them, which judgeth; if Magistrates, they have their Prince; if Princes, there is Heaven, a Tribunal before which they shall appear; on Earth they are not accountable to any.

Mr. Phipps. My Lords, We offer Doctor *Jackson's*, and Bishop *Usher's* Opinion in this Matter. And first Doctor *Jackson*.

Clerk reads.] 'He that is a King or Supreme Magistrate, by just and lawful Title, may not be thus resisted, albeit he exercise his Power tyrannically.

Mr. Phipps. The next is Archbishop *Usher*, in a Treatise called, *The Power communicated by God to the Prince, and the Obedience required of the Subject*, &c.

Clerk reads.] 'But if Mens Hands be thus tied (will some say) no Man's State can be secure: Nay, the whole Frame of the Commonwealth would be in Danger to be subverted and utterly ruin'd by the unbridled Lust of a distemper'd Governor.

I answer, God's Word is clear in the Point, *Whoever resisteth the Power, resisteth the Ordinance of God, and they that resist, shall receive to themselves Damnation*; and thereby a Necessity is imposed upon us, of being subject even for Conscience sake, which may not be avoided by the Pretext of any ensuing Mischief whatsoever.

Mr. Phipps. My Lords, We offer next the Authority of Mr. *Chillingworth*, and we need say no more of him than to mention that it is Mr. *Chillingworth*; and his Character is so established by the Lord *Clarendon*, that we need say no more of it.

Clerk reads.] 'They that make no Scruple at all of fighting with his Sacred Majesty, and shooting Muskets and Ordnance at him (which sure have not the Skill to chuse a Subject from a King) to the extreme Hazard of his Sacred Person, whom by all possible Obligations they are bound to defend, do they know, think you, the general Rule without Exception or Limitation left by the Holy Ghost for our Direction in all such Cases, *Who can lift up his Hand against the Lord's anointed, and be innocent?* 1 Sam. xxvi. 9. Or do they consider his Command in the *Proverbs of Solomon*, *My Son, fear God and the King, and meddle not with them that desire Change?* Prov. xxiv. 21. Or his Counsel in the Book of *Ecclesiastes*, *I counsel thee to keep the King's Commandment, and that in regard of the Oath of God?* Ecclef. viii. 2. Or because they possibly may pretend that they are exempted from, or unconcerned in the Commands of Obedience delivered in the Old Testament: Do they know and remember the Precept given to all Christians by St. *Peter*, *Submit yourselves to every Ordinance of Man for the Lord's Sake, whether it be to the King as Supreme, or unto Governors, as unto them that are sent by him?* Or that terrible Sanction of the same Command, *They that resist shall receive to themselves Damnation*, left us by St. *Paul* in his *Epistle* to the *Romans*, who then were the miserable Subjects of the worst King, the worst man, nay, I think, I may add truly, the worst Beast in the World; that so all Rebels' Mouths might be stopt for ever, and left without all Colour or Pretence whatsoever to justify the Resistance of Sovereign Power?

Mr. Phipps. My Lords, The next we offer is Archbishop *Bramhall*, sometime Bishop of *Armagh*.

Clerk reads.] 'The same Oath binds us to defend him against all Conspiracies and Attempts whatsoever, which shall be made against his Person or Crown; to defend him, much more therefore not to offend him, against all Conspiracies and Attempts whatsoever. That Oath which binds us to defend him against all Attempts whatsoever, presupposeth that no Attempt against him can be justified by Law, whether these Attempts be against his Person or his Crown.

Clerk reads.] 'If a Sovereign shall persecute his Subjects for not doing his unjust Commands, yet it is not lawful to resist by raising Arms against him, *They that resist shall receive to themselves Damnation*. But they ask, Is there no Limitation? I answer, *Ubi Lex non distinguit, nec nos distinguere debemus*. How shall we limit where God hath not limited, or distinguish where he hath not distinguish'd?

Mr. Dodd. My Lords, The next is Bishop *Sanderson*.

Clerk

Clerk reads.] ' No Conjunction of
 Fol. 522. ' Circumstances whatsoever, can make
 ' them expedient to be done at any

' Time, that is, of itself and in the Kind unlawful.
 ' For a Man to blaspheme the holy Name of God,
 ' to sacrifice to Idols, to give wrong Sentence in
 ' Judgment, by his Power to oppress those that are
 ' not able to withstand him, by Subtilty to over-
 ' reach others in bargaining, to take up Arms (of-
 ' fensive or defensive) against a lawful Sovereign:
 ' None of these, and sundry other Things of the
 ' like Nature, being all of them simply, and de to-
 ' to genere unlawful, may be done by any Man, at
 ' any Time, in any Case, upon any Colour or Preten-
 ' sion whatsoever; the express Command of God
 ' himself only excepted, as in the Case of Abraham
 ' for sacrificing his Son. Not for the avoiding of
 ' Scandal, not at the Instance of any Friend, or
 ' Command of any Power upon Earth; not for
 ' the Maintenance of the Lives or Liberties either
 ' of ourselves or others; nor for the Defence of
 ' Religion; nor for the Preservation of a Church or
 ' State; no nor yet, if that could be imagin'd pos-
 ' sible, for the Salvation of a Soul; no, not for the
 ' Redemption of the whole World.

Mr. Phipps. My Lords, Doctor Sacheverell be-
 ing educated in the University of Oxford, we offer
 the Decrees of that University touching this Mat-
 ter. They were publish'd in the Gazette the 26th
 of July 1683, by Authority.

Clerk reads.] Numb. 1845.
 The London Gazette. Publish'd by Authority.
 From Monday July 23. to Thursday July 26, 1683.

' Whitehall, July 24. This Day was presented
 ' to his Majesty the following Judgment and De-
 ' cree of the University of Oxford, pass'd in their
 ' Convocation, on Saturday the 21st Instant.

' The Judgment and Decree of the University of
 ' Oxford, pass'd in their Convocation, July 21,
 ' 1683, against certain pernicious Books, and dam-
 ' nable Doctrines, destructive to the Sacred Persons
 ' of Princes, their State and Government, and of
 ' all Human Society.

' Altho' the barbarous Assassination lately enter-
 ' prized against the Person of his Sacred Majesty,
 ' and his Royal Brother, engage all our Thoughts to
 ' reflect with utmost Detestation and Abhorrence on
 ' that execrable Villany, hateful to God and Man;
 ' and pay our due Acknowledgments to the Divine
 ' Providence, which by extraordinary Methods
 ' brought it to pass, That the Breath of our No-
 ' strils, the Anointed of the Lord, is not taken in
 ' the Pit which was prepared for him; and that
 ' under his Shadow we continue to live, and enjoy
 ' the Blessings of his Government; yet notwith-
 ' standing we find it to be a necessary Duty at this
 ' Time to search into, and lay open those impious
 ' Doctrines, which having of late been studiously
 ' disseminated, gave Rise and Growth to these ne-
 ' farious Attempts, and pass upon them our solemn
 ' publick Censure and Decree of Condemnation.

' Therefore, to the Honour of the Holy and undi-
 ' vided Trinity, the Preservation of Catholick Truth
 ' in the Church, and that the King's Majesty may
 ' be secured both from the Attempts of open bloody
 ' Enemies, and Machinations of treacherous Here-
 ' ticks and Schismatics; We the Vice-Chancellor,
 ' Doctors, Proctors, and Masters, Regent and not
 ' Regent, met in Convocation, in the accustomed
 ' Manner, Time and Place, on Saturday the one
 ' and twentieth Day of July in the Year one
 ' thousand six hundred and eighty three, concerning

' certain Propositions contain'd in divers Books and
 ' Writings, publish'd in the English, and also the
 ' Latin Tongue, repugnant to the Holy Scriptures,
 ' Decrees of Councils, Writings of the Fathers,
 ' the Faith and Profession of the Primitive Church;
 ' and also destructive of the Kingly Government,
 ' the Safety of his Majesty's Person, the publick
 ' Peace, the Laws of Nature, and Bonds of Human
 ' Society, by our unanimous Assent and Consent,
 ' have decreed and determined in Manner and
 ' Form following:

The First Proposition.

' All Civil Authority is derived originally from
 ' the people.

The Second.

' There is a mutual Compact, tacit or express,
 ' between a Prince and his Subjects; and that if
 ' he perform not his Duty, they are discharged
 ' from theirs.

The Third.

' That if lawful Governors become Tyrants, or
 ' govern otherwise than by the Laws of God and
 ' Man they ought to do, they forfeit the Right they
 ' had unto their Government. *Lex Rex. Buchanan*
de Jure Regni. Vindicie contra Tyrannos Bellar-
mine de Consiliis. De Pontificie Milton. Good-
win. Baxter. H. C.

The Fourth.

' The Sovereignty of England is in the three
 ' Estates, viz. King, Lords and Commons. The
 ' King has but a Co-ordinate Power, and may be
 ' over-ruled by the other two. *Lex Rex. Hunton*
of a limited and mixed Monarchy. Baxter H. C.
Polit. Catechis.

The Fifth.

' Birth-right and Proximity of Blood give no Ti-
 ' tle to Rule or Government; and it is lawful to
 ' preclude the next Heir from his Right and Succes-
 ' sion to the Crown. *Lex Rex. Hunt's Postscript.*
Doleman's History of Succession. Julian the Apo-
state. Mene Tekel.

The Sixth.

' It is lawful for Subjects, without the Consent,
 ' and against the Command of the Supreme Magi-
 ' strate, to enter into Leagues, Covenants and As-
 ' sociations, for Defence of themselves and their
 ' Religion. *Solemn League and Covenant. Late*
Association.

The Seventh.

' Self-preservation is the fundamental Law of
 ' Nature, and supercedes the Obligation of all
 ' others, whensoever they stand in Competition with
 ' it. *Hobbs de Cive Leviathan.*

The Eighth.

' The Doctrine of the Gospel concerning patient
 ' Suffering of Injuries, is not inconsistent with vio-
 ' lent resisting of the higher Powers, in case of
 ' Persecution for Religion. *Lex Rex. Julian Apo-*
state. Apolog. Relat.

The Ninth.

' There lies no Obligation upon Christians to
 ' Passive Obedience, when the Prince commands
 ' any Thing against the Laws of our Country;
 ' and the Primitive Christians rather chose to die
 ' than resist, because Christianity was not settled
 ' by the Laws of the Empire. *Julian Apostate.*

The Tenth.

' Possession and Strength give a Right to go-
 ' vern; and Success in a Cause or Enterprize, pro-
 ' claims it to be lawful and just. To pursue it, is
 ' to comply with the Will of God; because it is
 ' to follow the Conduct of his Providence. *Hobbs*
Owen's

Owen's Sermon before the Regicides, Jan. 31, 1648.
Baxter. Jenkins's Petition, Octob. 1651.

The Eleventh.

' In the State of Nature there is no Difference between Good and Evil, Right and Wrong. The State of Nature is a State of War, in which every Man hath a Right to all Things.

The Twelfth.

' The Foundation of Civil Authority is this National Right, which is not given, but left to the Supreme Magistrate upon Mens entering into Societies; and not only a Foreign Invader, but a Domestick Rebel, puts himself again into a State of Nature, to be proceeded against, not as a Subject, but an Enemy; and consequently, acquires by his Rebellion the same Right over the Life of his Prince, as the Prince (for the most heinous Crimes) has over the Life of his own Subjects.

The Thirteenth.

' Every Man, after his entering into a Society, retains a Right of defending himself against Force, and cannot transfer that Right to the Commonwealth, when he consents to that Union whereby a Commonwealth is made: And in case a great many Men together have already resisted the Commonwealth, for which every one of them expecteth Death; they have Liberty then to join together, to assist and defend one another. Their bearing of Arms, subsequent to the first Breach of their Duty, tho' it be to maintain what they have done, is no new unjust Act; and if it be only to defend their Persons, is not unjust at all.

The Fourteenth.

' An Oath superadds no Obligation to Pact, and a Pact obliges no farther than it is credited; and consequently, if a Prince gives any Indication that he does not believe the Promises of Fealty and Allegiance made by any of his Subjects, they are thereby free from their Subjection; and notwithstanding their Pacts and Oaths, may lawfully rebel against, and destroy their Sovereign. *Hobbs de Cive Leviathan.*

The Fifteenth.

' If a People, that by Oath and Duty are oblig'd to a Sovereign, shall sinfully dispossess him, and (contrary to their Covenants) chuse and covenant with another; they may be obliged by their later Covenants, notwithstanding their former. *Baxter. H. C.*

The Sixteenth.

' All Oaths are unlawful, and contrary to the Word of God. *Quakers.*

The Seventeenth.

' An Oath obligeth not in the Sense of the Imposer, but the Takers. *Sheriffs Case.*

The Eighteenth.

' Dominion is founded in Grace.

The Nineteenth.

' The Powers of this World are Usurpations upon the Prerogative of Jesus Christ; and it is the Duty of God's People to destroy them, in order to the setting Christ upon his Throne. *Fifth Monarchy-men.*

The Twentieth.

' The Presbyterian Government is the Sceptre of Christ's Kingdom, to which Kings as well as others are bound to submit; and the King's Supremacy in Ecclesiastical Affairs, asserted by the Church of England, is injurious to Christ, the sole King and Head of his Church. *Altare Damascenum. Apolog. Relat. Hist. Indulg. Cartwright. Travers.*

The Twenty first.

' It is not lawful for Superiors to impose any Thing in the Worship of God, that is not antecedently necessary.

The Twenty second.

' The Duty of not offending a weak Brother, is inconsistent with all Human Authority of making Laws concerning indifferent Things. *Protestant Reconciler.*

The Twenty third.

' Wicked Kings and Tyrants ought to be put to Death; and if the Judges and inferior Magistrates will not do their Office, the Power of the Sword devolves to the People: If the major Part of the People refuse to exercise this Power, then the Ministers may excommunicate such a King; after which it is lawful for any of the Subjects to kill him, as the People did *Athaliah*, and *Jehu*. *Jezebel. Buchanan. Knox. Goodman. Gilby. Jesuits.*

The Twenty fourth.

' After the Sealing of the Scripture Canon, the People of God in all Ages are to expect new Revelations for a Rule of their Actions; and it is lawful for a private Man, having an inward Motion from God, to kill a Tyrant. *Quakers and other Entbusiasts. Goodman.*

The Twenty fifth.

' The Example of *Phineas* is to us instead of a Command; for what God hath commanded or approved in one Age, must needs oblige in all. *Goodman. Knox. Naphtali.*

The Twenty sixth.

' King *Charles* the First was lawfully put to Death, and his Murderers were the blessed Instruments of God's Glory in their Generation. *Milton. Goodwin. Owen.*

The Twenty seventh.

' King *Charles* the First made War upon his Parliament; and in such a Case the King may not only be resisted, but he ceaseth to be King. *Baxter.*

' We Decree, Judge, and Declare all and every of these Propositions to be false, seditious, and impious, and most of them to be also heretical and blasphemous, infamous to Christian Religion, and destructive of all Government in Church and State.

' We farther Decree, That the Books which contain the aforesaid Propositions and impious Doctrines, are fitted to deprave good Manners, corrupt the Minds of unwary Men, stir up Seditions and Tumults, overthrow States and Kingdoms, and lead to Rebellion, Murder of Princes, and Atheism itself: And therefore we interdict all Members of the University from the Reading of the said Books, under the Penalties in the Statutes express'd. We also order the said recited Books to be publicly burnt by the Hand of our Marshal, in the Court of our Schools.

' Likewise we order, That in perpetual Memory hereof, these our Decrees shall be entred in the Registry of our Convocation; and that Copies of them being communicated to the several Colleges and Halls within this University, they be there publicly affix'd in the Libraries, Refectories, or other fit Places, where they may be seen and read of all.

' Lastly, We command and strictly injoin all and singular the Readers, Tutors, Catechists, and others to whom the Care and Trust of Institution of Youth is committed, that they diligently instruct

‘struct and ground their Scholars in that most necessary Doctrine, which in a Manner is the Badge and Character of the Church of England; Of submitting to every Ordinance of Man for the Lord’s Sake; whether it be to the King as Supreme, or unto Governors as unto them that are sent by him, for the Punishment of evil Doers, and for the Praise of them that do well. Teaching that this Submission and Obedience is to be clear, absolute, and without Exception of any State or Order of Men. Also that they, according to the Apostle’s Precept, exhort, That first of all, Supplications, Prayers, Intercessions, and giving of Thanks be made for all Men, for the King, and all that are in Authority; that we may lead a quiet and peaceable Life, in all Godliness and Honesty; for this is good and acceptable in the Sight of God our Saviour. And in especial Manner, that they press and oblige them humbly to offer their most ardent and daily Prayers at the Throne of Grace, for the Preservation of our Sovereign Lord King Charles, from the Attempts of open Violence, and secret Machinations of perfidious Traitors; that the Defender of the Faith, being safe under the Defence of the Most High, may continue his Reign on Earth, till he exchange it for that of a late and happy Immortality.

Mr. Phipps. My Lords, To shew that this was likewise at the same Time Archbishop Tillotson’s Opinion, we desire to read his Letter which he wrote to my Lord Russel, when he was under his Condemnation in *Newgate*, July 20, 1683.

Clerk reads.] ‘My Lord, I was heartily glad to see your Lordship this Morning in that calm and devout Temper at receiving of the blessed Sacrament; but Peace of Mind, unless it be well grounded, will avail little: And because transient Discourse many Times hath little Effect, for want of Time to weigh and consider it; therefore, in tender Compassion of your Lordship’s Case, and from all the good Will that one Man can bear to another, I do humbly offer to your Lordship’s deliberate Thoughts these following Considerations concerning the Points of Resistance, as your Lordship puts the Case; concerning which, I understand by Dr. B. that your Lordship had once received Satisfaction, and am sorry to find a Change.

First, ‘That the Christian Religion doth plainly forbid the Resistance of Authority.

Secondly ‘That tho’ our Religion be establish’d by Law, (which your Lordship urges as a Difference between our Case and that of the Primitive Christians) yet in the same Law which establishes our Religion, it is declar’d, That it is not lawful upon any Pretence whatsoever to take up Arms, &c. Besides that there is a particular Law, declaring the Power of the Militia to be solely in the King; and that ties the Hands of Subjects, tho’ the Law of Nature, and the general Rules of Scripture had left us at Liberty, which I believe they do not, because the Government and Peace of Human Society could not well subsist upon these Terms.

Thirdly, ‘Your Lordship’s Opinion is contrary to the declared Doctrine of all Protestant Churches; and tho’ some particular Persons have taught other-

wife, yet they have been contradicted herein, and condemn’d for it, by the Generality of Protestants. I beg your Lordship to consider, how it will agree with an avow’d asserting of the Protestant Religion, to go contrary to the general Doctrine of Protestants. My End in this is, to convince your Lordship that you are in a very great and dangerous Mistake; and being so convinc’d, that which was before a Sin of Ignorance, will appear of much more heinous Nature, as in Truth it is, and call for a very particular and deep Repentance; which if your Lordship sincerely exercise upon the Sight of your Error, by a penitent Acknowledgment of it to God and Men, you will not only obtain Forgiveness of God, but prevent a mighty Scandal to the Reform’d Religion. I am very loth to give your Lordship any Disquiet in the Distress you are in, which I commiserate from my Heart, but am much more concern’d that you do not leave the World in a Delusion and false Peace, to the Hindrance of your eternal Happiness. I heartily pray for you; and beseech your Lordship to believe that I am, with the greatest Sincerity and Compassion in the World,

My Lord,

Your Lordship’s most faithful

and afflicted Servant,

J. TILLOTSON.

Mr. Phipps. My Lords, We next offer the Opinion of Bishop Stillingfleet.

Clerk reads.] ‘A Vindication of the Answer to some late Papers, concerning the Unity and Authority of the Catholick Church, and the Reformation of the Church of England.

‘But it hath been said by Somebody, *That we had our Government and Ceremonies from his Lond. 1687. Church, our Doctrine from Luther and Calvin; and that we had nothing peculiar to our Church, but our Doctrine of Non-Resistance, and much good may it do us; and we hope we shall never fare the worse for it. This might give Occasion to inquire, Whether the Church, which pretends to be infallible, doth teach it so orthodoxly, or not? Or whether those who do think themselves obliged to believe what she teaches, are thereby oblig’d to the strictest Principles of Loyalty? But I forbear. It is sufficient to my Purpose, to shew that our Church doth not only teach them, as her own Doctrine, but (which is far more effectual) as the Doctrine of Christ and his Apostles, and of the Primitive Church.*

Mr. Phipps. My Lords, the same Bishop, in a *Discourse of the Unreasonableness of a new Separation*, takes Notice of some Objections made by those who are Friends to the Government, as if Non-Resistance were not consistent with the Revolution.

Lord Chancellor. There is no Name of an Author to these Books which you now produce.

Mr. Dodd. The Book is generally known by all learned Men to be Bishop Stillingfleet’s. Mr. Chiswell, who printed it, attended here three Days to prove it, but is ill now; but he has left a Certificate that he printed it, and all learned Men know it to be his.

Clerk reads.] ' I come to the particular Examination of the Difficulties which relate to the present Oaths [to King William and Queen Mary;] and because we are charg'd with Apostacy from the Principles of the Church of England, and that is made the main Ground of the design'd Separation, I would fain know what this Charge is built upon, with respect to the Oaths, for that is all we are concern'd in. If any particular Persons have advanc'd new Hypothesis of Government, contrary to the Sense of our Church, let them answer for themselves. The Case of the Oath is quite of another Nature; here is no renouncing the Doctrine of Passive Obedience, or asserting the Lawfulness of Resistance.

Mr. Phipps. Your Lordships observe, that since the Revolution that general Doctrine of Obedience is asserted by him.

Mr. Dodd. My Lords, The next we offer is Dr. Sherlock in his *Case of Allegiance stated*.

Clerk reads.] ' And Bishop Overall's Page 37. Convocation-Book, which is lately Lond. 1691. publish'd, the principal Design of Quarto. which is to assert the irresistible Authority of Sovereign Princes, does as plainly assert this too, that all settled Governments, whatever their Beginnings were, have God's Authority, and must be obey'd; of which more above: For those wise Men who sat in that Convocation, plainly saw the necessary Connexion between Non-Resistance, and Obedience to the present Powers; both which were equally resolv'd into the Authority of God, in removing Kings and setting up Kings: So that Obedience and Allegiance to the present Powers, when they are once well settled among us, is so far from being a renouncing of the Doctrine of Non-Resistance and Passive Obedience, that those who refuse to comply, must renounce the only Principle whereon that Doctrine is reasonably founded, and consequently renounce the Doctrine itself.

Mr. Phipps. My Lords, We now offer a Book publish'd by the late Bishop Beveridge, which was publish'd by her Majesty's License, counterfeign'd by the Earl of Sunderland.

Clerk reads.]

ANNE R.

' Whereas our Trusty and Well-beloved Richard Smith, of our City of London, Bookseller, hath humbly represented unto us, that he has with great Labour and Expence, prepar'd for the Press, a new Edition of the Sermons and other Works, written in English by the Right Reverend Father in God, Dr. William Beveridge, Bishop of St. Asaph, deceased: And has therefore humbly besought us to grant him our Royal Privilege of License for the sole Printing and Publishing thereof, for the Term of fourteen Years: We being willing to give all due Encouragement to Works of this Nature, tending to the Advancement of Piety and Learning, are graciously pleased to condescend to his Request; and do therefore, by these Presents, grant to him the said Richard Smith, his Executors, Administrators, and Assigns, our Royal License for the sole Printing and Publishing the English Works of the said late Bishop of St. Asaph for the Term of fourteen Years, from the Date hereof; strictly forbidding all our

Subjects, within our Kingdoms and Dominions, to reprint the same, either in Whole or in Part, or to import, buy, vend, utter or distribute any Copies thereof reprinted beyond Seas, during the aforesaid Term of fourteen Years, without the Consent and Approbation of the said Richard Smith, his Heirs, Executors and Assigns, under his, or their Hands and Seals, first had and obtain'd, as they will answer the contrary at their Peril; whereof the Master, Wardens and Company of Stationers are to take Notice, that the same may be enter'd in their Register, and that due Obedience be render'd thereunto. Given at our Court at Kensington, the fifth Day of June 1708, in the seventh Year of our Reign.

By her Majesty's Command, SUNDERLAND.

Private Thoughts upon Religion, digested into twelve Articles, with practical Resolutions form'd thereupon. By the Right Reverend Father in God, William Beveridge, D.D. late Lord Bishop of St. Asaph.

RESOLUTION I.

' I am resolv'd, by the Grace Pa. 251, 252, of God, to honour and obey 253, 254. Lon. the King, or Prince, whom God 1709. 8vo. is pleased to set over me; as well as to expect he should safeguard and protect me, whom God is pleased to set under him.

' The King of Kings, and Lord of Lords, the great and glorious Monarch of all the World, having enacted many gracious Laws, is pleased to set over every Kingdom and Nation, such Persons as may put them in Execution: So that I cannot but look upon a lawful King as truly a Representative of the most high God, as a Parliament is of the People. And am therefore persuaded that whosoever rebels against him, rebels against God himself; not only in that he rebels against the Ordinance of God, and so against the God of that Ordinance; but because he rebels against him whom God hath set up as his Vicegerent, to represent his Person and execute his Laws, in such a Part of his Dominions.

' Hence it is, that these two Precepts, *Fear God, and Honour the King*, are so often join'd together in Holy Writ; for he that fears God's Power, cannot but honour his Authority; and he that honours not the King that represents God, cannot be said to fear God, who is represented by him. And hence likewise it is, that God hath been as strict and express in injoining us Obedience to our Governors, as to himself: For, thus saith the Lord of Hosts, Rom. xiii. 1. *Let every Soul be subject to the higher Powers.* Why? Because there is no Power but of God; the Powers that be, are ordain'd of God.

' And he hath denounced as great a Judgment against such as rebel against the Magistrate he hath ordain'd, as against those that rebel against himself: For, *Whosoever resisteth the Power, resisteth the Ordinance of God; and they that resist shall receive to themselves Damnation*, ver. 2. So that the Wrath of God shall as certainly fall upon those that rise up against the King, as upon those that fight against God. And no wonder, that the Punishment should be the same, when the Fault is the same. For he that fights against the King, fights against God himself, who hath invested him with

‘ with that Power and Authority to govern his
‘ People, representing his own Glorious Majesty be-
‘ fore them.

‘ Upon this Ground it is, that I believe the
‘ Wickedness of a Prince cannot be a sufficient Plea
‘ for the Disobedience of his Subjects; for it is not
‘ the Holiness, but the Authority of God that he
‘ represents, which the most wicked, as well as the
‘ most holy Person may be endowed with. And
‘ therefore, when the Gospel first began to spread it-
‘ self over the Earth, tho’ there was no Christian
‘ King, or Supreme Magistrate, of what Title
‘ soever, to cherish and protect it; nay, tho’ the
‘ Civil Powers were then the greatest Enemies to it,
‘ yet, even then, were the Disciples of Christ in-
‘ joined to submit themselves to every Ordinance of
‘ Man, for the Lord’s sake.

‘ Inasmuch, that did I live among the Turks, I
‘ should look upon it as my Duty to obey the
‘ Grand Signior, in all his lawful Edicts, as well
‘ as the most Christian and pious King in the World.
‘ For, suppose a Prince be never so wicked, and ne-
‘ ver so negligent in his Duty of protecting me,
‘ it doth not follow, that I must neglect mine of
‘ obeying him. In such a Case, I have another
‘ Duty added to this, and that is, to pray for him,
‘ and to intercede with God for his Conversion:
‘ For, thus hath the King of Kings commanded,
‘ that Prayers, Supplications, Intercessions, and giving
‘ of Thanks be made, as for all Men, so more espe-
‘ cially for Kings, and those that are in Authority,
‘ that we may live a quiet and peaceable Life, in all
‘ Godliness and Honesty. 1 Tim. ii. 1, 2. So that
‘ whensoever I address to the Court of Heaven,
‘ I must be sure to remember my Sovereign on
‘ Earth, as himself doth in Heaven, in Righteous-
‘ ness and Mercy. But especially, in case of any
‘ seeming or real Default or Defect; tho’ I do
‘ not think it a Subject’s Duty to judge or censure
‘ his Sovereign’s Actions: I am to be the more
‘ earnest in my Prayers and Intercessions for him;
‘ but upon no Account to fight and rebel against
‘ him.

Mr. Dodd. My Lords, the next Book we offer is
his Grace the Archbishop of Canterbury’s Treatise,
intituled, *The Creed of Mr. Hobbs examined*.

Clerk reads.] ‘ There is no Tie so
Pag. 158. ‘ strong as that of Religion, which
Lond. 1670. ‘ eternally bindeth a conscientious
‘ Subject in Allegiance to his Sove-
‘ reign.

‘ Wo to all the Princes upon Earth,
Ibid. p. 160, ‘ if this Doctrine be true, and be-
161. ‘ cometh popular. If the Multitude
‘ believe this, the Prince not arm’d
‘ with the Scales of the *Leviathan*, that is, with irre-
‘ sistible Power, can never be safe from the Spears,
‘ and barbed Irons, which their Ambition and pre-
‘ sumed Interest will provide, and their Malice will
‘ sharpen, and their passionate Violence throw a-
‘ gainst him. If the Beast we spoke of come but
‘ to know its own Strength, it will never be manag’d.
‘ Wherefore such as own these pernicious Doctrines,
‘ destructive to all Societies of Men, may be said
‘ to have Wolves Heads, as the Laws of old were
‘ wont to speak concerning excommunicated Per-
‘ sons; and are like those ravenous Beasts, so far
‘ from deserving our Love and Care, that they
‘ ought to be destroyed at the common Charge.

Mr. Phipps. My Lords, there is a further Ac-
count of the Opinion of the same Archbishop of
Canterbury, in a printed Paper, intitled, *An Ac-
count of what passed at the Execution of the late Duke
of Monmouth, on Wednesday the 15th of July, 1685,
on Tower Hill.*

Clerk reads.] ‘ The late Duke of Monmouth
‘ came from the Tower to the Scaffold, attended
‘ by the Bishop of Ely, the Bishop of Bath and
‘ Wells, Doctor Tenison, and Doctor Hooper; which
‘ four the King was graciously pleased to send him,
‘ as his Assistants to prepare him for Death; and
‘ the late Duke himself intreated all four of them
‘ to accompany him to the Place of Execution, and
‘ to continue with him to the last. The two Bishops
‘ going in the Lieutenant’s Coach with him to the
‘ Bars, made seasonable and devout Applications to
‘ him all the way; and one of them desired him
‘ not to be surpriz’d, if they to the very last upon
‘ the Scaffold renewed those Exhortations to a par-
‘ ticular Repentance, which they had so often re-
‘ peated before.

‘ At his first coming upon the Scaffold, he look’d
‘ for the Executioner; and seeing him, said, *Is
‘ this the Man to do the Business? Do your Work
‘ well.*

‘ Then the late Duke of Monmouth began to
‘ speak, some one or other of the Assistants, during
‘ the whole Time, applying themselves to him.

Mon. I shall say but very little; I come to die;
I die a Protestant of the Church of England.

Assist. My Lord, if you be of the Church of
England, you must acknowledge the Doctrine of
Non-Resistance to be true.

Mon. If I acknowledge the Doctrine of the
Church of England in general, that includes all.

Assist. Sir, it is fit to own that Doctrine par-
ticularly, with respect to your Case. Here he was
much urg’d about that Doctrine of Non-Resistance;
but he repeated in Effect his first Answer.

Assist. My Lord, it is fit to be particular; and
considering the publick Evil you have done, you
ought to do as much Good now as possibly you
can, by a publick Acknowledgment.

Mon. What I have thought fit to say of pub-
lick Affairs, is in a Paper which I have sign’d; I
refer to my Paper.

Assist. My Lord, there is nothing in that Paper
about Resistance, and you ought to be particular
in your Repentance, and to have it well grounded.
God give you true Repentance.

Mon. I die very penitent, and die with great
Chearfulness, for I know I shall go to God.

Assist. My Lord, you must go to God in his
own Way: Sir, be sure you be truly penitent, and
ask Forgiveness of God for the many you have
wronged.

Mon. I am sorry for every one I have wronged;
I forgive every Body; I have had many Enemies,
I forgive them all.

Assist. Sir, your Acknowledgment ought to be
publick and particular.

Mon. I am to die; pray, my Lord—I refer
to my Paper.

Assist. They are but a few Words that we de-
sire: We only desire an Answer to this Point.

Mon. I can bless God that he hath given me so
much Grace, that for these two Years last past I
have led a Life unlike to my former Course, and
in which I have been happy.

Assjt. Sir, Was there no Ill in these two Years?
 ' In these Years these great Evils have happen'd;
 ' and the giving publick Satisfaction is a necessary
 ' Part of Repentance; be pleas'd to own a Detesta-
 ' tion of your Rebellion.

Mon. I beg your Lordships that you will stick to
 ' my Paper.

Assjt. My Lord, as I said before, there is no-
 ' thing in your Paper about the Doctrine of Non-
 ' Resistance.

Mon. I repent of all Things that a true Christian
 ' ought to repent of. I am to die; pray, my
 ' Lord. —

Assjt. Then, my Lord, we can only recom-
 ' mend you to the Mercy of God; but we cannot
 ' pray with that Cheerfulness and Encouragement
 ' as we should, if you had made a particular Ac-
 ' knowledgment.

This is a true Account, Witness our Hands.

Francis Ely.

Thomas Tenison,

Thomas Bath and Wells.

George Hooper.

William Gostlin,
 Peter Vandeput,

} Sheriffs.

Mr. Phipps. My Lords, We pray we may read
 the Sermon of his Grace the present Archbishop of
 York, preached before your Lordships on the 30th
 of January 1700.

Clerk reads.] ' And in case it ever hap-
 Pag. 13. ' pen that we cannot with a safe Consci-
 ' ence obey, there we are patiently to
 ' suffer the Penalties of our Disobedience; but by
 ' no means either to affront their Persons, or to dis-
 ' turb their Government, by raising or partaking in
 ' any Tumult, or Insurrection, or Rebellion.

Ibid. p. 19, 20. ' That there is such a Submission
 ' due from all Subjects to the Su-
 ' preme Authority of the Place
 ' where they live, as shall tie up their Hands from
 ' opposing or resisting it by Force, is evident from
 ' the very Nature and Ends of Political Society.
 ' And I dare say, there is not that Country upon
 ' Earth, let the Form of their Government be what
 ' it will (Absolute Monarchy, Legal Monarchy,
 ' Aristocracy, or Commonwealth) where this is not
 ' a Part of the Constitution. Subjects must obey
 ' passively, where they cannot obey actively: Other-
 ' wise the Government would be precarious, and the
 ' publick Peace at the Mercy of every Malecontent,
 ' and a Door would be set open to all the Insur-
 ' rections, Rebellions and Treasons in the World.
 ' Nor is this only a State Doctrine, but the Do-
 ' ctrine also of Jesus Christ, and that a necessary,
 ' indispensable one too; as sufficiently appears from
 ' those famous Words of St. Paul, *Rom. xiii. 1, 2.*
 ' which are so plain, that they need no Comment:
 ' *Let every Soul (saith he) be subject to the higher*
 ' *Powers, for there is no Power but of God, and the*
 ' *Powers that be are ordained of God; whosoever*
 ' *therefore resisteth the Power, resisteth the Ordinance*
 ' *of God; and they that resist shall receive to them-*
 ' *selves Damnation.* So that so long as this Text
 ' stands in our Bible, the Doctrine of Non-Re-
 ' sistance and Passive Obedience must be of Obliga-
 ' tion to all Christians.

Mr. Dodd. Pray see whether there is any Thing
 purporting the Thanks of the House to be given to
 the Archbishop for his Sermon.

Clerk reads.] ' *Die Jovis 1 Februarii 1699.*
 ' It is ordered by the Lords Spiritual and Temporal
 ' in Parliament assembled, That the Thanks of this
 ' House be and are hereby given to his Grace the
 ' Lord Archbishop of York, for his Sermon preach'd
 ' before this House the thirtieth of January last;
 ' and he is hereby desired to print and publish the
 ' same.

Matth. Johnson, Cl^r Parliamentor.

Mr. Walpole. My Lords, I presume the Counsel
 have offered all they think proper to offer out of this
 Sermon: But that your Lordships may have a Spec-
 imen of the Candor of the Doctor's Quotations, I
 pray the Clerk may read the two next Paragraphs of
 that Sermon, and that he may read them as distinctly
 as he did the others.

Clerk reads.] ' But then, after I have
 ' said this, Care must be taken, that this *Fol. 20.*
 ' general Doctrine be not misapplied in
 ' particular Countries. Tho' Non-Resistance, or
 ' Passive Obedience, be a Duty to all Subjects, and
 ' under all Governments; yet it is not expressed
 ' the same Way in all Places, but both the Objects
 ' and the Instances of it do vary in different Na-
 ' tions, according to the different Models of their
 ' Government.

‘ To speak this as plainly as I can: As the Laws
 ‘ of the Land are the Measures of our Active Obe-
 ‘ dience, so are also the same Laws the Measures of
 ‘ our Submission; and as we are not bound to obey,
 ‘ but where the Laws and Constitution require our
 ‘ Obedience, so neither are we bound to submit,
 ‘ but as the Laws and Constitution do require our
 ‘ Submission.

Mr. Walpole. Before we part with that Sermon,
 I desire one Paragraph more may be read; it be-
 gins with these Words, *If indeed a Preacher.*

Clerk reads.] ' If indeed a Preach-
 ' er should in the Pulpit presume to *Fol. 6.*
 ' give his Judgment about the Ma-
 ' nagement of publick Affairs, or to lay down Do-
 ' ctrines as from Christ about the Forms and Mo-
 ' dels of Kingdoms or Commonwealths, or to ad-
 ' just the Limits of the Prerogative of the Prince,
 ' or of the Liberties of the Subject in our present
 ' Government; I say, if a Divine should meddle
 ' with such Matters as these in his Sermons, I do
 ' not know how he can be excused from the just
 ' Censure of meddling with Things that nothing
 ' concern him: This is indeed a *practising in State*
 ' *Matters*, and is usurping an Office that belongs to
 ' another *Profession*, and to Men of another *Chara-*
 ' *cter*; and I should account it every whit as un-
 ' decent in a Clergyman to take upon him to deal
 ' in these Points, as it would be for him to deter-
 ' mine *Titles of Land* in the *Pulpit*, which are in
 ' dispute in *Westminster Hall*.

Mr. Phipps. My Lords, If your Lordships please,
 as to the two Paragraphs read next after what we
 read, we intirely concur in what is laid down in
 them; and if we shew that this Doctrine is agree-
 able to the Laws of the Land, then it is agreeable
 to what is there laid down: As to the other Part,
 if he has taken upon him to treat of the Model of
 Government, he will be under the Censure of the
 Archbishop; but we desire to read a little before
 the beginning of that Paragraph.

Clerk

Clerk reads.] 'Titus iii. 1. Put them in mind to be subject to Principalities and Powers, to obey Magistrates.

'You all know what kind of Argument this Day calls for: For by the Design of keeping it, the Business that the Preacher hath to do, is to press Obedience and Subjection to the Government we live under; and to preach against Faction, and Rebellion; and accordingly it is prescrib'd, in the Rubrick of this Day's Service, that if there be a Sermon at all, and not a Homily, it shall be upon this Argument.

'It is very well that Authority hath taken care that at some solemn Times we should preach upon this Subject in a more solemn Manner; because, tho' it be as needful as any, yet there are some among us think it a very improper Theme for the Pulpit. I must confess I had an Eye to this Suggestion, when I pitch'd upon these Words which I have now read to you: Because I think there is something to be observed in them which will effectually confute it.

'St. Paul here lays his Charge upon Titus, that he should put the People that were under his Care in mind, to be subject to Principalities and Powers, and to obey Magistrates.

'Two Things I would here consider, First, the Person that is order'd thus to put the People in mind: And Secondly, the Thing that he is to put them in mind of, which is Subjection and Obedience to Principalities, and Powers, and Magistrates.

'I begin with the first thing, the Person to whom St. Paul writes this Epistle, and to whom he gives it in charge, that he should put the People in mind to be subject.

'Who was this Person? Why, it was Titus, an Ecclesiastick, Bishop, a Preacher of the Gospel, not a Layman, not a Magistrate, but a pure Churchman. What can be more plainly gathered from hence than this, That it is not Foreign to a Clergyman's Office to preach Obedience and Subjection to the Government; but on the contrary a Part of his Function, a necessary Duty incumbent upon him to do it? If any Man affirm otherwise, he must either say that St. Paul did not rightly instruct Titus in his Office, but injoin'd him to do that which he had nothing to do with; or he must shew that the Case of Titus was different from that of the Ministers of the Gospel at this Day: Neither of which things can, I believe, be easily made out.

'And yet into such Times are we fallen, that it is taken ill by many, that Ministers should in their Pulpit-Discourses meddle with these Matters: I must confess, I think, that of all Men it most concerns a Minister of Religion not to be a Busy-Body, or a Meddler in other Mens Matters; for in Truth he hath Work enough to do of his own, and such kind of Work too, as, let him behave himself as inoffensively as he can, will create him Difficulties and Enemies enough. And therefore it would be very imprudent in him to usurp other Mens Provinces, and to burn his Finger where he needs not, especially considering that the Success of his Labours and Endeavours among the People doth in a great measure depend upon the good liking they have of him.

'But what is it that gives Offence? Or what is it that renders this Argument we are speaking of so improper a Subject for a Clergyman to treat of? Why, several Things are pretended, and I shall name some of them.

First, It is said, That the Work of a Clergyman is to instruct Men in Christ's Religion, to preach against Vice and Sin, and to preach up Holiness and Good Life, and mutual Love and Charity; but what hath he to do with State-Affairs, as Matters of Government are?

'I answer, He hath nothing indeed to do with them: But his only Work is to make Men good Christians, by endeavouring to possess them with a hearty Belief of our Saviour's Doctrines and Promises, and persuading them to a Conformity in their Lives to his Precepts. This is our proper Work, and this is what we ought to attend to all the Days of our Life; and with Government and State-Affairs we ought not to meddle, in our Sermons especially.

'But then, after all this, it doth not follow but that we are all bound, as we have Occasion, to preach up Loyalty, and Obedience to our Governors; for this is no State-Affair, but an Affair of the Gospel. We cannot instruct Men in Christ's Religion, without instructing them in this.

'If, indeed, it was an indifferent Thing to a Man's Christianity, or to his Salvation, whether he was a good or a bad Subject, then indeed it would be as indifferent to a Preacher, whether he insisted on these Things to the People; but it is not so.

'One great Branch of Christian Holiness, as it is declared in the New Testament, is, That every Man demean himself quietly and peaceably, and obedient to the Government he lives under; and that not only for Wrath, or Fear of Punishment, but also for Conscience-sake: And this is made as necessary a Condition of going to Heaven, as any other particular Virtue is. And therefore, if we will instruct Men in Christ's Religion, and in the indispensable Points of Holiness requir'd thereby, we must instruct them in this also.

'One great Vice and damnable Sin that the Religion of our Lord has caution'd against, is the Sin of Faction and Rebellion; and therefore if it be our Duty to declare against the Sins and Vices that are contrary to Christianity, it is our Duty to declare and caution against this also.

'Lastly, We do readily grant that a great Part of our Office consists in most affectionately recommending and pressing the Necessity of mutual Love and Charity; but if this be necessary, is it not more so to recommend and press Obedience to Authority, without which, mutual Love and Charity cannot possibly subsist? That being the common Ligament of them; and take away that, we should be no better than Bears and Tygers one to another.

'But it is said in the Second place, That Preachers ought not to meddle with these Points, because they are not competent Judges of them: They do not know the Measures and Limits of Loyalty and Disloyalty, of being a good and a bad Subject; these depending altogether upon the Constitution of the Government we live under, and the determining of them belongs to the Civil Courts, and not to their Profession.

'To this I answer, That in all those Instances wherein this Argument falls under the Cognizance and Determination of Parliament, or Judges, or Lawyers, we do not pretend to meddle with it; and if any Man do, let him answer for himself: All that we pretend to, is to press the plain, general, indispensable Duties of Obedience to Laws, and of Peaceableness and Subjection to the Higher Powers,

‘ Powers, which Christ and his Apostles have every where taught in the Bible.

Mr. Phipps. My Lords, We do not desire to read any more; we think we have justified our Quotations, and shew’d that it is the Opinion of that Great and Learned Archbishop, That the Doctrine of Passive Obedience and Non-Resistance is the Doctrine of our Church; and that it is a Duty incumbent upon the Clergy to preach it to the People.

Mr. Dodd. The next we offer to your Lordships, is the Opinion of the present Bishop of Worcester, in a Sermon preached before the late Queen the 29th of May 1692, when he was Bishop of St. Asaph.

Clerk reads.] ‘ They had brought Page 18, 19. ‘ Things to that pass, that our Laws ‘ signify’d nothing but what they ‘ pleased; our Religion was held at the Courtesy of ‘ them that were the bloody Enemies of it. Our ‘ Obedience was made use of as a perfect Snare to ‘ us; we must not resist; that our Religion would ‘ not allow. — It was God that infatuated our ‘ Oppressors, to join the Injuries of a People that ‘ could not lawfully Resist, with those of a Prince ‘ that could not lawfully pass them by without Resistance.

Mr. Phipps. We shall now offer to your Lordships a Sermon preach’d by the Bishop of Rochester before the Artillery-Company, upon the 29th of May 1692.

Clerk reads.] Put up thy Sword, Page 5. ‘ says he; O Peter, submit with Patience. Oppose not Authority. Do ‘ not then break the Laws of thy Country, tho’ for ‘ Kindness and Love of me. Put up thy Sword. He ‘ that uses the Sword unlawfully, tho’ on a Pretence ‘ never so pious, shall perish by the Sword; shall either ‘ be destroy’d by it here, or punish’d hereafter by ‘ God himself for having so used it.

‘ Wherefore we are not to conclude, that our ‘ Blessed Lord by this Check given to St. Peter ‘ did absolutely prohibit all manner of using the ‘ Sword among Christians, but only that he taught ‘ us the great Duty of Christian Submission. For if ‘ St. Peter was, then certainly all other Christian ‘ Subjects are forbidden to unsheath the Sword ‘ against their Lawful Sovereign, or his Ministers, ‘ as they are commission’d by him, tho’ they do it ‘ on a Pretext so Spiritual, as the Cause of Christ ‘ himself.

‘ Tho’ they could not be induced Ib. 25, 26. ‘ by Fear or Favour to rank their ‘ Princes equal with their God, yet ‘ they preserv’d them in the next Place: Tho’ they ‘ would never worship them as Gods upon Earth, ‘ yet they religiously obey’d them as God’s Deputies and Representatives. They judg’d those who ‘ rebell’d against them worthy of Death, as if they ‘ had actually rebell’d against God himself. What ‘ else means St. Paul, when in so many Words he ‘ declares, *That whosoever resisteth the Power, resisteth the Ordinance of God; and they that resist shall receive to themselves Damnation?* Rom. xiii. 2. ‘ Out of all doubt he there speaks of the Temporal Power, and of Eternal Damnation to ensue ‘ upon resisting it; than which, what more grievous ‘ Punishment could have been inflicted, had they ‘ immediately resisted God himself?

‘ And recollect, I intreat you, the Time when ‘ this was so positively pronounced by St. Paul. It

‘ must have been writ under the Reign of Claudius ‘ or Nero. So that ’tis evident, all that resisted ‘ them were, without Repentance, in a damnable ‘ State. Can there be then any Colour so specious, ‘ any Cause so just, in which, instead of Damnation, a Christian Subject may justly expect to ‘ receive to himself Salvation, on the Account of ‘ Resisting?

Mr. Phipps. We shall next offer to your Lordships Consideration the Authority of the Lord Bishop of Sarum; where he shews, that this is ‘ not only the Doctrine of the Church of England, ‘ but of the Church of Scotland, and of all Christian ‘ Churches.’

Clerk reads.] *A Vindication of the Authority, Constitution, and Laws of the Church and State of Scotland, &c.* By Gilbert Burnet.

‘ But these Words of St. Paul, be- Printed at
ing as at first address’d to the Ro- Glasgow,
mans, so also designed by the Holy 1673. Pa.
Ghost to be a Part of the Rule of 41, 42.
‘ all Christians, do prove, that who-
‘ ever hath the Supreme Power, is to be submitted
‘ to, and never resisted.

‘ Ifot. If you were not in too great a haste, you ‘ would not be so forward; consider therefore the ‘ Reason St. Paul gives for Submission to Superior ‘ Rulers, is, *because they are the Ministers of God for good*. If then they swerve from this, they forsake ‘ the End for which they are raised up, and so fall ‘ from their Power and Right to our Obedience.

‘ Basil. Truly what you have said makes me ‘ not repent of any haste I seem’d to make; for ‘ what you have alledged proves indeed that the ‘ Sovereign is a Minister of God for good, so that ‘ he corrupts his Power grossly when he pursues not ‘ that Design: But in that he is only accountable to ‘ God, whose Minister he is. And this must hold ‘ good, except you give us good Ground to believe, ‘ that God hath given Authority to the Subjects ‘ to call him to account for his Trust; but if that ‘ be not made appear, then he must be left to God, ‘ who did empower him, and therefore can only ‘ coerce him. As one having his Power from a ‘ King, is countable to none for the Administration ‘ of it, but to the King, or those on whom the ‘ King shall devolve it: So except it be proved, ‘ that God hath warranted Subjects to call their Sovereigns to account, they being his Ministers, must ‘ only be answerable to him. And according to ‘ these Principles of yours, the Magistrates Authority shall be so enervated, that he shall no more ‘ be able to serve these Designs, for which God hath ‘ vested him with Power: Every one being thus ‘ taught to shake off his Yoke when they think he ‘ acts in Prejudice of Religion. And here I shall ‘ add one thing, which all *Casuits* hold a safe Rule ‘ in Matters that are doubtful, That we ought to ‘ follow that Side of the Doubt which is freeest of ‘ hazard. Here then Damnation is at least the seeming Hazard of Resistance; therefore except upon ‘ as clear Evidence you prove the Danger of absolute ‘ Submission to be of the same Nature that it may ‘ balance the other, then absolute Submission, as ‘ being the securest, is to be followed.

Mr. Phipps. There is another Sermon, preach’d by the Bishop of Salisbury, intitled, *Subjection for Conscience Sake asserted*, in a Sermon preach’d at Guildhall 1689.

Clerk

Printed at Clerk reads.] 'Blessed be God, our
London, 'Church hates and condemns this Do-
Page 30. 'ctrine from what Hand soever it
'comes, and hath established the
'Rights and Authority of Princes,

'on sure and unalterable Foundations; injoining an
'intire Obedience to all the lawful Commands of
'Authority, and an absolute Submission to that Su-
'preme Power God hath put into our Sovereign's
'Hands. This Doctrine we justly glory in; and
'if any that had their Baptism, and Education in
'our Church, have turn'd Renegades from this,
'they prov'd no less Enemies to the Church herself,
'than to the Civil Authority: So that their Apo-
'stacy leaves no Blame on our Church, which
'glories in nothing more than a well-temper'd
'Reformation from the later Corruption which
'the dark Ages brought into the Pure and Primi-
'tive Doctrines which our Saviour and his Apo-
'stles taught, and the first Christians retain'd, and
'practis'd for many Ages.

Mr. Phipps. My Lords, I only observe, That
the absolute Submission to the Supreme Power, are
the Words in the Doctor's Sermon.

Sir Peter King. My Lords, Before your Lord-
ships go on to any other, I pray the 17th Page of
the Book which they read, intituled, *The Vindication*
of the Authority, Constitution and Laws of the Church
and State of Scotland, may be read.

Page 17. 'The Case varies very much when
'the Abuse is such that it tends to a
'total Subversion, which may be call'd
'justly a *Phrensy*, since no Man is capable of it,
'till he be under some Lesion of his Mind; in
'which case, the Power is to be administred by
'others, for the Prince and his People's Safety:
'But this will never prove that a Magistrate go-
'verning by Law, though there be great Errors in
'Government, ought to be coerced: Otherwise
'you must open a Door to perpetual Broils, since
'every one by these Maxims becomes Judge; and
'where he is both Judge and Party, is not like
'to be cast in his Pretensions; And even few
'Malefactors die, but they think hard measure
'given them. If then forcible Self-defence be to
'be followed, none of these should yield up their
'Lives without using all Attempts for rescuing
'them.

Mr. Dee. My Lords, the next we offer is a
Sermon preached by the Bishop of *Ely* before the
Lord Mayor and Aldermen at *Guildhall*, the 26th
of *January* 1648.

Page 19. Clerk reads. 'The patient Chri-
'stian cannot but condemn those, who
'under the Pretence of defending their
'Rights or Religion, resist lawful Authority. It
'being a Blasphemy against the Divine Wisdom
'and Power, to suppose God can ever stand in need
'of our Sins to bring to pass his most glorious
'Designs. He then in whom this Virtue of Pati-
'ence dwells, keeps a due Regard to the Commands
'laid upon him, to submit himself to the Supreme
'Powers; and he dares not lift up his Hand against
'the Lord's Anointed, or levy War upon the most
'plausible Account whatsoever; nay, to him it can-
'not but seem a Wonder that the Doctrine of Re-
'sistance should have gone down so glibly with any

'who have read the New Testament, and are bap-
'tiz'd into the Christian Faith.

'There is an universal absolute
'Command in the Holy Scripture *Ib. P. 20, 21.*
'laid upon all Christians, to be sub-
'ject to the Supreme Powers in all Cases. Now
'nothing is plainer, than that if we be required
'to be subject in all Cases, Resistance in any will
'be sinful. *Let every Soul be subject to the Higher*
'*Power*; to which Christian Precept there is no
'Exception to be found for any Person, in any
'Instance, from one End of the Christian Institu-
'tion to the other. — Subjection is a Duty, than
'which there is hardly any oftner repeated in the
'Christian Law, so as we cannot plead Ignorance of
'it; it is press'd with such Evidence of Reason, that
'cuts off all Pretences of evading it; it is set down
'in such plain, easy, and full Expressions, as that
'there can be no Colour to doubt about the right
'Understanding of it. The Holy Scripture gives
'Permission no more to the People collected into
'one Body to rebel, than it does to each of them,
'by himself singly considered. Every Christian,
'in all Circumstances, is requir'd to conform to the
'Laws of the Supreme Authority, if they have no
'Repugnancy to God's Laws, and to suffer patient-
'ly where Obedience would be a Sin.

Mr. Dee. My Lords, the next we beg Leave to
offer, is a Sermon of the Bishop of *Bath and Wells*,
preached before the King at *Whitehall* the 5th of
November 1681.

Clerk reads.] 'Is he not the Vice-
'gerent of God? Where-ever therefore Page 11.
'his Sovereign the Almighty has not
'prevented him by any precedent Commands, there
'he has a Right and Liberty to put forth his; in
'these Cases to expect an active chearful Obedience,
'and that we should in no Case, and for no Reason
'resist.

Ib. Pa. 19. 'The Church, of which we have
'the Blessing to be Members, where she can't obey,
'is ready to endure, expecting her Reward in Hea-
'ven. Not ignorant how much she suffers now
'from the Contradiction of disloyal Men, for the
'Truth of this Doctrine, and how much (for its
'Meekness) she stands exposed to future Persecu-
'tion.

Mr. Dee. The next we offer to your Lordships,
is a Sermon preached by the Bishop of *Lincoln* be-
fore your Lordships, on the 30th of *January* 1708.
which was published by your Lordships Com-
mands.

Clerk reads.] 'Die Sabbati, 31 Januarii, 1707.
'Order'd by the Lords Spiritual and Tempo-
'ral in Parliament assembled, That the Thanks
'of this House be, and are hereby given to
'the Lord Bishop of *Lincoln*, for his Sermon
'preach'd before this House Yesterday, in the
'Abby Church in *Westminster*; and that he
'be desir'd to Print and Publish the same.

Matth. Johnson, Cler' Parliamentor.

Page 15, 16, 17, 18. 'And if neither the Ma-
'lice of the *Jews*, nor the Innocence of our Lord;
'if neither the Truth of our Religion persecuted in
'its Founder, nor the apparent Marks of Malice
'and Envy, of Violence and Oppression, which ap-
'peared in the whole Course of their Prosecution
'of Him; were sufficient to warrant St. Peter to
'draw the Sword in his Defence, against that Legal
'Autho-

' *Authority* by which they acted ; We must conclude, that neither will any of these Pretences suffice to justify any other Christians, in the like Circumstances, now. But if it shall please God at any time to permit the *Lawful Powers* to be against Us, and make them that hate us, to rule over us ; We must follow the Example of our Blessed Master, and submit patiently to their *Authority* ; and not, with this warm *Apostle*, take the Sword against those, to whom God has committed the Power of the Sword.

' Let this then suffice to shew, what the true Christian Doctrine, of *Submission* to the Civil Magistrate, is. I shall not here inquire, whether some may not possibly have misapplied these Principles, or have stretched them further than they ought to have done, and by that means have led both themselves and others into great Mistakes, and no less Inconveniencies. What that *Authority* in every State or Country is, to which such a *Subjection* (as I have now been speaking of) is due, and against which no *Resistance* (no not to defend the *Best Cause*, or the most *Innocent Person* in the World) may be used by any of the Community, is a Point which the Municipal Laws and Constitution of every State and Country must determine : But that wherever that *Supreme Power* and *Authority* is lodged, or in whomsoever it resides, to which God has commanded us to be *subject not only for Wrath*, but also for *Conscience Sake* ; concerning which St. Paul has laid down this Rule, *Let every Soul be subject to the Higher Powers* ; and St. Peter himself declared, that we must *submit to it for the Lord's Sake* : We are bound to pay either an Active, or Passive Obedience to it ; must either do what it requires, or suffer what it inflicts : This is without Controversy the standing *Doctrine of Christianity*, and has been confirmed by the *Practice of the best Christians* in all Ages of the Church.

' Which being so, let us go on finally (upon these Principles) to consider,

' III. What we are to judge of Those, who, notwithstanding so plain an Admonition, not only took the Sword, (tho' that had been too much) but cut off with it that *Royal Person*, who alone had the *Rightful Power* of it.

' And here I cannot follow either a plainer or a surer Guide, than our *Laws* themselves, which speak not only with *Authority*, but *Approbation* too ; and tell us, in effect, what the *Sense* of the whole Nation is, or at least ought to be, both of Them and their Proceedings. The *Fact* it self they call a *Horrid, Execrable, Detestable Murder* ; an *impious Fact*, an *unparalleled Treason* : The Court, which decreed it, a *Traiterous Assembly*, a *prodigious and unheard-of Tribunal*. The Persons who thus unwarrantably drew the Sword against their own Sovereign, they brand as a Parcel of *wretched Men*, *desperately wicked*, *hardened in their Impiety*. And lastly, As to the Principles upon which they proceeded, the same *Laws* declare, " That by the *Undoubted and Fundamental Laws of this Kingdom*, neither the Peers of this Realm, nor the Commons, nor both together in Parliament, or out of Parliament, Collectively or Representatively, nor any other Persons whatsoever, ever had, have, hath, or ought to have, any Coercive Power over the Persons of the Kings of this Realm.

Clerk reads on by Direction of the Managers.

' Such is the Censure which our Laws have passed upon the Murder of our Royal Sovereign, and the Persons who committed it : And the same is the Sense which both the Word of God, and the Laws of all other Nations, teach us to have of both.

' For to allow that some Things had been done under the Authority of that Unfortunate Prince less regularly than were to have been wish'd ; That the Prerogative had been strained to an Exorbitant Height, and the Subject too much provoked to complain, if not of the King himself, yet of those who were about him, and should have advised, and acted more moderately than they did. To grant that when the Parliament met, with which our Troubles began, it was excusable, or even fitting for it to have redressed those Grievances, and reduced the Prerogative within its just Bounds ; and that those therefore who entered upon the proper Methods of doing this in a Parliamentary way, without any ill Designs, either against the Person or Government of the King, were not to be blamed. Yet certainly, when this was done, and thereupon such Acts were passed, as not only abundantly repair'd whatever the Subject had suffered before, but sufficiently secured him against any more Invasions, either of his Liberty or Property, for the Time to come ; for Men to proceed farther still, and without any lawful Authority, or evident Necessity, enter into a War against their Sovereign, who had so far condescended to all their just Desires, must needs have been as illegal as it was unreasonable, and bespeak those who did it, to have taken the Sword in that Sense which our Saviour here forbade, and all good Men have ever condemned.

' Had that Excellent Prince indeed never called his last Parliament at all, nor given any Opportunity to his People to redress their Grievances by the proper Methods of it ; had he not only continued to insist upon those Pretensions which some had set up under the Shelter of his Authority, but so far improved them as utterly to set aside the Laws of the Realm, and to act arbitrarily, not only without Law, but against it ; and when nothing else would do, had he chose rather to desert the Government, than to rule according to his own Oath, and the Fundamental Laws and Limitations of it ; this might have warranted an oppressed People to take the Sword for the necessary Defence of their Laws and Constitution, and their Religion and Liberties founded thereupon. But to take up Arms against a King, whose Excesses had been moderate, and whose Necessities pressed him, contrary to his own Inclinations, to run into the most of them ; but especially, who had already, without Force, not only freely redressed the Grievances of his People, but abundantly repaired them, and secured them against the like Attempts for the future : This must needs have been an unwarrantable Enterprize ; a War as unjustifiable in its Rise, as it proved fatal in its Consequences.

Mr. Dodd. The next we shall offer to your Lordships, is the Bishop of Exeter's Sermon preached before her Majesty, on her Majesty's Accession to the Throne.

Clerk reads.] Page 13, 14. ' Nay, though the Laws of our Earthly Governors should in some Instances be contrary to the Divine Laws, (upon which

which Supposition the Magistrate does certainly exceed the Bounds of his Commission) yet this does not void their Authority, they are the Ministers of God for all this; or else there were none that were so, there were none that could be call'd so, when the Apostle wrote this Epistle: And there is a Duty lying on Subjects even in this Case, viz. not to oppose, nor resist the Power, but quietly and patiently to suffer the Penalty of those Laws, which they cannot, without sinning against God, yield an active Obedience to.

Mr. Dodd. The next we shall offer to your Lordships, is the Bishop of St. Asaph's Sermon, preach'd before the Lord Mayor, on the Thirtieth of January 1699.

Clerk reads.]

CHILD MAYOR.

Jovis nono Die Februarii 1698. Annoque Reg. Regis Willielmi Tertii, Angliæ, &c. decimo.

This Court doth desire Mr. Fleetwood to Print his Sermon, preach'd at the Cathedral Church of St. Paul, the Thirtieth of January last, before the Lord Mayor, Aldermen, and Citizens of this City.

Goodfellow.

Page 18. 'It is plain, that a Government can't possibly subsist for any Time, where any Kind of Violence is allowed against the Magistrate. We see what wicked Work is made in some unhappy States, where private Executions of Revenge betwixt Particulars are indulg'd, or frequently conniv'd at. But Government is at an end, where Rulers are expos'd to popular Assaults.

Mr. Phipps. My Lords, We shall now produce a Sermon, preach'd by the Bishop of Carlisle before your Lordships, upon the Thirtieth of January, 1702.

Clerk reads.] 'Die Lune, 1 Februarii 1702.

'It is order'd by the Lords Spiritual and Temporal, in Parliament assembled, That the Thanks of this House shall be (and are hereby) given to the Lord Bishop of Carlisle, for his Sermon preach'd before this House on the Thirtieth of January last, in the Abby Church at Westminster: And he is hereby desired to Print and Publish the same.

Matth. Johnson, Cler. Parliamentor.'

Page 31. 'Our Foundations, 'tis to be hoped, are not shaken by the Weight of those many great and extraordinary Revolutions that have pass'd upon us. The All-wise Providence of God has frequently of late (and as some of us always thought very graciously) exchanged our Governors: But if we ungratefully alter our Notions of the Divine Right of Government, and throw off our Antient and Primitive Rules of Obedience, we shall make an unworthy Return for the Mercies we have received.

Mr. Phipps. We beg Leave to offer to your Lordships Three Sermons, preach'd before the House of Commons; one preach'd before them by Doctor Eyre, upon January 30, 1707.

Clerk reads.] Sabbat. 31 Die Jan. 1707. Or-

dered, That the Thanks of this House be given to Dr. Eyre, for the Excellent Sermon by him preach'd before this House at St. Margaret's Westminster, Yesterday, being

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'The Day appointed for a Solemn Fast and Humiliation, for the Murder of King Charles the First: And that he be desir'd to Print the same; and that Mr. Bridges, Mr. Candler, the Lord William Powlett, and Mr. Eyre, do acquaint him therewith.

Paul Joddrell, Cl. Dom. Com.

'Let no Seditious and Antimonarchical Principles be so much as once named among us, as becometh good Subjects, and good Christians: Let no sly Insinuations of Male-Administration be suggested, no new Doctrines advanced, nor any old ones revived, whereby to lessen the Security of the Crown, under the specious Pretence of maintaining the Rights and Liberties of the People.

Mr. Dee. The next is Dr. Kennet's Sermon, preach'd before the Commons the 30th of January 1705.

Clerk reads.] 'Jovis 31 Die Januarii 1705.

'Ordered, That the Thanks of this House be given to Dr. Kennet, Archdeacon of Huntingdon, for the Sermon by him preach'd before this House Yesterday, at St. Margaret's Westminster: And that he be desired to Print the same. And that Sir Thomas Littleton, Mr. Worsley, and Mr. King, do acquaint him therewith.

Paul Joddrell, Cl. Dom. Com.

'This is the true Foundation of that common Axiom, *The King can do no wrong*; because there is no Right nor Remedy against his Royal Person.

'It was declarative of our Original Constitution, that our Legislature, upon Occasion of this Day, would have it express'd, "That by the Undoubted and Fundamental Laws of this Kingdom, neither the Peers of this Realm, nor the Commons, nor both together, in Parliament, or out of Parliament, nor the People Collectively, or Representatively, nor any other Persons whatsoever, ever had, have, or ought to have, any Coercive Power over the Persons of the Kings of this Realm."

Mr. Dee. My Lords, The next is Dr. Delaune's Sermon, preach'd before the House of Commons, upon the 30th of January 1702.

Clerk reads.] 'Lune, 1 die Feb. 1702. Ordered,

'That the Thanks of this House be given to Dr. Delaune, Vice-Chancellor of the University of Oxford, for the Sermon by him preach'd before this House on Saturday last, at St. Margaret's Westminster: And that he be desir'd to Print the same. And that Mr. Bridges, Mr. Bromley, and Mr. Rowney, do acquaint him therewith.

Paul Joddrell, Cl. Dom. Com.

Page 10. 'The Civil Laws of a Country are in the Nature of Articles of Agreement between the Rulers and their Subjects; Duty and Obedience are secured on one Hand, and on the other, Protection in Civil Rights. If the Subject breaks his Part of the Covenant, (as I may call it) his Punishment is at Hand; and if the Supreme Power breaks his, his Punishment is no less certain, tho' more remote; for he is guilty before God, who is his Ruler; tho' it is impossible he should be accountable for it in his own Dominions, for that

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' would infer a Power Superior to the Supreme,
' which is a flat Contradiction.

Mr. Dodd. Your Lordships observe by all these Sermons, how generally this Point is laid down, without making any Exception; and yet I don't doubt, but that there is an Exception included in every one of these; yet it is always laid down in general Terms: And we desire that the same Exception may be allowed to the Doctor, as is to all these: And if he has erred, he can only be said *Errare cum Patribus*.

Mr. Phipps. My Lords, We have thus far made good our Defence, That this is the Doctrine of the Church of *England*; That the Fathers of the Church have always avow'd it; That it has been preach'd in the same Terms in which the Doctor has preach'd it, ever since her Majesty's Accession to the Throne, and no Objection has been made to it till now; and that it has been approv'd by both Houses of Parliament, and by her Majesty. We will now proceed to shew, that it is confirm'd by several Acts of Parliament: The first is in the 12th of *Charles II. cap. 30*.

Clerk reads.] ' And be it hereby declared, That by the Undoubted and Fundamental Laws of this Kingdom, neither the Peers of this Realm, nor the Commons, nor both together, in Parliament, or out of Parliament, nor the People Collectively or Representatively, nor any other Persons whatsoever, ever had, have, hath, or ought to have, any Coercive Power over the Persons of the Kings of this Realm.

Mr. Dodd. The next Act of Parliament we shall read to your Lordships, is the Corporation-Act, 13 *Car. II. Stat. 2. §. 5*.

Clerk reads.] ' *I A. B. do declare and believe, That it is not Lawful, upon any Pretence whatsoever, to take up Arms against the King; and that I do abhor that Traiterous Position, of taking Arms by his Authority against his Person, or against those that are commissioned by him. So help me GOD.*

Mr. Dodd. This is a General Oath, to be taken by all the Officers of Corporations.

Sir Jos. Jekyll. I can't but observe, my Lords, that it is a little extraordinary, the Doctor's Counsel should open this Act of Parliament, and offer it to be read, and not inform your Lordships that it is repealed.

Mr. Dodd. My Lords, We did open it that it is repealed; but we did insist, That as this Oath had been taken by all Officers of Corporations so many Years, so it was then a true Proposition, and still remains so, altho' it be repealed: That Repeal don't make the Proposition false.

Mr. Phipps. We admit, my Lords, that in the Act for abrogating the Oaths, and appointing others, this Paragraph was omitted. But what we offer it for, is to shew that this Doctrine has been sworn to by most of the Great Men, and all the Great Officers of *England*, for so many Years together.

Mr. Dodd. My Lords, The next is the *Militia Act*, 13 & 14 *Car. 2. cap. 3*. We desire to read the Preamble of that Act, and then the Oath appointed to be taken.

Clerk reads.] ' Forasmuch as within all his Majesty's Realms and Dominions, the Sole and Supreme Power, Government, Command and Disposition of the *Militia*, and of all Forces by Sea and Land, and of all Forts and Places of Strength,

is, and (by the Laws of *England*) ever was the undoubted Right of his Majesty, and his Royal Predecessors, Kings and Queens of *England*; And that both, or either of the Houses of Parliament, cannot, nor ought to pretend to the same; nor can, nor lawfully may, raise or levy any War, Offensive or Defensive, against his Majesty, his Heirs, or Lawful Successors: And yet the contrary thereof hath of late Years been practised, almost to the Ruin and Destruction of this Kingdom: And during the late Usurped Governments, many evil and rebellious Principles have been instilled into the Minds of the People of this Kingdom, which may break forth, unless prevented, to the Disturbance of the Peace and Quiet thereof.

§. 18. ' *I A. B. do declare and believe, That it is not lawful, upon any Pretence whatsoever, to take up Arms against the King: And that I do abhor that Traiterous Position, That Arms may be taken by his Authority against his Person, or against those that are commissioned by him, in Pursuance of such Military Commissions. So help me GOD.*

Mr. Dee. My Lords, The next is the Act of Uniformity, 13 & 14 *Car. II. cap. 4*.

Clerk reads.] ' And be it further enacted by the Authority aforesaid, That every Dean, Canon, and Prebendary of every Cathedral or Collegiate Church, and all Masters and other Heads, Fellows, Chaplains, and Tutors of or in any College, Hall, House of Learning, Hospital, and every Publick Professor and Reader in either of the Universities, and in every College elsewhere, and every Parson, Vicar, Curate, Lecturer, and every other Person in Holy Orders, and every Schoolmaster keeping any publick or private School, and every Person instructing or teaching any Youth in any House or private Family as a Schoolmaster, who upon the First Day of May, which shall be in the Year of our Lord God 1662, or at any Time thereafter, shall be incumbent, or have Possession of any Deanry, Canonry, Prebend, Mastership, Headship, Fellowship, Professor's Place, or Reader's Place, Parsonage, Vicarage, or any other Ecclesiastical Dignity or Promotion, or any Curate's Place, Lecture or School, or shall instruct or teach any Youth as Tutor or Schoolmaster, shall before the Feast-Day of *St. Bartholomew*, which shall be in the Year of our Lord 1662, or at or before his or their respective Admission to be Incumbent, or have Possession aforesaid, subscribe the Declaration or Acknowledgment following; (*scilicet*)

' *I A. B. do declare, That it is not lawful, upon any Pretence whatsoever, to take Arms against the King; and that I do abhor that Traiterous Position, of taking Arms by his Authority against his Person, or against those that are commissioned by him: And that I will Conform to the Liturgy of the Church of England, as it is now by Law established. And I do declare, That I hold there lies no Obligation upon me, or any other Person, from the Oath commonly call'd The Solemn League and Covenant, to endeavour any Change or Alteration of Government either in Church or State; and the same was in it self an unlawful Oath, and imposed upon the Subjects of this Realm, against the known Laws and Liberties of this Kingdom.*

Mr. Phipps. The Reason of our Reading this, is to let your Lordships see, what Obligations were on

on all Clergymen to subscribe this Declaration; and then we submit it to your Lordships Judgment, whether the Doctor is Criminal for Preaching that which all Parsons were (before that Act was repeal'd) oblig'd to Subscribe, in order to qualify themselves for Preaching. And I beg Leave just to observe to your Lordships, That by 16 Car. II. the Act for Select Vestries, all Vestrymen were oblig'd to Subscribe the same Declaration.

Mr. Dodd. My Lords, There are Two other Acts, but I think we need not read them, because they were so lately made: The one is for the Association, the other for the Abjuration, which is taken almost every Day in *Westminster-Hall*.

Mr. Phipps. If your Lordships please, we shall offer nothing more on this Article, but only some Part of his late Majesty's Declaration, to shew that there was some Reason for what the Doctor said of his late Majesty's disclaiming all manner of Resistance.

Sir Joseph Jekyll. My Lords, I perceive they are going to read some Part of his late Majesty's Declaration: We should have offered some Part of that Declaration, as a material Proof against the Doctor; but we would not produce any Papers as Evidence, which are not so; tho' we allow that to the Doctor. But since it is produced as Evidence for the Doctor, I desire it may be read quite through.

Clerk reads.] *The Declaration of his Highness, William Henry, by the Grace of God Prince of Orange, &c. of the Reasons inducing him to appear in Arms in the Kingdom of England, for preserving of the Protestant Religion, and for restoring the Laws and Liberties of England, Scotland, and Ireland.*

1. **I**T is both certain and evident to all Men, That the Publick Peace and Happiness of any State or Kingdom cannot be preserv'd, where the Laws, Liberties, and Customs Establish'd by the Lawful Authority in it, are openly transgressed and annulled: More especially, where the Alteration of Religion is endeavour'd, and that a Religion which is contrary to Law, is endeavour'd to be introduced: Upon which those who are most immediately concerned in it, are indispensibly bound to endeavour to preserve and maintain the Establish'd Laws, Liberties and Customs, and above all, the Religion and Worship of God that is establish'd among them; and to take such an effectual Care, that the Inhabitants of the said State or Kingdom, may neither be depriv'd of their Religion, nor of their Civil Rights. Which is so much the more necessary, because the Greatness and Security, both of Kings, Royal Families, and of all such as are in Authority, as well as the Happiness of their Subjects and People, depend in a most especial manner upon the exact Observation and Maintenance of these their Laws, Liberties and Customs.

2. Upon these Grounds it is, that we cannot any longer forbear to declare, That to our great Regret, we see that those Counsellors, who have now the Chief Credit with the King, have overturned the Religion, Laws and Liberties of those Realms, and subjected them in all Things relating to their Consciences, Liberties and Properties, to Arbitrary Government; and that not only by secret and indirect Ways, but in an open and undisguised manner.

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3. Those Evil Counsellors, for the advancing and colouring this with some plausible Pretexs, did invent and set on foot the King's *Dispensing Power*; by virtue of which, they pretend, that, according to Law, he can *suspend* and *dispense* with the Execution of the Laws that have been enacted by the Authority of the King and Parliament, for the Security and Happiness of the Subject, and so have rendered those Laws of no Effect: Tho' there is nothing more certain, than that as no Laws can be made, but by the joint Concurrence of King and Parliament; so likewise Laws so enacted, which secure the Publick Peace and Safety of the Nation, and the Lives and Liberties of every Subject in it, cannot be repealed or suspended but by the same Authority.

4. For tho' the King may pardon the Punishment that a Transgressor has incurred, and to which he is condemned, (as in the Cases of *Treason* or *Felony*) yet it cannot be with any Colour of Reason infer'd from thence, that the King can intirely suspend the Execution of those Laws relating to *Treason* or *Felony*; unless it is pretended, that he is cloathed with a Despotick and Arbitrary Power; and that the Lives, Liberties, Honours and Estates of the Subjects, depend wholly on his good Will and Pleasure, and are intirely subject to him; which must infallibly follow, on the Kings having a Power to *suspend* the Execution of the Laws, and to *dispense* with them.

5. Those Evil Counsellors, in order to the giving some Credit to this strange and execrable Maxim, have so conducted the Matter, that they have obtained a Sentence from the Judges, declaring, That this *Dispensing Power* is a Right belonging to the *Crown*: As if it were in the Power of the Twelve Judges to offer up the Laws, Rights, and Liberties of the whole Nation to the King, to be disposed of by him arbitrarily, and at his Pleasure; and expressly contrary to Laws enacted for the Security of the Subjects. In order to the obtaining this Judgment, those Evil Counsellors did before-hand examine secretly the Opinion of the Judges, and procur'd such of them as could not in Conscience concur in so pernicious a Sentence, to be turned out, and others to be substituted in their rooms, 'till by the Changes which were made in the Courts of Judicature, they at last obtained that Judgment. And they have rais'd some to those Trusts, who make open Profession of the Popish Religion, tho' those are by Law rendred incapable of all such Employments.

6. It is also manifest and notorious, That as his Majesty was, upon his coming to the Crown, received and acknowledged by all the Subjects of *England, Scotland, and Ireland*, as their King, without the least Opposition, tho' he made then open Profession of the *Popish Religion*; so he did then promise, and solemnly swear at his Coronation, That he would maintain his Subjects in the free Enjoyment of their Laws and Liberties; and in particular, that he would maintain the *Church of England as it was establish'd by Law*. It is likewise certain, that there have been at divers and sundry Times several Laws enacted for the Preservation of those Rights and Liberties, and of the Protestant Religion; and among other Securities, it has been enacted, That all Persons whatsoever, that are advanced to any Ecclesiastical Dignity, or to bear Office in either University, as likewise all other that should be put in any Employment, Civil or Military, should declare that they were not

Papists,

‘ Papists, but were of the Protestant Religion, and that by their taking of the Oaths of *Allegiance* and *Supremacy*, and the *Test*; yet these Evil Counsellors have in effect annulled and abolished all those Laws, both with Relation to Ecclesiastical and Civil Employments.

‘ 7. In order to Ecclesiastical Dignities and Offices, they have not only without any Colour of Law, but against most express Laws to the contrary, set up a Commission, of a certain Number of Persons, to whom they have committed the Cognizance and Direction of all Ecclesiastical Matters; in the which Commission there has been, and still is one of his Majesty’s Ministers of State, who makes now publick Profession of the Popish Religion, and who at the time of his first professing it, declared that for a great while before he had believed that to be the only true Religion. By all this, the deplorable State to which the Protestant Religion is reduced, is apparent, since the Affairs of the Church of *England* are now put into the Hands of Persons who have accepted of a Commission that is manifestly illegal, and who have executed it contrary to all Law; and that now one of their chief Members has abjur’d the *Protestant Religion*, and declared himself a *Papist*; by which he is become incapable of holding any publick Employment. The said Commissioners have hitherto given such Proof of their Submission to the Directions given them, that there is no Reason to doubt, but they will still continue to promote all such Designs as will be most agreeable to them. And those Evil Counsellors take Care to raise none to any Ecclesiastical Dignities, but Persons that have no Zeal for the *Protestant Religion*, and that now hide their Unconcernedness for it, under the specious Pretence of *Moderation*. The said Commissioners have suspended the Bishop of *London*, only because he refused to obey an Order that was sent him to suspend a worthy Divine, without so much as citing him before him to make his own Defence, or observing the common Forms of Process. They have turned out a President chosen by the Fellows of *Magdalen College*, and afterwards all the Fellows of that College, without so much as citing them before any Court that could take legal Cognizance of that Affair, or obtaining any Sentence against them by a competent Judge. And the only Reason that was given for turning them out, was their refusing to chuse for their President, a Person that was recommended to them by the Instigation of those Evil Counsellors; tho’ the Right of a Free Election belonged undoubtedly to them. But they were turn’d out of their Freeholds contrary to Law, and to that express Provision in the *Magna Charta*, *That no Man shall lose Life or Goods, but by the Law of the Land*. And now these Evil Counsellors have put the said College wholly into the Hands of Papists, tho’ as is above said, they are incapable of all such Employments, both by the Law of the Land, and the Statutes of the College. These Commissioners have also cited before them all the Chancellors and Archdeacons of *England*, requiring them to certify to them the Names of all such Clergymen as have read the King’s Declaration for *Liberty of Conscience*, and of such as have not read it; without considering that the reading of it was not enjoined the Clergy by the Bishops, who are their Ordinaries. The Illegality and Incompetency of the said Court of the Ecclesiastical Commissioners was so notoriously known, and it did so evi-

dently appear that it tended to the Subversion of the *Protestant Religion*, that the most Reverend Father in God, *William Archbishop of Canterbury*, Primate and Metropolitan of all *England*, seeing that it was raised for no other End but to oppress such Persons as were of eminent Virtue, Learning and Piety, refused to sit, or to concur in it.

‘ 8. And tho’ there are many express Laws against all Churches or Chapels for the Exercise of the Popish Religion, and also against all Monasteries and Convents, and more particularly against the Order of the *Jesuits*; yet those Evil Counsellors have procured Orders for the building of several Churches and Chapels for the Exercise of that Religion. They have also procured divers Monasteries to be erected; and in Contempt of the Law, they have not only set up several Colleges of *Jesuits* in divers Places for the corrupting of the Youth, but have raised up one of the Order to be a Privy-Counsellor, and a Minister of State. By all which they do evidently shew, that they are restrained by no Rules of Law whatsoever; but that they have subjected the Honours and Estates of the Subjects, and the establish’d Religion to a Despotick Power, and to Arbitrary Government. In all which they are served and seconded by those Ecclesiastical Commissioners.

‘ 9. They have also follow’d the same Methods with relation to Civil Affairs; for they have procured Orders to examine all Lords-Lieutenants, Deputy-Lieutenants, Sheriffs, Justices of Peace, and all others that were in any Publick Employment, if they would concur with the King in the Repeal of the *Test* and *Penal Laws*; and all such whose Consciences did not suffer them to comply with their Designs, were turned out, and others were put in their Places, who they believed would be more compliant to them in their Designs of defeating the Intent and Execution of those Laws which had been made with so much Care and Caution for the Security of the *Protestant Religion*. And in many of these Places they have put professed Papists, tho’ the Law has disabled them, and warranted the Subjects not to have any Regard to their Orders.

‘ 10. They have also invaded the Privileges, and seized on the Charters of most of those Towns that have a Right to be represented by their Burgesses in Parliament, and have procur’d Surrenders to be made of them, by which the Magistrates in them have delivered up all their Rights and Privileges, to be disposed of at the Pleasure of those Evil Counsellors, who have thereupon placed new Magistrates in those Towns, such as they can most intirely confide in; and in many of them they have put Popish Magistrates, notwithstanding the Incapacities under which the Law has put them.

‘ 11. And whereas no Nation whatsoever can subsist without the Administration of good and impartial Justice, upon which Mens Lives, Liberties, Honours and Estates do depend, those Evil Counsellors have subjected these to an Arbitrary and Despotick Power. In the most important Affairs, they have studied to discover, before-hand, the Opinion of the Judges, and have turned out such as they found would not conform themselves to their Intentions, and have put others in their Places, of whom they were more assured, without having any Regard to their Abilities. And they have not stuck to raise even professed Papists to the Courts of Judicature, notwithstanding their Incapacity by Law, and that no Regard is due to any Sentences

‘ tences flowing from them. They have carried this
 ‘ so far, as to deprive such Judges, who in the com-
 ‘ mon Administration of Justice, shewed that they
 ‘ were governed by their Consciences, and not by
 ‘ the Directions which the others gave them. By
 ‘ which it is apparent; that they design to render
 ‘ themselves the absolute Masters of the Lives, Ho-
 ‘ nours and Estates of the Subjects, of what Rank
 ‘ or Dignity soever they may be; and that without
 ‘ having any Regard either to the Equity of the
 ‘ Cause, or to the Consciences of the Judges, whom
 ‘ they will have to submit in all Things to their own
 ‘ Will and Pleasure; hoping by such Ways to in-
 ‘ timidate those who are yet in Employment, as
 ‘ also such others, as they shall think fit to put in
 ‘ the Rooms of those whom they have turned out;
 ‘ and to make them see what they must look for,
 ‘ if they should at any Time act in the least contrary
 ‘ to their good liking; and that no Failings of that
 ‘ Kind are pardoned in any Persons whatsoever. A
 ‘ great deal of Blood has been shed in many Places
 ‘ of the Kingdom, by Judges governed by those
 ‘ evil Counsellors, against all the Rules and Forms
 ‘ of Law, without so much as suffering the Persons
 ‘ that were accused to plead in their own De-
 ‘ fence.

‘ 12. They have also, by putting the Admini-
 ‘ stration of Justice in the Hands of Papists, brought
 ‘ all the Matters of Civil Justice into great Uncer-
 ‘ tainties; with how much Exactness and Justice
 ‘ soever that these Sentences may have been given.
 ‘ For since the Laws of the Land do not only exclude
 ‘ Papists from all Places of Judicature, but have put
 ‘ them under an Incapacity, none are bound to ac-
 ‘ knowledge or to obey their Judgments, and all
 ‘ Sentences given by them are null and void of them-
 ‘ selves: So that all Persons who have been cast
 ‘ in Trials before such Popish Judges, may justly
 ‘ look on their pretended Sentences, as having no
 ‘ more Force than the Sentences of any private
 ‘ or unauthoriz’d Person whatsoever. So deplorable
 ‘ is the Case of the Subjects who are obliged to an-
 ‘ swer to such Judges, that must in all Things stick
 ‘ to the Rules which are set them by those evil
 ‘ Counsellors, who, as they raised them up to those
 ‘ Employments, so can turn them out of them at
 ‘ Pleasure, and who can never be esteemed lawful
 ‘ Judges; so that all their Sentences are in the
 ‘ Construction of the Law of no Force and Efficacy.
 ‘ They have likewise disposed of all military Em-
 ‘ ployments in the same Manner; for tho’ the Laws
 ‘ have not only excluded Papists from all such Em-
 ‘ ployments, but have in particular provided, that
 ‘ they should be disarm’d; yet they, in Contempt of
 ‘ these Laws, have not only arm’d the Papists, but
 ‘ have likewise raised them up to the greatest mili-
 ‘ tary Trust both by Sea and Land; and that
 ‘ Strangers, as well as Natives, and *Irish*, as well
 ‘ as *English*; that so by those Means, having ren-
 ‘ dered themselves Masters both of the Affairs of the
 ‘ Church, of the Government, of the Nation, and
 ‘ of the Courts of Justice, and subjected them all
 ‘ to a despotick and arbitrary Power, they might
 ‘ be in a Capacity to maintain and execute their
 ‘ wicked Designs, by the Assistance of the Army,
 ‘ and thereby to enslave the Nation.

‘ 13. The dismal Effects of this Subversion of
 ‘ the establish’d Religion, Laws, and Liberties in
 ‘ *England*, appear more evidently to us, by what we
 ‘ see done in *Ireland*; where the whole Govern-
 ‘ ment is put into the Hands of Papists, and where
 ‘ all the Protestant Inhabitants are under the daily

‘ Fears of what may be justly apprehended from the
 ‘ arbitrary Power which is set up there; which
 ‘ has made great Numbers of them leave that King-
 ‘ dom, and abandon their Estates in it, remembring
 ‘ well that cruel and bloody Massacre which fell
 ‘ out in that Island in the Year 1641.

‘ 14. Those evil Counsellors have also prevailed
 ‘ with the King to declare in *Scotland*, that he is
 ‘ clothed with *absolute Power*, and that all the
 ‘ Subjects are bound *to obey him without Reserve*:
 ‘ Upon which he has assum’d an arbitrary Power
 ‘ both over the Religion and Laws of that King-
 ‘ dom; from all which it is apparent, what is to
 ‘ be looked for in *England*; as soon as Matters are
 ‘ duly prepared for it.

‘ 15. Those great and insufferable Oppressions,
 ‘ and the open Contempt of all Law, together with
 ‘ the Apprehensions of the sad Consequences that
 ‘ must certainly follow upon it, have put the Sub-
 ‘ jects under great and just Fears; and have made
 ‘ them look after such lawful Remedies as are al-
 ‘ lowed of in all Nations; yet all has been without
 ‘ Effect. And those evil Counsellors have endea-
 ‘ voured to make all Men apprehend the Loss of
 ‘ their Lives, Liberties, Honours, and Estates, if
 ‘ they should go about to preserve themselves from
 ‘ this Oppression by Petition, Representations, or
 ‘ other Means authoriz’d by Law. Thus did they
 ‘ proceed with the Archbishop of *Canterbury*, and
 ‘ the other Bishops, who having offer’d a most
 ‘ humble Petition to the King, in Terms full of Re-
 ‘ spect, and not exceeding the Number limited by
 ‘ Law; in which they set forth in short, the Rea-
 ‘ sons for which they could not obey that Order,
 ‘ which, by the Instigation of those evil Counsellors,
 ‘ was sent them, requiring them to appoint their
 ‘ Clergy to read in their Churches the Declaration
 ‘ for *Liberty of Conscience*; were sent to Prison,
 ‘ and afterwards brought to a Trial, as if they had
 ‘ been guilty of some enormous Crime. They were
 ‘ not only obliged to defend themselves in that Pur-
 ‘ suit, but to appear before profess’d Papists, who
 ‘ had not taken the *Test*, and by Consequence were
 ‘ Men whose Interest led them to condemn them;
 ‘ and the Judges that gave their Opinions in their
 ‘ Favours, were thereupon turned out.

‘ 16. And yet it cannot be pretended, that any
 ‘ Kings, how great soever their Power has been,
 ‘ and how arbitrary and despotick soever they have
 ‘ been in the Exercise of it, have ever reckon’d it
 ‘ a Crime for their Subjects to come in all Submissi-
 ‘ on and Respect, and in a due Number, not ex-
 ‘ ceeding the Limits of the Law, and present to
 ‘ them the Reasons that made it impossible for them
 ‘ to obey their Orders. Those evil Counsellors
 ‘ have also treated a Peer of the Realm as a Cri-
 ‘ minal, only because he said, That the Subjects
 ‘ were not bound to obey the Orders of a Popish
 ‘ Justice of Peace; though it is evident, that they
 ‘ being by Law rendred incapable of all such Trusts,
 ‘ no Regard is due to their Orders. This being the
 ‘ Security which the People have by the Law for
 ‘ their Lives, Liberties, Honours, and Estates, that
 ‘ they are not to be subjected to the arbitrary Pro-
 ‘ ceedings of Papists, that are contrary to Law put
 ‘ into any Employments Civil or Military.

‘ 17. Both We ourselves, and our dearest and
 ‘ most intirely beloved Consort the Princess, have
 ‘ endeavoured to signify, in Terms full of Respect
 ‘ to the King, the just and deep Regret which all
 ‘ these Proceedings have given us; and in Com-
 ‘ pliance with his Majesty’s Desires signified to us,
 ‘ We

‘ We declared both by Word of Mouth, to his Envoy, and in Writing, what our Thoughts were, touching the Repealing of the *Test and Penal Laws*; which We did in such a Manner, that We hoped We had proposed an Expedient, by which the Peace of those Kingdoms, and a happy Agreement among the Subjects of all Persuasions, might have been settled: But those evil Counsellors have put such ill Constructions on these our good Intentions, that they have endeavoured to alienate the King more and more from us; as if We had design’d to disturb the Quiet and Happiness of the Kingdom.

‘ 18. The last and great Remedy for all those Evils, is the *Calling of a Parliament*, for securing the Nation against the evil Practices of those wicked Counsellors: But this could not be yet compassed, nor can it be easily brought about. For those Men apprehending, that a lawful Parliament being once assembled, they would be brought to an Account for all their open Violations of Law, and for their Plots and Conspiracies against the *Protestant Religion*, and the Lives and Liberties of their Subjects; they have endeavoured, under the specious Pretence of *Liberty of Conscience*, first to sow Divisions among Protestants, between those of the *Church of England* and the *Dissenters*: The Design being laid to engage Protestants, that are all equally concerned to preserve themselves from Popish Oppression, into mutual Quarrellings, that so by these, some Advantages might be given to them to bring about their Designs; and that both in the Election of Members of Parliament, and afterwards in the Parliament itself. For they see well, that if all Protestants could enter into a mutual good Understanding one with another, and concur together in the preserving of their Religion, it would not be possible for them to compass their wicked Ends. They have also required all Persons, in the several Counties of *England*, that either were in any Employment, or were in any considerable Esteem, to declare before-hand, that they would concur in the Repeal of the *Test and Penal Laws*; and that they would give their Voices in the Elections to Parliament, only for such as would concur in it. Such as would not thus pre-engage themselves, were turned out of all Employments; and others who enter’d into those Engagements, were put in their Places, many of them being Papists. And contrary to the Charters and Privileges of those Boroughs that have a Right to send Burgesses to Parliament, they have ordered such Regulations to be made, as they thought fit and necessary, for assuring themselves of all the Members that are to be chosen by those Corporations: And by this Means they hope to avoid that Punishment which they have deserved; tho’ it is apparent, that all Acts made by Popish Magistrates, are null and void of themselves. So that no Parliament can be lawful, for which the Elections and Returns are made by Popish Sheriffs and Mayors of Towns; and therefore as long as the Authority and Magistracy is in such Hands, it is not possible to have any lawful Parliament. And tho’ according to the Constitution of the *English* Government, and immemorial Custom, all Elections of Parliament Men ought to be made with an intire Liberty, without any Sort of Force; or the requiring the Electors to chuse such Persons as shall be named to them; and the Persons thus freely elected, ought to give

‘ their Opinions freely, upon all Matters that are brought before them; having the Good of the Nation ever before their Eyes, and following in all Things the Dictates of their Conscience; yet now the People of *England* cannot expect a Remedy from a *Free Parliament*, legally called and chosen. But they may, perhaps, see one called, in which all Elections will be carried by Fraud or Force; and which will be composed of such Persons, of whom those evil Counsellors hold themselves well assured; in which all Things will be carried on according to their Direction and Interest, without any Regard to the Good or Happiness of the Nation. Which may appear evidently from this, that the same Persons tried the Members of the last Parliament, to gain them to consent to the Repeal of the *Test and Penal Laws*; and procured that Parliament to be dissolved, when they found that they could not, neither by Promises nor Threatnings, prevail with the Members to comply with their wicked Designs.

‘ 19. But to crown all, there are great and violent Presumptions, inducing us to believe, that those evil Counsellors, in order to the carrying on of their ill Designs, and to the gaining to themselves the more Time for the effecting of them, (for the encouraging of their Complices, and for the discouraging of all good Subjects) have published, that the *Queen* hath brought forth a *Son*; tho’ there have appeared, both during the *Queen’s* pretended Bigness, and in the Manner in which the Birth was managed, so many just and visible Grounds of Suspicion, that not only we ourselves, but all the good Subjects of those Kingdoms, do vehemently suspect, that the pretended Prince of *Wales* was not born by the *Queen*. And it is notoriously known to all the World, that many both doubted of the *Queen’s* Bigness, and of the Birth of the Child; and yet there was not any one Thing done to satisfy them, or to put an End to their Doubts.

‘ 20. And since our dearest and most intirely-beloved Consort the Princess, and likewise we ourselves have so great an Interest in this Matter, and such a Right (as all the World knows) to the Succession to the Crown: Since also the *English* did in the Year 1672, when the *States General* of the *United Provinces* were invaded in a most unjust War, use their utmost Endeavours to put an End to that War, and that in Opposition to those who were then in the Government; and by their so doing, they run the Hazard of losing both the Favour of the Court, and their Employments: And since the *English* Nation has ever testified a most particular Affection and Esteem, both to our dearest Consort the Princess, and to ourselves, We cannot excuse ourselves from espousing their Interests, in a Matter of such high Consequence; and from contributing all that lies in Us, for the maintaining both of the *Protestant Religion*, and of the Laws and Liberties of those Kingdoms, and for the securing to them the continual Enjoyment of all their just Rights. To the doing of which, We are most earnestly solicited by a great many Lords, both Spiritual and Temporal, and by many Gentlemen, and other Subjects of all Ranks.

‘ 21. Therefore it is, that We have thought fit to go over to *England*, and to carry over with us a Force, sufficient by the Blessing of God, to defend us from the Violence of those evil Counsellors.

fellors. And We being desirous that our Intentions in this may be rightly understood, have, for this End, prepared this *Declaration*, in which, as we have hitherto given a true Account of the Reasons inducing us to it; so, We now think fit to declare, that this our Expedition is intended for no other Design, but to have a free and lawful Parliament assembled, as soon as is possible: and that in order to this, all the late Charters, by which the Election of Burgeffes are limited contrary to the antient Custom, shall be considered as null and of no Force: And likewise all Magistrates who have been unjustly turned out, shall forthwith resume their former Employments, as well as all the Boroughs of *England* shall return again to their antient Prescriptions and Charters: And more particularly, that the antient Charter of the great and famous City of *London*, shall again be in Force: And that the Writs for the Members of Parliament shall be addressed to the proper Officers, according to Law and Custom. That also none be suffer'd to chuse, or to be chosen Members of Parliament, but such as are qualified by Law: And that the Members of Parliament being thus lawfully chosen, they shall meet and sit in full Freedom; that so the two Houses may concur in the preparing of such Laws, as they, upon full and free Debate, shall judge necessary and convenient, both for the confirming and executing the Law concerning the *Test*, and such other Laws as are necessary for the Security and Maintenance of the *Protestant Religion*; as likewise for making such Laws as may establish a good Agreement between the *Church of England* and all *Protestant Dissenters*; as also for the covering and securing of all such who will live peaceably under the Government, as becomes good Subjects, from all Persecution upon the Account of their Religion, even *Papists* themselves not excepted; and for the doing of all other Things, which the two Houses of Parliament shall find necessary for the Peace, Honour and Safety of the Nation, so that there may be no more Danger of the Nations falling at any Time hereafter under *Arbitrary Government*. To this Parliament we will also refer the Enquiry into the Birth of the pretended Prince of *Wales*, and of all Things relating to it, and to the Right of Succession.

22. And We, for our Part, will concur in every Thing that may procure the Peace and Happiness of the Nation, which a free and lawful Parliament shall determine; since we have nothing before our Eyes in this our Undertaking, but the Preservation of the *Protestant Religion*, the Covering of all Men from Persecution for their Consciences, and the securing to the whole Nation the free Enjoyment of all their Laws, Rights and Liberties under a just and legal Government.

23. This is the Design that we have proposed to ourselves, in appearing upon this Occasion in Arms: In the Conduct of which, We will keep the Forces under our Command, under all the Strictness of Martial Discipline; and take a special Care, that the People of the Countries, through which we must march, shall not suffer by their Means; and as soon as the State of the Nation will admit of it, We promise that We will send back all those foreign Forces that we have brought along with us.

24. We do therefore hope that all People will judge rightly of us, and approve of these our Proceedings: But we chiefly rely on the Blessing

of God for the Success of this our Undertaking, in which We place our whole and only Confidence.

25. We do in the last Place invite and require all Persons whatsoever, all the Peers of the Realm both Spiritual and Temporal, all Lords-Lieutenants, Deputy-Lieutenants, and all Gentlemen, Citizens, and other Commons of all Ranks, to come and assist us, in order to the executing of this our Design, against all such as shall endeavour to oppose us; that so we may prevent all those Miseries which must needs follow upon the Nations being kept under Arbitrary Government and Slavery: And that all the Violences and Disorders which have overturned the whole Constitution of the *English* Government, may be fully redressed in a free and legal Parliament.

26. And We do likewise resolve, that as soon as the Nations are brought to a State of Quiet, We will take Care that a Parliament shall be called in *Scotland*, for the restoring the antient Constitution of that Kingdom, and for bringing the Matters of Religion to such a Settlement, that the People may live easy and happy, and for putting an End to all the unjust Violences, that have been in a Course of so many Years committed there.

We will also study to bring the Kingdom of *Ireland* to such a State, that the Settlement there may be religiously observed; and that the Protestant and *British* Interest there, may be secured. And we will endeavour by all possible Means to procure such an Establishment in all the three Kingdoms, that they may all live in a happy Union and Correspondence together; and that the Protestant Religion, and the Peace, Honour and Happiness of these Nations, may be establish'd upon lasting Foundations.

Given under our Hand and Seal, at our Court in the Hague, the tenth Day of October, in the Year of our Lord 1688.

WILLIAM HENRY, PRINCE of ORANGE.

By his Highness's Special Command,

C. HUYGENS.

His Highness's Additional Declaration.

After We had prepared and printed this our Declaration, We have understood, that the Subverters of the Religion and Laws of those Kingdoms, hearing of our Preparations to assist the People against them, have begun to retract some of the Arbitrary and Despotick Powers that they had assumed, and to vacate some of their unjust Judgments and Decrees. The Sense of their Guilt, and the Distrust of their Force, have induced them to offer to the City of *London* some seeming Relief from their great Oppressions; hoping thereby to quiet the People, and to divert them from demanding a Re-establishment of their Religion and Laws under the Shelter of our Arms: They do also give out, that we do intend to conquer and enslave the Nation; and therefore it is that we have thought fit to add a few Words to our Declaration.

We are confident, that no Persons can have such hard Thoughts of us, as to imagine that We have any other Design in this Undertaking, than to procure a Settlement of the Religion, and of the Liberties and Properties of the Subjects, upon so sure

sure a Foundation, that there may be no Danger of the Nations relapsing into the like Miseries at any Time hereafter. And as the Forces that We have brought along with us, are utterly disproportioned to that wicked Design of conquering the Nation, if We were capable of intending it; so the great Numbers of the principal Nobility and Gentry, that are Men of eminent Quality and Estates, and Persons of known Integrity and Zeal both for the Religion and Government of England, many of them also being distinguished by their constant Fidelity to the Crown, who do both accompany us in this Expedition, and have earnestly solicited us to it, will cover us from all such malicious Insinuations: For it is not to be imagined, that either those who have invited us, or those that are already come to assist us, can join in a wicked Attempt of Conquest, to make void their own lawful Titles to their Honours, Estates and Interests. We are also confident, that all Men see how little Weight there is to be laid on all Promises and Engagements, that can be now made; since there has been so little Regard had in the Time past, to the most solemn Promises. And as that imperfect Redress that is now offered, is a plain Confession of those Violations of the Government that We have set forth; so the Defectiveness of it is no less apparent: For they lay down nothing which they may not take up at Pleasure; and they reserve entire, and not so much as mentioned, their Claim and Pretences to an Arbitrary and Despotick Power; which has been the Root of all their Oppression, and of the total Subversion of the Government. And, it is plain, that there can be no Redress, no Remedy offer'd but in Parliament; by a Declaration of the Rights of the Subjects that have been invaded, and not by any pretended Acts of Grace, to which the Extremity of their Affairs has driven them. Therefore it is that We have thought fit to declare, that We will refer all to a free Assembly of the Nation, in a lawful Parliament.

Given under our Hand and Seal, at our Court in the Hague, the twenty fourth Day of October, in the Year of our Lord 1688.

WILLIAM HENRY, PRINCE of ORANGE.

By his Highness's Special Command,

C. HUYGENS.

Mr. Phipps. My Lords, The Reason why we humbly offer this Declaration, is with Relation to that Passage in the Sermon, which says, that the Prince of Orange disclaimed all Manner of Resistance. All we observe is, that it don't appear that he came over with an Army with any other Intent than to defend himself against evil Counsellors: And if the Doctor has made a wrong Inference, we submit it to your Lordships, whether such a Misapprehension of his Highness's Meaning, shall subject him to a Charge of High Crimes and Misdemeanors.

Mr. Dodd. My Lords, We have finished what we have to offer on this Article, and submit it to your Lordships whether we have not made good our Defence. We are ready to go on to the second Article, if it be your Lordships Pleasure.

Then the LORDS adjourned to their House above.

Monday, March 6. The Seventh Day.

THE Lords coming down into *Westminster-hall*, and being seated in the Manner before-mention'd, Proclamation was made by the Serjeant at Arms as follows:

Our Sovereign Lady the Queen doth strictly Charge and Command all manner of Persons to keep Silence, upon Pain of Imprisonment.

Then another Proclamation was made: *Henry Sacheverell*, Doctor in Divinity, come forth, save thee and thy Bail, else thou forfeitest thy Recognizance.

The Doctor appearing at the Bar accordingly, with his Counsel as before:

Lord Chancellor. Gentlemen, you that are Counsel for the Prisoner, may proceed in his Defence.

Mr. Dodd. MY Lords, We who are Counsel for Doctor *Sacheverell*, beg the Favour that we may enter on the Doctor's Defence as to the second Article: This Article is divided into three Heads. 1. *That the Toleration is unreasonable, and the Allowance of it unwarrantable.* 2. *That he is a False Brother, who defends Toleration and Liberty of Conscience.* 3. *That it is the Duty of the chief Pastors to thunder out Anathemas, &c.*

The first Head I shall speak to is, as to the Toleration. My Lords, we say there is no such Thing as a Toleration granted by Law; the Word is not to be found in the Act of Parliament; there is an Act (which we suppose is intended) to exempt Protestant Dissenters from the Penalties of certain Laws therein mentioned: However, in this Debate, we shall take Notice of it as a Toleration; altho' we think, when there is a legal Proceeding, the Act should have been called by its own proper Name: Now, my Lords, this Act of Parliament hath several Restrictions and Limitations in it, and (amongst others) not to exempt any Persons from the Penalties, that do not frequent some religious Assembly thereby allowed. The Doctor no where finds Fault with a legal Toleration, or a Toleration granted by Law, within the Description and Meaning of this Act of Parliament. My Lords, we think the Doctor has taken such Care, lest any Expression should undergo a wrong Construction, as if he were uneasy at the Toleration, that he explains himself very particularly about it: We shall read the Words out of the Sermon, which I think will clear the Doctor as to this Objection; the Doctor says, *Pray do not misunderstand me, as if I reflected upon that Indulgence the Government has given the Dissenters, which I am sure all Well-wishers to our Church are ready to grant; nor do I intend to cast the least Reflection on that Indulgence, which the Law has given to Consciences truly scrupulous; let them enjoy it in the full Limits the Law has prescribed.*

Now after such a Declaration, so plain a Confession, so full in the Case, in Words as significant as can be to shew his Meaning, we hope there is no Room to tax him with this Part of the Article by any incoherent Words, or Inferences, when it is

is directly contrary to what he has in Words at length exprest'd.

My Lords, This being considered, we think it is too hard to draw Inferences, and Consequences, that the Doctor is against the Toleration allowed by Law; it is not to be done with Candor, by any one that reads the Sermon without Prejudice, and considers the Care he takes to avoid giving any Offence in this Case.

As to the second Part of this Article, we think it may receive the same Answer; *That he is a False Brother who defends Toleration and Liberty of Conscience.* The Doctor does not say they are False Brethren that defend a legal Toleration; No-body complains of that; but the Persons intended, are those that defend an unlawful Toleration, and not a legal Exemption; which legal Exemption the Doctor admits to be good and just, in the Passage I have before repeated. We apprehend, the Doctor means those are False Brethren, and blameable, that excuse the Separation from the Church, not on account of the Toleration, but by *laying the Faults on the true Sons of the Church, for carrying Matters too high*; these are the People, the False Brethren, that cry out against the Church upon all Occasions.

As to the Doctor's Expressions about Archbishop Grindall, the Doctor thought he had good Grounds for them; but at least they were but unwary Expressions, and we hope not criminal. The Toleration he mentions Archbishop Grindall to be blamed for, was quite another Thing from the present Indulgence now granted; the first was by *Q. Elizabeth* alone, or by the Archbishop's Authority under her, and without the Parliament; the Dissenters were then few, and it had been no great Difficulty to have prevented that Schism at the Beginning. But now the Dissenters are a considerable Part of the Nation, have great Riches, and Properties amongst us, and it became the Wisdom of the Legislature, to give them an Indulgence according to the Restrictions in the Act of Parliament: But this is a different Case, and by a different Authority, from what was in Archbishop Grindall's Time. The Story of that Archbishop, as related by one of the Gentlemen Managers, does indeed acquit the Archbishop, but how far it clears Queen Elizabeth, we must leave to your Lordships; for should a great Favourite Attempt to procure a Grant of the Archbishop's Palace, or a chief Revenue of that See or Church, and that the Archbishop's opposing the Favourite herein (as was by the Gentleman suggested) should be the Reason of his Disgrace; or, if the Archbishop did prosecute or punish a Man in the Spiritual Court, for having two Wives at the same Time; (which Prosecution or Punishment was highly commendable in the Archbishop, and was his Duty to do) it would be hard to think, that Queen Elizabeth should suspend him from the Archbishoprick for such a Proceeding, for thus discharging his Duty; therefore we cannot give Credit to that History as it is related; but we shall shew your Lordships, from the Archbishop's Letter to the Council, and Letters from Beza and Calvin at that Time, that it was his Indulgence to the Dissenters of that Time, that drew the Anger of Queen Elizabeth on him; and that this was the Reason of it, we shall make out by undeniable Proof. Now, my Lords, we apprehend the Fault the Doctor finds in his Sermon is against an universal general Toleration that tends to a Dissolution of all Things; and such a To-

leration, would make Religion like that of the Samaritans, a Mixture of all Sorts, that was odious to the World, and an Abomination to the Jews; and indeed, my Lords, we apprehend such a Toleration the Doctor had great Reason to find Fault with. Surely such a Toleration is not to be defended, nor would be of any Service to either Church or State: This is the Toleration which we think the Doctor intended, and not against a legal or particular Exemption, which the Wisdom of the Nation hath thought fit to give. Indeed he thinks, that Occasional Conformists do attempt to hoist the Toleration into an Establishment, and come into the Communion of the Church to serve a particular Purpose; and this at most can only be said to be the Doctor's Opinion of that Matter, and whether true or false, cannot be criminal. To speak against a Law, or to break a Law, is not to be justified: Nor has he spoke against this Law; but if he had, surely he had been punishable in the ordinary Methods of Justice, and not in a Proceeding of this Nature.

As to the next Head, that is, as to that Part of the Charge about thundering out *Anathema's*; the Discourse is general, and not determined to any Persons, nor pointed at the Dissenters, but properly intended against Irreligion; and the Sentence that he dares any Power on Earth to reverse, is such, and such only, as is ratified in Heaven. He believes some Sentences of the Church to be ratified in Heaven; and if that Sentence which is pronounced here on Earth, be ratified in Heaven, it is, beyond all Dispute, out of the Power of Man to reverse it. He supposes some Persons exempt from Punishment by particular Laws, may yet, by the Law of Christ, be liable to such a Sentence: But from hence, or his Answer to the Articles, to draw a Conclusion, that he asserts the State had not Power to reverse the Sentence of the Spiritual Court, (of which there can be no doubt, but that the Legislature has such a Power) or that the Legislature is guilty of Blasphemy, (as has been objected by one of the Gentlemen Managers) is neither true Reason nor Logick.

That Schism is a Sin punishable by the Laws of the Church, will not be disputed, if it be a Separation without a just Cause; and how far this is such a Separation, or that the Act of Parliament hath taken away this Schism, this Sin, we submit to your Lordships.

Mr. Phipps. MY Lords, We are come now to the second Article, and we humbly apprehend, shall give your Lordships as full Satisfaction of the Doctor's Innocence, as to that Crime charg'd in this Article, as we hope we did as to those contain'd in the first Article.

As to that Part of the second Article which says, *That the Doctor does suggest and maintain, that the Toleration granted by Law is unreasonable, and the Allowance of it unwarrantable*: He conceives there is nothing in his Sermon can warrant that Charge. The Toleration Act is not what the Doctor finds Fault with, but the Persons that abuse it; and I beg Leave to say, that the ill Use which is made of it, is unreasonable and unwarrantable. But, that the Doctor asserts the Toleration itself to be unreasonable, or the Allowance of it unwarrantable, will appear to be a great Mistake, when the Paragraphs in the Doctor's Sermon, upon which this Article is founded, are consider'd.

My Lords, The first Passage is in Page the 8th, where the Doctor says thus: *If upon all Occasions to comply with the Dissenters, both in publick and private Affairs, as Persons of tender Consciences and Piety, to promote their Interests in Elections, to sneak to them for Places and Preferment, to defend Toleration and Liberty of Conscience, and under the Pretence of Moderation, to excuse their Separation, and lay the Fault upon the true Sons of the Church for carrying Matters too high, &c.* These are some of the Characters which the Doctor gives of False Brethren: But, is there any Thing in this Passage that avers Toleration to be unreasonable, or the Allowance of it unwarrantable?

Page the 10th, the Doctor hath these Words, which were urged to prove this Article: *Our Constitution, both in Church and State, has been so admirably contrived, with that Wisdom, Weight and Sagacity, and the Temper and Genius of each, so exactly Suited and Modell'd, to the mutual Support and Assistance of one another, that 'tis hard to say, whether the Doctrines of the Church of England contribute more to authorize and enforce our Civil Laws, or our Laws to maintain and defend the Doctrines of our Church. The Natures of both are so nicely correspondent, and so happily intermixed, that 'tis almost impossible to offer a Violation to the one, without breaking in upon the Body of the other. So that in all those Cases before mentioned, whoever presumes to innovate, alter, or misrepresent any Point in the Articles of the Faith of our Church, ought to be arraign'd as a Traitor to the State; Heterodoxy in the Doctrines of the one, naturally producing, and almost necessarily inferring Rebellion and High Treason in the other; and consequently a Crime that concerns the Civil Magistrate as much to punish and restrain, as the Ecclesiastical.* Can this be meant of the Toleration? Is the Toleration so much as mentioned here? Does he not here speak against such as innovate, alter, or misrepresent the Articles of our Faith? Is there any Innovation, Alteration, or Misrepresentation of any Article of our Faith by the Protestant Dissenters? The Dissenters do not differ from us in Matters of Faith, but in Matters of Form and Ceremony; if they differ'd from us in Matters of Faith, they would be Hereticks, and Heresy was never intended to be tolerated by the Act of Indulgence: And therefore what the Doctor says in this Paragraph, can never be taken to be a Reflection on the Toleration.

I shall next humbly offer to your Lordships Consideration another Clause, which was cited by the Gentlemen of the House of Commons to support this Article, which is Page 14. where 'tis said, *These False Brethren in our Government, do not singly, and in private, spread their Poison, but (what is lamentable to be spoken) are suffer'd to combine into Bodies, and Seminaries, wherein Atheism, Deism, Tritheism, Socinianism, with all the bellish Principles of Fanaticism, Regicide and Anarchy, are openly profess'd, and taught, to corrupt and debauch the Youth of the Nation, in all Parts of it, down to Poverty, to the present Reproach, and future Extirpation of our Laws, and Religion. Certainly the Toleration was never intended to indulge, and cherish such Monsters and Vipers in our Bosom, that scatter their Pestilence at Noon-day, and will rend, distract, and confound, the firmest and best settled Constitution in the World.* Is there any Thing in this Clause that can maintain this Article? The Doctor says, Certainly the Toleration was never intended to indulge and cherish such Monsters, and Vipers

in our Bosom, as Atheists, Tritheists, Socinians, &c. And the Doctor is well warrant'd in saying that, because those enormous Crimes are particularly excepted in the Act of Toleration, and for this we refer to the Act itself.

The next Clause that was urg'd to maintain this Article is in the 16th Page, where the Doctor expresseth himself in these Words: *But since this Model of an universal Liberty and Coalition fail'd, and these False Brethren could not carry the Conventicle into the Church, they are now resolv'd to bring the Church into the Conventicle, which will more plausibly and slyly effect her Ruin: What could not be gain'd by Comprehension and Toleration, must be brought about by Moderation and Occasional Conformity; that is, what they could not do by open Violence, they will not fail by secret Treachery to accomplish. If the Church can't be pull'd down, it may be blown up; and no Matter with these Men how 'tis destroy'd, so that it is destroy'd.* Does this suggest the Toleration to be unreasonable, or the Allowance of it unwarrantable? It rather excuses it from having hurt the Church: For he says, *What could not be gain'd by Toleration, must be brought about by Moderation and Occasional Conformity;* so that the Injury which is done to the Church is ascribed by him to some other Cause. Thus your Lordships observe there is not any Passage in the Doctor's Sermon, whereby he suggests that the Toleration granted by Law is unreasonable, or the Allowance of it unwarrantable, and consequently no Foundation for this Article, unless it is to be supported by Inferences contrary to the Doctor's express Words: For the Doctor in his Sermon, Page 20. says, *I would not here be understood, as if I intended to cast the least invidious Reflection upon that Indulgence the Government has condescended to give them, which I am sure all those that wish well to our Church are very ready to grant to Consciences truly scrupulous; let them enjoy it in the full Limits the Law has prescrib'd.* By which 'tis evident, he allows the Indulgence given by the Act to Dissenters, and is very far from suggesting, that it is unreasonable, or the Allowance of it unwarrantable. He wishes with all his Heart they may enjoy it in the full Limits of the Law. And therefore if there be any other Expressions concerning Toleration, which may seem to carry a dubious Sense, 'tis humbly conceiv'd they ought not to be apply'd to the Exemption granted by Law, but will be so interpreted as may consist with his avowed Approbation of that Law. For in all Writings, such Exposition is to be made, that one Part may not contradict or be inconsistent with the other. But to strain the Sense of any ambiguous Clause, and to put such a Construction upon it, as to make it contradict a plain and positive Assertion in the same Writing, was never allow'd, and I am sure will not be permitted by your Lordships, who have shew'd such a just Abhorrence of strain'd and foreign Insinuations and Innuendo's. And therefore where he seems to blame those who defend Toleration, he cannot be thought to condemn the Indulgence granted by Law, because he hath in such positive and express Terms allowed and approved of it.

But it must have some other Meaning, and I think his Meaning is very plain. For by condemning such as defend Toleration, 'tis evident, he means such as maintain, that the Act of Indulgence is a Justification of their Separation, and excuseth them from the Sin of Schism: For the Defence of Toleration, and Excuse of Separation, are mentioned in

one and the same Clause of the Sentence, and in one and the same Branch of their Character of False Brethren. So that the true and genuine Sense of what he hath said in his Sermon concerning Toleration is,

1. That he intirely approves of the Exemption by the Act of Indulgence of Protestant Dissenters from the several Penalties inflicted by the several Statutes for their Non-Conformity.

2. That tho' they are exempt from the Penalties, yet that does not excuse their Separation from the Sin of Schism *in foro Conscientiæ*. And is the Doctor alone in this Notion? Is he not justified in it by the Opinion of many learned Men, who have writ on that Subject? Nay, I appeal to your Lordships, whether it be not the concurrent Opinion of the greatest Part, if not all the learned Men of our Church at this Day.

And since the Act of Uniformity is in Force, and is not repeal'd or enervated by the Act of Indulgence, since the Doctrine and Worship of the Church of England is the establish'd Religion of this Kingdom, whether a Separation from the Church, since the Act of Indulgence, is not as much a Schism *in foro Conscientiæ*, as it was before, is humbly submitted.

But suppose that Separation from the Church by Dissenters, since the Act of Indulgence, should not be thought a Schism, yet he having the Opinion of so many learned Men of his Side, his Assertion cannot be said to be wicked, malicious, and seditious, nor to be so high a Crime and Misdemeanor, as to be the subject Matter of an Impeachment.

But the Passages in the Doctor's Sermon, which are supposed to condemn the Toleration, or to reflect on the Dissenters, are open to another plain and natural Construction. For since he positively, and in express Terms, allows Liberty of Conscience to Consciences truly scrupulous, and which are intitled to the Benefit of the Act: Where he condemns or speaks against Toleration, it must be intended as to such Dissenters who are not intitled to the Benefit of the Act, but are excepted out of it: And those are such as by Printing or Writing deny the Trinity, such as do not come to some Assembly of Religious Worship allowed by that Act; and no Assembly of Religious Worship is allow'd by that Act 'till the Place of meeting be certified to the Bishop, Archdeacon, or Justices at the Quarter-Sessions, and recorded, and a Certificate thereof given: And, what Multitudes frequent Religious Assemblies which are not allow'd by that Act? Nay, how few Religious Assemblies are qualified according to the Act? What vast Numbers go to no Religious Worship at all? And how many there are who deny the second Person of the Trinity, is too evident: And against every one of these, all the Laws for frequenting Divine Service on the Lord's Day are still in Force, by the express Words of that Act. Therefore all those who defend a general Toleration, who maintain that the Act extends to all such Dissenters, are justly censur'd by the Doctor; and all the Expressions in the Doctor's Sermon against Toleration must be intended against those excepted in the Act, since he so expressly approves the Indulgence allow'd to those that conform to the Terms prescribed by the Act.

My Lords, As to that Branch of this second Article, which charges the Doctor with asserting, *That Queen Elizabeth was deluded by Archbishop Grindall to the Toleration of the Genevian Discipline*; whether he be not warranted in this Assertion, is

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humbly submitted to your Lordships, when 'tis consider'd, That Archbishop was once in the highest Esteem with the Queen, She made him Bishop of London, then Archbishop of York, and afterwards promoted him to the See of Canterbury; and that after this he was in Disgrace, and died in her Majesty's Displeasure, cannot be deny'd. The Reason assign'd for his Disgrace was, that he was a great Encourager of unlawful Conventicles, or Prophesyings, as they were then called. Whether that Charge against him was true, or whether it was only a false Suggestion of the Earl of Leicester, to remove him from the Queen's Favour, I will not presume to determine. The learned Manager who spoke first to this Article, was pleas'd to acquit the Archbishop, and lay the Fault upon the Queen; though, whoever reads Calvin's and Beza's Letters to him, when Bishop of London, whoever reads Queen Elizabeth's Letter to the Bishops, dated the third of May, 1577, and the Archbishop's own Letter to the Lords of the Council the 25th of November, 1577, will be fully satisfied that he was not innocent; for he confesses he was commanded by the Queen and Council to suppress the Prophesyings, and that he refused, and could not comply with that Command; and acknowledged it to be an Act of great Clemency in her Majesty, that she carried her Repentment no higher. So, I think, that pious good Queen is intirely acquitted by the Archbishop himself.

All Historians admit, that in his Time the Puritans were very numerous, and their Party very strong; and it is evident they grew so dangerous, that the Statute of the 35th of Elizabeth was made to suppress their Conventicles, and compel them to come to Church. And at his Death the Affairs of the Church were in so great Confusion, that his Successor, Archbishop Whitgift, was put to great Trouble to check that growing Faction, and reduce Things into good Order again. If therefore the Doctor was of Opinion the Puritans receiv'd too great Encouragement by the Countenance of that great Man, and if it was his Zeal for the Church, and the Repentment he had that it should receive any Prejudice by the Connivance of one at the Head of it, that provoked him to use a harsh Expression of that Archbishop, 'tis humbly to be hoped that is not a sufficient Ground for an Impeachment of High Crimes and Misdemeanors.

The Gentleman that spoke first to this Article, was pleas'd to admit, that what the Doctor said in relation to that Archbishop, was not an offence, as it was a Reflection on the Archbishop; but that using such Expressions of the Archbishop for his Moderation to the Puritans, was a Reflection on the late Act of Toleration granted to Protestant Dissenters; and that calling the Prosecutions against the Prophesyings in Queen Elizabeth's Time *Wholesome Severities*, is an Encouragement to use such Severities against the Protestant Dissenters now.

Can what was done in Queen Elizabeth's Time reflect on the Toleration? Can calling the Prosecutions by Queen Elizabeth against such as frequented Conventicles against the Law, and for which there was no Toleration; I say, can the calling such Prosecutions *Wholesome Severities*, reflect on this Toleration granted by Law? Or can it encourage a Prosecution against the Dissenters, who are intitled to the Benefit of the Toleration, and are exempt from the Penalties of the Laws?

The only Thing that can be inferr'd from what the Doctor says, in relation to the Wholesome Se-

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verities

verities is, That he intended to excite the Magistrates to put the Laws in Execution against such Dissenters as were excepted out of the Act of Toleration; and I am at a Loss to find how that can make him an Offender. For surely the Parliament never intended that any Person should have the Benefit of the Act of Toleration, that did not comply with the Terms and Conditions of it: And therefore when the Doctor presseth the Execution of the Laws against such as are not intitled to the Benefit of the Act, he seems to me rather to Vindicate than Reflect upon the Toleration. Great Offence hath been taken at the Words *Wholesome Severities* in the Doctor's Sermon; yet my Lords, I cannot think the Word *Wholesome* an improper Epithet for the Severities used by Queen Elizabeth against the Puritans; for Faction was then in its Infancy, Schism did but just begin to disturb the Church; and by the Severities of the Laws that were put in Execution, and the Courage, Learning, and Prudence of Archbishop Whitgift, a Stop was put to them. And, I presume, such Severities as suppress'd these bold and daring Crimes in their Infancy, may be called *Wholesome* without a *Catachresis*; and can never be construed to be a Suggestion, that the Toleration now granted by Law is unreasonable, or the Allowance of it unwarrantable.

As to that Part of the Second Article, which chargeth the Doctor with maintaining, *That it is the Duty of Superior Pastors to thunder out their Ecclesiastical Anathema's against Persons intitled to the Benefit of the Toleration*: The Doctor humbly apprehends there is nothing in his Sermon can be a just Foundation for that Charge.

The Sermon hath this Sentence, Page 25. *Let our Superior Pastors do their Duty, in thundering out their Ecclesiastical Anathema's; and let any Power on Earth dare reverse a Sentence ratified in Heaven.* This is an intire and independent Sentence, that doth not relate to any particular Person, or any particular Crimes, and does not mention the Persons intitled to the Benefit of the Toleration.

Nor can it be imagin'd that he should desire *Anathema's* to be thundered out against such Persons who he wisheth may enjoy the Toleration in the full Limits the Law hath prescrib'd. But the *Anathema's* must be intended to be against the Works of Darkness, Atheism, Prophaneness, Faction, and other enormous Crimes which are mentioned in the preceding Part of this Sermon, since it is not applied by him to any particular Sins or Offences.

The thundering *Anathema's*, is declaring those Judgments which are denounced in Scripture against Sin. And he desires the Superior Pastors of the Church to thunder out these *Anathema's*, because the greater the Authority is of the Person that declares these Judgments, the greater Influence they are like to have upon the Persons guilty of such Sins.

But if he had desir'd *Anathema's*, or *Excommunications*, (as they would infer) should be thundered out against Dissenters, yet it must be intended only against such as are not intitled to the Benefit of the Toleration; and since the Act of Indulgence leaves such Persons open to the Laws, it cannot be a Crime in the Doctor to press the Execution of the Laws against them.

For not to accept of the Toleration on the Terms offer'd by the Act, is what the Doctor calls *boisting the Toleration into an Establishment*, in despite of the Act, and setting up a Toleration of their own in Defiance of it.

As to the last Part of the Second Article, which charges, that the Doctor *insolently dares and defies any Power on Earth to reverse such Sentences*, which Sentences are there insinuated to be the Sentences, or *Anathema's*, given and thundered out by Superior Pastors; there are no such Words in the Doctor's Sermon: For, the Doctor's Words are, *Let any Power on Earth dare reverse a Sentence ratified in Heaven.* So that the bare Recital of the Doctor's Expression, is a sufficient Confutation of that Part of the Article.

For, if the Judgments or *Anathema's* denounced by Superior Pastors against Sin, are such as are denounced against such Sins in Scripture, such Sentences may truly be said to be ratified in Heaven: And if so, then no one can dare to think, that such Sentences, so ratified in Heaven, can be reversed by all the Powers on Earth united together. And therefore, the Doctor hopes it will not be thought Insolence, or a High Crime or Misdemeanor in him, to assert what he conceiv'd would be Blasphemy in any one to deny. This is what I humbly offer to your Lordships Consideration on this Article.

Mr. De. **M**Y Lords, I humbly beg the Favour of a few Words on this Article. It is divided into Three Parts. The first is concerning Toleration; the Charge against the Doctor is, That he has reflected on the Toleration as it is Established by Law. I crave Leave to take Notice, that on considering the whole Sermon, there are two distinct Tolerations mentioned in it; a Toleration that is Legal, (for so I call the Act of Indulgence) and a Toleration that is general; and we think that Distinction, well observed, will clear the Doctor of any Crime in this Particular. Where he reflects on Toleration, it is not the Legal Toleration, but the general; and if it will bear this Construction, you will not put the other upon it; for where he has taken Notice of a Legal Toleration, (which he hath done only in one Place of his Sermon) he is for extending it to the utmost Bounds; his Words are these, *I would not here be misunderstood, as if I intended to cast the least invidious Reflection upon that Indulgence the Government hath condescended to give them; which I am sure all those that wish well to our Church, are very ready to grant to Consciences truly Scrupulous; let them enjoy it in the full Limits the Law hath prescribed.* But where he speaks against Toleration, it is a Toleration of such enormous Crimes, as are not fit to be tolerated in any Christian Nation.

As to the Second Part of the Article, for reflecting on Archbishop Grindal, and thereby reflecting on the Toleration, it was given up on the other Side; and admitted, that, whether True or False, it was not material, and then surely that will hardly amount to a Crime. But, we shall be so far from giving up that Point, that we shall shew he was False to the Church at that Time; and it was a Crime in him, to give up the Discipline of the Church. No Laws were then made to indulge any Separation: And for the Head of the Church, under the Queen, to give up the Discipline of the Church, was a high Crime in him; and though it may be thought harsh, will bear the true Term of a False Brother.

As to the Third Part of the Article, the thundering out *Anathema's*, I would beg Leave to read that Part of the Doctor's Sermon, which, I hope, shall not be applied to those that are within the Legal Toleration. *Schism and Faction are Things of impudent*

udent and incroaching Natures, they thrive upon Concessions, take Permission for Power, and advance a Toleration immediately into an Establishment: (I hope the Dissenters will not take these Characters on themselves:) And are therefore to be treated like growing Mischiefs, or infectious Plagues, &c. Presently after follows, Let our Superior Pastors, do their Duty, in thundering out their Ecclesiastical Anathema's; and let any Power on Earth dare reverse a Sentence ratified in Heaven. Now, my Lords, I would beg Leave to say, that this is only Advice; and altho' the Doctor may be accounted pretty Pert, to give Advice to his Superior Pastors, that they ought to thunder out *Anathema's*; yet this cannot be construed to extend to them that are described in the Act of Toleration, those that could not conform to some Ceremonials by reason of Scrupulous Consciences, these could not be called Factious, but is meant of other People described in the Sermon. But if the Doctor had advised to thunder out *Anathema's* against Dissenters; (supposing, but not granting it) the Question would come to this Point, whether he was deceived in Point of Judgment or no: For, if they were Schismatics before, the Schism remains the same, notwithstanding the Toleration; and if it was Sin before the Act of Toleration, it is so still, notwithstanding the Act; and then his Advice to the Superior Pastors, is, to do that which is, (with Submission) their Duty to do, 'till prohibited by the Temporal Courts. My Lords, I shall mention one Case, that will shew you, that it is still Schism to separate from the Church, and that it is the Duty of Dissenters to Communicate with the Church. That was the Case of one Mr. Larwood: In *Hillary Term*, *sixto* of King William. An Information was exhibited against him, for refusing to take upon him the Office of Sheriff of the City of *Norwich*; he pleads he had not taken the Sacrament in Twelve Months; the Attorney replied, that he ought to have done it. He rejoins, that he was a Protestant Dissenter, and was excused by the Act for Toleration. There were two Points in the Case; the first was, whether it appear'd by the Information that the Defendant was duly elected; the other, whether the Plea in Bar was good, (for the whole Court held, that the Rejoinder was a Departure from the Bar, and that the Replication was insufficient); so that Judgment was to be given upon the Information, and the Plea in Bar. Samuel Eyre, Justice, was of Opinion with the Defendant as to both Points; my Lord Chief Justice Holt, and Mr. Justice Giles Eyre, were of Opinion against him as to both Points, and held the Bar to be insufficient, because it was only excusing of one Fault by another, which no Man shall be admitted to do; and they held, that the Duty of Communicating with the Church remain'd notwithstanding the Act of Toleration: And I submit it to your Lordships Consideration, whether, if it be a Duty to Communicate with the Church of England, it be not Schism to Separate from it. My Lords, I shall say no more to this Article, but submit it to your Lordships.

Dr. Henchman. MY Lords, We are now endeavouring to defend Doctor *Sacheverell* against the Charge contain'd in the Second Article of Impeachment, in the two first Clauses of which he is laid to suggest and maintain, That the Toleration granted by Law is unreasonable, and the Allowance of it unwarrantable: And to assert, That he is a False Brother with Relation to God, Religion

and the Church, who defends Toleration and Liberty of Conscience. But it has not been said by any of the Learned Managers on this Head, that either of those two Branches of this Article are expressly delivered in any Part of the Sermon preached at St. Paul's; but what is no where affirm'd, is said to be suggested, and this Charge is maintained by Inferences only, because there is no plain positive Proposition that it can be supported by.

My Lords, It is humbly hop'd, That if an Inference may be allowed as Proof to accuse him, an open Declaration will be heard in his Defence: If what another Man makes him say be thought Ground enough for an Accusation, then certainly what he himself openly declares will be esteemed something more than a dry Caution, and have its due Weight with your Lordships in his Vindication. I would therefore beg Leave to read a Passage where he explains himself, and plainly declares what his Thoughts are concerning the Indulgence granted by Law: This Passage is in the twentieth Page, where speaking of some wholesome Severities used in former Reigns, he adds, *I would not here be misunderstood, as if I intended to cast the least invidious Reflection upon that Indulgence the Government has condescended to give them, which I am sure all those that wish well to our Church are very ready to grant to Consciences truly scrupulous; let 'em enjoy it in the full Limits the Law has prescribed.*

My Lords, these Words are plain and express, and not capable of being misconstrued or misunderstood: Whether those Learned Gentlemen, who have applied some Parts of this Sermon to Purposes directly opposite to this plain Declaration, have misunderstood or misconstrued those Passages, must be submitted to your Lordships Judgment; but it seems hardly reconcileable, that the same Person in the same Discourse should declare, That all who wish well to the Church are ready to grant Indulgence to Consciences truly scrupulous; and at the same time maintain, That such Toleration is unreasonable, and the Allowance of it unwarrantable; that he should desire it may be enjoy'd in its full Latitude, and yet assert that he is a False Brother that defends it.

My Lords, This seeming Difficulty will be easily reconciled, by considering who those Persons are who are designed to be eased by the Act of Exemption, and who the False Brethren are, described by Doctor *Sacheverell* in this Sermon.

That Act, in the Preamble, is said to be intended for the Ease of scrupulous Consciences; one Sett of the False Brethren, mention'd in the Sermon, are Men of no Conscience at all; whether Dissenters, or such as profess themselves with Zeal to be of the established Church, but yet break her Communion by not obeying her Precepts.

That Act was intended for such only, as qualify themselves according to the Directions laid down in that Act; the False Brethren which the Doctor every where speaks of are such, and such only, as neither qualify themselves according to that Act, nor think themselves subject to the Penalties of former Acts.

This Act was intended in favour of such as either subscribe the Articles of Religion, excepting only the thirty fourth, thirty fifth and thirty sixth, some Part of the twentieth, and that Part of the twenty seventh which relates to Infant-Baptism; or else for such as subscribe a Profession of their Christian Belief in these Words; *I profess Faith in God the Father, and in Jesus Christ his Eternal Son the true*

true God, and in the Holy Spirit, one God blessed for evermore; and do acknowledge the Holy Scriptures of the Old and New Testament to be given by Divine Inspiration. These are the Qualifications required of such as will intitle themselves to the Benefit of this Act.

On the other hand, the False Brethren described by Doctor Sacheverell, are *Atheists, Deists, Tritheists, Socinians, Revilers of the Holy Scripture*, and such like. Are not Men of these Opinions False Brethren, with Relation to God and Religion? Or shall such Men be suffered to cover themselves under the Protection of an Act of Parliament, designed only for the Ease of scrupulous Consciences. That there are Men among us of these Principles, will be but too visible, from a Passage or two, which I beg Leave to lay before your Lordships from Books lately publish'd.

The first which I shall mention, is intitled, *A brief but clear Confutation of the Trinity*: If the Title itself has not given too much Offence to your Lordships, I will proceed to look into the Book it self; and in the Ninth Page there is this Proposition laid down, *The Divinity attributed to the Son and Holy Ghost is unscriptural and idolatrous*; and in Page the Tenth he goes on in these Words, *This one Fundamental False Principle, as well with Jews and Turks, as Heathens, has done more Mischief to Christianity than all other Errors besides*. These are such bare-fac'd Blasphemies as must make every Man's Ears tingle that hears them; and the Respect which is due to your Lordships, and this Assembly, makes me forbear instancing any Thing more from this Author: But he does not stand alone; out of many more of the like Sort I shall mention but one only, and

This is a Book, intitled, *The Rights of the Christian Church*; and the Author, in p. 108, lays down this Doctrine.

Among Christians one no more than another can be reckoned a Priest. And a little after, The Clerk has as good a Title to the Priesthood as the Parson.

Thus, my Lords, these two Men strike off our whole Religion at once; the Fundamental Doctrine of our Faith is destroyed by the first of 'em; and the Ministers, who are to support and defend that Doctrine, are set aside by the other.

If these and such like Opinions have any where prevailed, is it not high time that some wholesome Severities were used to stop the growing Contagion? Or, if the Superior Pastors of the Church should thunder out their Ecclesiastical *Anathemas* against the Authors and Abettors of such horrible Blasphemies, by what Construction can this be said to be done against Persons intitled to the Benefit of the Toleration?

But, my Lords, there is one Passage in this Sermon, which has been urg'd by the Learned Managers on this Head with more than ordinary Force, and as a direct Breach and Insult upon the Toleration; with your Lordships Patience, I shall endeavour to set that Passage in a true Light. It is in the Eighth Page: *Should any one, out of Ignorance or Prejudice to the antient Rights and essential Constitution of the Catholick Church affirm, that the Divine Apostolick Institution of Episcopacy is a novel Doctrine, not sufficiently warranted by Scripture, and that it is indifferent, whether the Church be governed by Bishops or Presbyters; is not such an one an Apostate from his own Orders?*

It was said, my Lords, that all those Dissenters who do not acknowledge the Divine Right of Episcopacy, and are therefore specially exempted by the

Act of Indulgence from Subscribing some of the Articles of Religion, and who are immediately under the Protection of that Act, are yet, in the End of this Paragraph, charged with being False Brethren, where he prays, *That God would deliver us from all such False Brethren*.

But, my Lords, it is plain, that these Words are not meant, nor can be construed, generally of Dissenters, who deny the Divine Institution of Episcopacy; but are intended peculiarly of such Persons as have themselves been Episcopally ordain'd; the first of these cannot be said to be Apostates from that Doctrine which they never owned, nor Subscribed to; the latter, who could not be admitted to their Orders 'till they had subscrib'd the receiv'd Doctrine of our Church, are the only Persons who can be said to be Apostates from their own Orders, if they deny that Divine Institution, by which they themselves had been Ordain'd, and consequently, the only Persons that are intended in this Passage, and term'd *False Brethren*.

My Lords, I shall not presume to say, what the Duty of the Superior Pastors of the Church is, when our Religion and Discipline is invaded by Atheists and Schismatics, much less to determine what Sentences justly pass'd by them on Earth, may be ratify'd in Heaven. Thus much I hope I may say without Offence, That the Spiritual Power of Church-Pastors, is not derived from the Civil Magistrate, but from God; that one Branch of that Power is the censuring of notorious Offenders, and excluding them from the Communion of the Church; and that this has in all Ages, in Fact, and of Right too, been exercised by the Pastors of the Church, by Permission of the Civil Magistrate. The Reverend and Learned Bench of Bishops well know, That before the Civil Magistrate did embrace the Christian Religion, the Pastors of the Church did inflict Spiritual Censures on Offenders, for doing such Things as the Imperial Edicts did not only permit, but command; and this Power of inflicting Censures on Persons exempted from Punishment by the Laws of the Land, has been always challeng'd, and is now exercised by the Reformed Churches abroad; and by the Rubrick of our own Liturgy, open and notorious Evil Livers are to be repell'd from the Lord's Table, until they have openly declar'd their Repentance and Amendment.

We are told by the Learned Managers, That in case any Ecclesiastical Judge should inflict an illegal Censure of Excommunication, the Temporal Courts may, and would soon give Relief, by sending forth a Prohibition. But, your Lordships will consider, that there is a wide and manifest Difference betwixt an Excommunication founded upon a Prosecution in the Ecclesiastical Courts, and the pronouncing Censures purely Spiritual. The external coercive Jurisdiction of Ecclesiastical Courts being derived from the Laws of the Land, may, and is frequently by those Laws restrain'd; but such Restraint does not hinder the Pastors of the Church from exercising the Spiritual Power of the Keys, which they derive not from the Laws of the Land, but from the Institution of Christ; and therefore tho' it be provided in the Act of Exemption, that Persons taking the Oaths, and making the Declaration in that Act mention'd, shall not be prosecuted in any Ecclesiastical Court for not conforming to the Church of England, yet it is not by that Act express'd or intended that Non-conformity to the Established Church should no longer be looked upon as Schism; or that

that Separatists may not, by the Pastors of the Church, be pronounced Schismatical. If Separatists from the Church of *England* were guilty of Schism before the Act of Exemption, they are as much guilty of it since; the Laws of the Land which require Conformity, being not by that Act repeal'd, tho' the Transgressors of those Laws are released from those Pains and Penalties to which they were before obnoxious: But were the Laws of the Land which require Conformity to the Church of *England* expressly or virtually repeal'd; yet whilst the Laws of God requiring Church-Unity, and forbidding Schism, are uncancell'd, and remain in their full Force, those who make causeless and unnecessary Divisions are still guilty of Schism, and may, by the Pastors of the Church be censur'd as such.

My Lords, I shall add but one Word in relation to Archbishop *Grindal*, not to disturb his Ashes, or blacken his Character, but to vindicate the Memory of that Glorious Queen, under whose Displeasure he died.

It was said, my Lords, that the true Ground of that Archbishop's Suspension, was partly because he would not give up his Manor of *Lambeth* to the Earl of *Leicester*; and partly because he had censur'd one *Julio* an *Italian* for an illegal Marriage. Had these been the known Reasons of his Suspension, he would have had just Cause to complain loudly of that Censure; but without entering into the Secret History of that Reign, I shall put the whole Matter upon that Archbishop's own Sentiments, both as to the Cause of his Suspension, and the Justice of it.

By the Account which is yet extant under his own Hand it appears, that there were in those Days Men of a Fanatical Spirit that call'd themselves *Prophe-siers*; that that Archbishop had been order'd by the Queen and Council to suppress such Exercises within his Province, as contrary to the Laws of the Land, and the Establish'd Discipline of the Church; but this Archbishop thought fit not only to delay, but absolutely to refuse to join in suppressing those Exercises; and for this Disobedience to the lawful Commands of his Sovereign he was suspended.

My Lords, His own Words which he uses upon this Occasion are very remarkable, when he applies to the Council to intercede with her Majesty to be restor'd to her gracious Favour, viz.

And whereas I have sustain'd the Restraint of my Liberty, and the Sequestration of my Jurisdiction, now by the Space of Six Months; I am so far from repining thereat, or thinking my self injuriously or hardly dealt withal therein at her Majesty's Hands, that I do thankfully embrace, and frankly, with all Humility, acknowledge her Princely and Gracious Care and Clemency towards me, who having Authority and Power to have used greater and sharper Severity against me, and for good Policy and Example thinking it so expedient, hath notwithstanding dealt so mercifully, mildly and gently with me.

My Lords, In this Letter that Archbishop frankly acknowledges that he had given Offence, and was, for good Policy and Example, justly punished by her Majesty; but had it been known that he was suspended for not tamely parting with the Revenues of his See, or for pronouncing a Sentence in a Court of Justice against an unlawful Marriage, there could have been no Reason for him to have acknowledged the Justice of his Suspension; neither could it be for good Policy and Example expedient, that he should be punished for not alienating the Revenues

of his Church, or for not pronouncing *Julio's* Marriage with another Man's Wife lawful.

Mr. *Dodd*. We shall spend a little of your Lordships Time in reading to this Head; we shall only read the Toleration-Act, to shew the Exception in it; and offer the Archbishop's Letter to the Council; and the Queen's Letter to the Bishops. We have the Letters of *Calvin* and *Beza*; but I believe we shall not have occasion to read them, but only the other Three. The first is the Act of Toleration.

Clerk reads.] Anno Primo Gulielmi & Mariæ.
An Act for Exempting their Majesties Protestant Subjects, Dissenting from the Church of England, from the Penalties of certain Laws.

‘ **F**Orasmuch as some Ease to scrupulous Consciences in the Exercise of Religion may be an effectual Means to unite their Majesties Protestant Subjects in Interest and Affection,

‘ Be it Enacted by the King and Queen's most Excellent Majesties, by and with the Advice and Consent of the Lords Spiritual and Temporal, and the Commons in this present Parliament Assembled, and by the Authority of the same, That neither the Statute made in the Three and twentieth Year of the Reign of the late Queen *Elizabeth*, intitled, *An Act to retain the Queen's Majesty's Subjects in their due Obedience*: Nor the Statute made in the Twenty ninth Year of the said Queen, intitled, *An Act for the more speedy and due Execution of certain Branches of the Statute made in the Three and twentieth Year of the Queen's Majesty's Reign, viz.* The aforesaid Act; nor that Branch or Clause of a Statute made in the First Year of the Reign of the said Queen, intitled, *An Act for the Uniformity of Common Prayer, and Service in the Church, and Administration of the Sacraments*; whereby all Persons, having no lawful or reasonable Excuse to be absent, are required to resort to their Parish Church or Chapel, or some usual Place where the Common Prayer shall be used, upon Pain of Punishment by the Censures of the Church, and also upon Pain that every Person so offending shall forfeit for every such Offence Twelve-pence: Nor the Statute made in the Third Year of the Reign of the late King *James* the First, intitled, *An Act for the better Discovering and Repressing Popish Recusants*: Nor that other Statute made in the same Year, intitled, *An Act to prevent and avoid Dangers which may grow by Popish Recusants*: Nor any other Law or Statute of this Realm made against Papists or Popish Recusants, except the Statute made in the Five and twentieth Year of King *Charles* the Second, intitled, *An Act for preventing Dangers which may happen from Popish Recusants*; and except also the Statute made in the Thirtieth Year of the said King *Charles* the Second, intitled, *An Act for the more effectual preserving the King's Person and Government, by disabling Papists from sitting in either House of Parliament*; shall be construed to extend to any Person or Persons Dissenting from the Church of *England*, that shall take the Oaths mention'd in a Statute made in this present Parliament, intitled, *An Act for removing and preventing all Questions and Disputes concerning the Assembling and Sitting of this present Parliament*: And shall make and subscribe the Declaration mentioned in a Statute made in the Thirtieth Year of the Reign of King *Charles* the

the Second, intituled, *An Act to prevent Papists from sitting in either House of Parliament.* Which Oaths and Declaration, the Justices of Peace at the General Sessions of the Peace to be held for the County or Place where such Person shall live, are hereby required to render and administer to such Persons as shall offer themselves to take, make, and subscribe the same, and thereof to keep a Register. And likewise none of the Persons aforesaid, shall give or pay as any Fee, or Reward to any Officer, or Officers belonging to the Court aforesaid, above the Sum of six Pence, nor that more than once, for his or their Entry of his taking the said Oaths, and making and subscribing the said Declaration. Nor above the further Sum of six Pence for any Certificate of the same to be made out, and signed by the Officer or Officers of the said Court.

And be it further enacted by the Authority aforesaid, That all and every Person and Persons already convicted, or prosecuted in order to Conviction of Recusancy, by Indictment, Information, Action of Debt, or otherwise, grounded upon the aforesaid Statutes, or any of them, that shall take the said Oaths mentioned in the said Statute made this present Parliament, and make and subscribe the Declaration aforesaid, in the Court of *Exchequer*, or Assizes, or General or Quarter-Sessions to be held for the County where such Person lives, and to be thence respectively certified into the *Exchequer*, shall be thenceforth exempted and discharged from all the Penalties, Seizures, Forfeitures, Judgments and Executions, incurred by Force of any the aforesaid Statutes, without any Composition, Fee, or further Charge whatsoever.

And be it further enacted by the Authority aforesaid, That all and every Person and Persons that shall as aforesaid, take the said Oaths, and make and subscribe the Declaration aforesaid, shall not be liable to any Pains, Penalties, or Forfeitures, mentioned in an Act made in the Five and thirtieth Year of the Reign of the late Queen *Elizabeth*, intituled, *An Act to retain the Queen's Majesty's Subjects in their due Obedience*: Nor in an Act made in the Two and twentieth Year of the Reign of the late King *Charles* the Second, intituled, *An Act to prevent and suppress Seditious Conventions.* Nor shall any of the said Persons be prosecuted in any Ecclesiastical Court, for or by Reason of their Nonconforming to the Church of *England*.

Provided always, and be it enacted by the Authority aforesaid, That if any Assembly of Persons, dissenting from the Church of *England*, shall be had in any Place for Religious Worship, with the Doors locked, barred or bolted, during any Time of such meeting together, all and every Person or Persons that shall come to and be at such Meeting, shall not receive any Benefit from this Law, but be liable to all the Pains and Penalties of all the aforesaid Laws recited in this Act for such their Meeting, notwithstanding his taking the Oaths, and his making and subscribing the Declaration aforesaid.

Provided always, that nothing herein contained shall be construed to exempt any of the Persons aforesaid from paying of Tythes or other Parochial Duties, or any other Duties to the Church or Minister; nor from any Prosecution in any Ecclesiastical Court or elsewhere for the same.

And be it further enacted by the Authority aforesaid, That if any Person dissenting from the

Church of *England*, as aforesaid, shall hereafter be chosen or otherwise appointed to bear the Office of High Constable, or Petit Constable, Churchwarden, Overseer of the Poor, or any other Parochial or Ward-Office, and such Person shall scruple to take upon him any of the said Offices in regard of the Oaths, or any other Matter or Thing required by the Law to be taken or done in respect of such Office, every such Person shall and may execute such Office or Employment by a sufficient Deputy, by him to be provided, that shall comply with the Laws on this Behalf.

Provided always, the said Deputy be allowed and approved by such Person or Persons, in such Manner as such Officer or Officers respectively should by Law have been allowed and approved.

And be it further enacted by the Authority aforesaid, That no Person dissenting from the Church of *England*, in holy Orders, or pretended holy Orders, or pretending to holy Orders, nor any Preacher or Teacher of any Congregation of Dissenting Protestants, that shall make and subscribe the Declaration aforesaid, and take the said Oaths at the General or Quarter-Sessions of the Peace, to be held for the County, Town, Parts or Division where such Person lives; which Court is hereby impowered to administer the same; and shall also declare his Approbation of, and subscribe the Articles of Religion, mentioned in the Statute made in the Thirteenth Year of the Reign of the late Queen *Elizabeth*, except the Thirty fourth, Thirty fifth, and Thirty sixth, and these Words of the twentieth Article, *viz. [The Church hath Power to decree Rites or Ceremonies, and Authority in Controversies of Faith]* and yet shall be liable to any of the Pains or Penalties mentioned in an Act made in the Seventeenth Year of the Reign of King *Charles* II. intituled, *An Act for restraining Nonconformists from inhabiting in Corporations*; nor the Penalties mentioned in the aforesaid Act made in the Two and twentieth Year of his said late Majesty's Reign, for or by reason of such Persons preaching at any Meeting for the Exercise of Religion; nor to the Penalty of One hundred Pounds, mentioned in an Act made in the Thirteenth and Fourteenth of King *Charles* II. intituled, *An Act for the Uniformity of publick Prayers, and Administration of Sacraments, and other Rites and Ceremonies; and for establishing the Form of Making, Ordaining, and Consecrating of Bishops, Priests, and Deacons in the Church of England*, for officiating in any Congregation for the Exercise of Religion, permitted and allowed by this Act.

Provided always, That the making and subscribing the said Declaration, and the taking the said Oaths, and making the Declaration of Approbation and Subscription to the said Articles, in Manner as aforesaid, by every respective Person or Persons herein before mentioned, at such General or Quarter-Sessions of the Peace as aforesaid, shall be then and there entred of Record in the said Court, for which Six-pence shall be paid to the Clerk of the Peace, and no more.

Provided, That such Person shall not at any Time preach in any Place, but with the Doors not locked, barred or bolted, as aforesaid.

And whereas some Dissenting Protestants scruple the Baptizing of Infants; Be it enacted by the Authority aforesaid, That every Person in pretended holy Orders, or pretending to holy Orders, or Preacher, or Teacher, that shall subscribe the

the aforefaid Articles of Religion, (except before excepted, and alfo except Part of the Seven and twentieth Article, touching *Infant-Baptifm*) and fhall take the faid Oaths, and make and fubfcribe the Declaration aforefaid, in manner aforefaid, every fuch Perfon fhall enjoy all the Privileges, Benefits and Advantages, which any other Diffenting Minifter, as aforefaid, might have or enjoy by virtue of this Act.

And be it further enacted by the Authority aforefaid, That every Teacher or Preacher in Holy Orders, or pretended Holy Orders, that is a Minifter, Preacher or Teacher of a Congregation, that fhall take the Oaths herein required, and make and fubfcribe the Declaration aforefaid, and alfo fubfcribe fuch of the aforefaid Articles of the Church of *England*, as are required by this Act in manner aforefaid, fhall be thenceforth exempted from ferving upon any Jury, or from being chofen or appointed to bear the Office of Church-Warden, Overfeer of the Poor, or any other Parochial or Ward-Office, or other Office in any Hundred, of any Shire, City, Town, Parifh, Divifion or Wapentake.

And be it further enacted by the Authority aforefaid, That every Juftice of the Peace may at any Time hereafter require any Perfon, that goes to any Meeting for Exercife of Religion, to make and fubfcribe the Declaration aforefaid, and alfo to take the faid Oaths, or Declaration of Fidelity herein after mentioned, in cafe fuch Perfon fcruples the taking of an Oath; and upon Refufal thereof, fuch Juftice of the Peace is hereby required to commit fuch Perfon to Prifon without Bail or Mainprize; and to certify the Name of fuch Perfon to the next General or Quarter Sessions of the Peace to be held for that County, City, Town, Part or Divifion where fuch Perfon then refides: And if fuch Perfon fo committed, fhall, upon a Second Tender at the General or Quarter Sessions, refufe to make and fubfcribe the Declaration aforefaid, fuch Perfon refufing fhall be then and there recorded; and he fhall be taken thenceforth, to all Intents and Purpofes, for a Popifh Recufant Convict, and fuffer accordingly, and incur all the Penalties and Forfeitures of all the aforefaid Laws.

And whereas there are certain other Perfons, Diffenters from the Church of *England*, who fcruple the taking of any Oath; Be it enacted by the Authority aforefaid, That every fuch Perfon fhall make and fubfcribe the aforefaid Declaration, and alfo this Declaration of Fidelity following; *viz.*

I A. B. do Sincerely Promise, and Solemnly Declare before God and the World, that I will be True and Faithful to King William and Queen Mary; and I do solemnly profefs and declare, that I do from my Heart abhor, deteft and renounce, as impious and heretical, that damnable Doctrine and Pefition, That Princes Excommunicated, or deprived by the Pope, or any Authority of the See of Rome, may be depofed or murdered by their Subjects, or any other whatfoever. And I do declare, That no Foreign Prince, Perfon, Prelate, State or Potentate, hath, or ought to have, any Power, Jurifdiction, Superiority, Preeminence or Authority, Ecclefiaftical or Spiritual, within this Realm.

And fhall fubfcribe a Profefsion of their Chriftian Belief, in thefe Words;

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I A. B. profefs Faith in God the Father, and in Jesus Chrift his Eternal Son, the True God, and in the Holy Spirit, One God blessed for evermore; and do acknowledge the Holy Scriptures of the Old and New Testament to be given by Divine Inspiration.

Which Declarations and Subscription fhall be made, and entred of Record, at the General or Quarter Sessions of the Peace for the County, City, or Place where every fuch Perfon fhall then refide. And every fuch Perfon that fhall make and fubfcribe the Two Declarations and Profefsion aforefaid, being thereunto required, fhall be exempted from all the Pains and Penalties of all and every the aforementioned Statutes made againft Popifh Recufants, or Protestant Nonconformifts; and alfo from the Penalties of an Act made in the Fifth Year of the Reign of the late Queen *Elizabeth*, entitled, *An Act for the Affurance of the Queen's Royal Power, over all Estates and Subjects within Her Dominions*; for or by reason of fuch Perfons not taking, or refufing to take the Oath mentioned in the faid Act; and alfo from the Penalties of an Act made in the Thirteenth and Fourteenth Years of the Reign of King *Charles II.* entitled, *An Act for preventing Mifchiefs that may arife by certain Perfons (called Quakers) refufing to take Lawful Oaths*; and enjoy all other the Benefits, Privileges and Advantages, under the like Limitations, Provifos and Conditions, which any other Diffenters fhall, or ought to enjoy by virtue of this Act.

Provided always, and be it enacted by the Authority aforefaid, That in cafe any Perfon fhall refufe to take the faid Oaths, when tender'd to them, which every Juftice of the Peace is hereby empowered to do, fuch Perfon fhall not be admitted to make and fubfcribe the Two Declarations aforefaid, tho' required thereunto either before any Juftice of the Peace, or at the General or Quarter Sessions, before or after any Conviction of Popifh Recufancy, as aforefaid, unlefs fuch Perfon can within Thirty one Days after fuch Tender of the Declarations to him, produce Two fufficient Protestant Witneffes, to testify upon Oath, that they believe him to be a Protestant Diffenter, or a Certificate under the Hands of Four Protestants who are conformable to the Church of *England*, or have taken the Oaths, and fubfcribed the Declaration above-mentioned; and fhall alfo produce a Certificate under the Hands and Seals of Six, or more, fufficient Men of the Congregation to which he belongs, owning him for one of them.

Provided alfo, And be it enacted by the Authority aforefaid, That until fuch Certificate under the Hands of Six of his Congregation (as aforefaid) be produced, and Two Protestant Witneffes come to attelt his being a Protestant Diffenter, or a Certificate under the Hands of four Protestants (as aforefaid) be produced, the Juftice of the Peace fhall, and hereby is required to take a Recognizance with Two Sureties, in the Penal Sum of Fifty Pounds, to be levied of his Goods and Chattels, Lands and Tenements, to the Ufe of the King and Queen's Majelties, their Heirs and Succelfors, for his producing the fame; and if he cannot give fuch Security, to commit him to Prifon, there to remain until he has produced fuch Certificates, or Two Witneffes, as aforefaid.

5 E

Provided

‘ Provided always, And it is the true Intent and Meaning of this Act, That all the Laws made and provided for the frequenting of Divine Service on the Lord’s Day, commonly call’d *Sunday*, shall be still in force, and executed against all Persons that offend against the said Laws; except such Persons come to some Congregation, or Assembly of Religious Worship, allowed or permitted by by this Act.

‘ Provided always, And be it further enacted by the Authority aforesaid, That neither this Act, nor any Clause, Article, or Thing herein contained, shall extend, or be construed to extend, to give any Ease, Benefit or Advantage, to any Papist, or Popish Recusant whatsoever; or any Person that shall deny, in his Preaching or Writing the Doctrine of the Blessed Trinity, as it is declared in the aforesaid Articles of Religion.

‘ Provided always, And be it enacted by the Authority aforesaid, That if any Person or Persons, at any Time or Times after the Tenth Day of *June*, do and shall, willingly and of purpose, maliciously or contemptuously, come into any Cathedral or Parish Church, Chapel, or other Congregation permitted by this Act, and disquiet or disturb the same, or misuse any Preacher or Teacher; such Person or Persons, upon Proof thereof before any Justice of Peace, by Two or more sufficient Witnesses, shall find Two Sureties, to be bound by Recognizance in the Penal Sum of Fifty Pounds; and in Default of such Sureties, shall be committed to Prison, there to remain till the next General or Quarter Sessions; and upon Conviction of the said Offence at the said General or Quarter Sessions, shall suffer the Pain and Penalty of Twenty Pounds, to the Use of the King and Queen’s Majesties, their Heirs and Successors.

‘ Provided always, That no Congregation or Assembly for Religious Worship, shall be permitted or allowed by this Act, until the Place of such Meeting shall be certified to the Bishop of the Diocese, or to the Archdeacon of that Archdeaconry, or to the Justices of the Peace, at the General or Quarter Sessions of the Peace, for the County, City, or Place in which such Meeting shall be held, and registred in the said Bishop’s or Archdeacon’s Court respectively, or recorded at the said General or Quarter Sessions; the Register or Clerk of the Peace whereof respectively, is hereby required to register the same, and to give Certificate thereof to such Person as shall demand the same; for which there shall be no greater Fee nor Reward taken, than the Sum of Six Pence.

Mr. Dodd. The next is the Queen’s Letter to the Bishops: We have it from the *Cotton Library*, and a Person here, that has the Custody of it, and proves it a True Copy.

Then Mr. Rawlinson was Sworn.

Mr. Dodd. Pray give my Lords an Account, whether you examin’d that Paper; and where: and whether it be a True Copy.

Rawlinson. I examin’d it in the *Cotton Library*, and (Errors excepted) I believe it a True Copy.

Mr. Dodd. Do you believe it to be a True Copy?

Rawlinson. Yes, I do believe it.

‘ Clerk reads] ‘ *A Letter from the Queen’s Majesty, sent to the Bishops through England, for the suppressing of the Exercise called Prophecying.*

RIGHT Reverend Father in God, Cotton Library, Cleopatra, F. 2.
We greete you well. We hear fol 287, 288, 289.
to our great Griefe, that in sundry Parts of our Realme there are no small Numbers of Persons presuming to be Teachers, and Preachers of the Church, tho’ neither lawfull thereunto called, no yet for the same, which contrary to our Laws established for the publique Devine Service of Almighty God, and the Administration of his holie Sacrement within this Church of *England*, doe dailie devise, imagine, propound and put in execution sundrie new Rites and Forms in the Church, as well by their preaching, readings, and ministring the Sacraments, as well by procureing unlawful Assemblies of a great Number of our People out of either their ordinary Parishes, and from Place far distant; and that also of some of good-will, calling (though therein not well advised) to be Hearers of their Disputations, and new devised Opinions upon points of Devinities, farre and unmete of unlarge People; which manner of Invasions they in some places call Propheciings, and in some other places Exercises. By which manner of Assemblies great Numbers of our People, especially the vulgar sort, meete to be otherwise ouccupied with honest Labour for there Livinge, are brought to Idleness, and seduced, and in a manner schismatically divided amongst themselves into varietie of dangerous Opinions, not only in Towns and Parishes, but even in some Families; and manifestly thereby incorraged to the Violation of our Laws, and to the Breach of common Order, and finalie to the Offence of all our quiett Subjects that desire to serve God according to the uniforme Orders off established in the Church, wherof the Sequele cannot be but over-dangerous to be suffered. Wherefore, considering it should be the Duty of the Bishoppes, being the principal ordinary Officers in the Church of God, as you are one, to see this Dishonors against the Honor of God, and the Quietnes of the Church reformed: And that we see that by the Increase of these, through Sufferance, great danger may ensue even to the decay of the Cristianne Faith, whereof we are by God appointed the Defendor; besides the other Inconveniencies, to the disturbance of our peaceable Government. We therefore, according to Authoritie we have, do Charge and Command you, as the Bishopp of that Dyocesse, with all manner of Diligence, to take Order through your Diocesse, as well in Places exempt as otherwise; that no manner of Publique and Devine Service, nor other Form of th’ Administration of the Holy Sacraments, nor any other Rightes or Ceremonies be in any sort used in the Church, but directlie according to the Orders established by our Laws. Nether that any manner of Person be suffred within your Diocesse to preach, teach, read or ani exercise any Function in the Church, but such as shall be lawfully Approved and Licensed, as Persons able for their Knowledge, and conformable to the Ministrie in the Rites and Ceremonies of the Church of *England*. And where there shall not be sufficient able Persons for Learning in any Cures, to preach or instruct their Cures as were requiset, there shall you

‘ you lymitte the Curates to read the publique
 ‘ Homlines, according to the Injunctions heretofore
 ‘ by us given for like Causes: And furthermore
 ‘ considering, for the great Abuse that have byn in
 ‘ fundrie Places of our Realme, by reason of our
 ‘ forsaide Assemblies called Exercises, and for that the
 ‘ same are not, nor have not been Appointed nor
 ‘ Warranted by us or by our Laws, we Will and
 ‘ straightlie Charge you, that you do charge the
 ‘ same forthwith to cease, and not to be used: But
 ‘ if any shall attempt, or continew or renew the
 ‘ same, We will you not onlie to committe there-
 ‘ unto Prison, as Maynteyners of Disorders, but al-
 ‘ so to advertise Us or our Counsaile of the Names
 ‘ and Qualities of them, and of their Mayntainers
 ‘ and Abbettors, that thereupon for better Example
 ‘ their Punishment may be more sharp for their Re-
 ‘ formation. And in these things we charge you to
 ‘ be so careful and villiant, as by your Negligence if
 ‘ we should hear of any Person attempting to fend
 ‘ in the Premisses without your Correccion or In-
 ‘ formation to us, we be not forced to make some
 ‘ Example or Reformation of you, according to
 ‘ your Deserts.

*Given under our Signet, at our Mannor of
 Greenwich, the 7th of May, 1577.*

Mr. *Phipps*. Your Lordships observe, this is a
 Letter from Queen *Elizabeth* to the Bishops, taking
 Notice of the Danger that might arise from the Pro-
 phesyings, and directs them to take care to suppress
 those unlawful Assemblies; and now we will read to
 your Lordships the Letter from the Archbishop to
 the Council, wherein he tells them, that he could
 not comply with Her Majesty's Command.

Clerk reads.]

To the Lords of the Privy-Council.

‘ **R**IGHT Honorable and my singuler good
 ‘ Lords; I cannot deny but that I have been
 ‘ commanded both by the Quenes Majestie her
 ‘ self, and also by divers of your Honorable Lord-
 ‘ ships in Her Name, to suppress all those Exercis-
 ‘ es within my Province, that are commonly called
 ‘ Prophecies; but I do protest before God, the Judge
 ‘ of all Hartes, that I did not of any Stubberness
 ‘ or Wilfulness refuse to Accomplish the same, but
 ‘ onely upon Conscience; for that I found such
 ‘ kind of Exercise set down in the Holie Scriptures,
 ‘ and the use of the same to have contynued in
 ‘ the Primitive Church, and was perswaded that
 ‘ (the Abuses being reformed which I always offer'd
 ‘ myself ready to Labour in) the said Exercise might
 ‘ yet serve to the great Profit of the Church, and
 ‘ feared that the utter suppressing of them would
 ‘ breed Offence, and therefore was a most humble
 ‘ Suter unto Her Majestie, that I might not be
 ‘ made the chiefe Instrument in suppressing the
 ‘ same: Yet not prejudicing or condemning any
 ‘ that in respect of Pollicie or otherwise should be
 ‘ of contrary Judgment, or being of Authority,
 ‘ should suppress them: For I know right well, that
 ‘ there be some things of that Nature, wherein di-
 ‘ verse Men may be of diverse Opinions, and abownd
 ‘ in their owne Sense, (being not repugnant to the
 ‘ Analogie of Faith) without any Prejudice to the
 ‘ their Salvation, or any Prejudice of ether to other.
 ‘ Notwithstanding however others being other-
 ‘ wise perswaded, might safely do yt; yet I
 ‘ thought it not safe for me (being so perswaded
 ‘ in Minde) to be the Doer of that whereof my
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‘ own Heart and Conscience would condemn me.
 ‘ And whereas I have susteyned the Restraint of my
 ‘ Libertie, and Sequestration of my Jurisdiction
 ‘ nowe by the space of six Monethes, I am so farre
 ‘ from Repining thereat, or thinkinge my self in-
 ‘ juriouly or hardlie dealt withal therein at Her
 ‘ Majesties Hands, that I do thankfully Embrace,
 ‘ and franklie, with all Humilite, acknowledge her
 ‘ Princely, Gracious, and Rare Clemencie towards
 ‘ me, who having Authoritie and Power to have
 ‘ used greater and sharper Severitie againste me,
 ‘ and for good Pollicie and Example thinking it so
 ‘ expedient, hath notwithstanding dealt so merci-
 ‘ fullie, myldelye, and gentlie with me. But the
 ‘ greatest Griefe that ever I have had or have, is the
 ‘ Loss of Her Majesties Favour, and the susteyninge
 ‘ of the Displeasure of so gracious a Sovereigne,
 ‘ by whom the Church and Realm of *Englande* hath
 ‘ been so longe and so happilie Governed; and by
 ‘ whom my self privatelie and speciallie above other
 ‘ Subjects have received so many and so great Be-
 ‘ nefitts above all my Deservings, for the recovery
 ‘ of whose gracious Favour, I most humbly beseech
 ‘ your Lordships to be a meanes to Her Majestie for
 ‘ me: The which obeyned, I shall esteeme far a-
 ‘ bove all worldly Benefits whatsoever. And I pro-
 ‘ test here before God and your Honours, that not
 ‘ onely my dewtifull and humble Obedience to
 ‘ Her Majestie shall be suche, as She shall have no
 ‘ Cause to Repente Her of Her graciouse Goodness
 ‘ and Clemencie shewed unto me; but also that
 ‘ by moste fervente, heartie, and dailie Prayer (as
 ‘ I have done hitherto) so I will contynew, accor-
 ‘ ding to my bownden Dewtie, to make moste
 ‘ earneste Sute unto Almighty God for the longe
 ‘ Preservation of Her Majesties most happie Raigne,
 ‘ to the unspeakable Benefitt of the Church and
 ‘ Realm of *England*, &c.’

29 Novemb.
 1577.

EDM. CANTUAR.

Mr. *Dodd*. We hope these Two Letters have set
 that Matter in a true Light, that the Reason of the
 Archbishop's Disgrace was, for not complying with
 the Commands of the Queen. We will add no more
 upon this Article, but proceed to the Third.

Mr. *Phipps*. My Lords, The Dates of these Let-
 ters are Material; for your Lordships take notice,
 they were written in the Year 1577; and Her Ma-
 jesty's Commands for suppressing the Prophecysings
 not being obeyed, the *Puritans* in few Years became
 so dangerous, that the Parliament was necessitated
 to make the Act of the 35th Year of Her Reign,
 (with those severe Penalties, which have been so
 much censured by one of the Learned Managers)
 to give a Check to them.

Mr. *Dodd*. **M**Y Lords, The Third Article that
 the Doctor is charged with, is,
 That he does suggest and assert, That the Church of
 England is in a Condition of great Peril and Adver-
 sity under Her Majesty's Administration; And that,
 in order to arraign and blacken the Vote or Resolution
 of both Houses of Parliament, approved by Her Ma-
 jesty, be, in Opposition thereto, does suggest the Church
 to be in Danger. And, my Lords, this we take the
 Liberty totally to deny: the Doctor asserts no such
 Thing in his Sermon, nor hath it (as we apprehend)
 been proved upon him.

But true it is, that he asserts That when National
 Sins are ripened to Maturity, with other Immoralities

ties and Irreligious Practices therein mentioned, then such a People and Church are in very great Danger, as we apprehend, from the Sins and Vices of wicked Men. My Lords, This we conceive no ways to be opposite to the Votes of the Two Houses of Parliament, nor to Her Majesty's Declaration: We think we have followed the Act of Parliament of the 9th and 10th of King *William*, for suppressing Blasphemy and Prophaneness, and other Acts of Parliament, in asserting this Matter. It must be agreed, that the Church, as a Church Militant, is always in Danger, till it is a Church Triumphant: It is always taken Notice so to be; she has many Enemies; she ought to be always on her Guard and Watch, and all good People ought to pray for her Support. The Prayers directed by Her Majesty to be used, and that are used in all Churches, are, *That no Sedition may disturb the State, nor Schism distract this Church*; and that we all ought to lay it to Heart, how great Dangers we are in by our unhappy Divisions: These are the Prayers that are put up every Day in the Churches. Now to object from this, that we look on the Church to be in Danger under Her Majesty's Administration, is so directly contrary to what the Doctor has asserted in his Sermon, wherein he does, as a good and loyal Subject, pray, and pray heartily for the Best of Queens, *that she may long live for the Comfort and Support of this Church and Nation*; after this, one would think, when he has so positively laid it down in plain Words, there could be no Ground to quarrel with him on this Head. And as to that which was urged by one of the Gentlemen Managers for the House of Commons, observing that the Doctor's Expressions were taken out of the *Lamentations*, and that when the *Lamentations* were written, the King was a Prisoner, and the People in Captivity; and therefore the Doctor intended the Parallel to answer the present Times; surely no such Inference can be drawn from these Passages: I hope the People are in no Captivity whatsoever; nor is our Queen (blessed be God) a Prisoner. And if it was intended by the Gentleman Manager, (as I suppose it was) that the Doctor herein meant the *Pretender*; the Doctor utterly denies it, and has all along disclaimed his Right, and asserted Her Majesty's Right in very express Terms. But in this Place cited by the Doctor, is represented the Prophet's Lamentation for the Sins of the People, and the Judgments that had overtaken the *Jews* for their Sins and Rebellion. The like Prayers may be observed to have been made by King *David*, and yet the Church of the *Jews* was in the greatest Prosperity in his Time: However, there is scarce a *Psalms* but he laments the Sins of the People, for fear lest they should bring down Judgments on the *Jewish* Church and State. This is pathetically expressed almost throughout all the *Psalms*.

As to the Allegation, That the Members of both Houses were Conspiring the Ruin of the Church, he totally denies it; nor has the Doctor, in all his Sermon, mentioned the Votes of the Two Houses: Therefore for the Article to charge the Doctor with asserting, *That the Members of both Houses, who pass'd the Vote relating to the Danger of the Church, were Conspiring her Ruin, when they Voted her out of Danger*, is a mistaken Fact. That Vote was almost Four Years ago. There could be no Reason to think he reflected on that Vote; nor is there any Thing that can induce your Lordships (as we humbly apprehend) in the Doctor's Sermon, to believe such a Charge. The Passage in the Doctor's Ser-

mon relates to the Wars in the late Times: And as in those Days there were many ill Men, and God permitted them to bring their ill Designs about; so it is plain, that there were many good Men innocent, as my Lord *Clarendon* expresses it, that had no such ill Designs. Now, when your Lordships and the Commons pass'd that Vote, no doubt it was a just Vote, and gave a great Satisfaction: But no body could expect that Passage to be turned on the Doctor, as a Reflection on your Lordships, the Commons, and Her Majesty, in relation to that Vote. But what he reflects upon is quite another Thing: He takes notice, that the Church is in Danger from evil Men, from evil Practices, and evil Books that are daily published. We hope your Lordships will not take it, that when we urge this, we intend to reflect either on the Pastors of the Church, or the Ministry of the Queen; for it would be hard, that they should be answerable for all those Pamphlets. But when such are published to poison the Notions of the People, and a Minister in the Pulpit takes Notice of them, to prevent the ill Consequences of them; whether this can have such a Construction as has been contended for, we may safely submit to your Lordships. The now asserting the Christian Faith to be in Danger by Vice and Irreligion, cannot be contrary to the Votes in the Articles alledged, nor affect him, who makes the Assertion, with any Crime, or (as we think) subject him to any Punishment.

My Lords, We shall be the shorter in opening this Article, because we fear we shall be very long in our Evidence upon this Head; we shall produce and give in Evidence several Books that daily come out, which contain the highest Blasphemy, Irreligion and Heresy that can be published. I will not take upon me to open them, they are so horrid, I leave the Passages to be read, that your Lordships may see what Grounds there are for a Preacher in the Pulpit to take Notice of these Matters. When the Church is run down, the Clergy vilify'd; when they tell us a grey Coat has as much Authority to administer the Sacrament as a black Coat; and that a Country-Man may make as good a Priest as the Parson of the Parish: These Things may excuse the Zeal of the Doctor in so warmly Reprehending them.

We shall read abundance of this sort of Learning, and we shall do it only to shew that there was Reason for the Doctor in the Pulpit to forewarn the People, to caution them that they may not have ill Impressions made upon them, by such wicked and scurrilous Writings. We shall humbly offer our Evidence to your Lordships, and then submit this Article.

Mr. Phipps. MY Lords, I am now to speak to the Third Article exhibited by the Commons of Great Britain against Doctor *Sacheverell*: And I humbly beg your Lordships Patience, while I take Notice of the several Branches of this Article, and shew your Lordships, that the Doctor is not guilty of any Offence therein charged.

As to such Part of this Article as charges the Doctor, *That he doth falsely and seditiously suggest and assert, that the Church of England is in a Condition of great Peril and Adversity under Her Majesty's Administration; and that to arraign and blacken the Vote and Resolution of both Houses of Parliament, approv'd by Her Majesty, he, in Opposition thereto, doth suggest the Church to be in Danger*:

I beg Leave to take Notice, that the First Part of the Fourth Article explains this Branch of the Third Article, and shews what the Commons meant by the Church being in Danger under Her Majesty's Administration: For the First Part of the Fourth Article says, That *the Doctor suggests, that her Majesty's Administration in Ecclesiastical and Civil Affairs tends to the Destruction of the Constitution.* So that by charging that the Doctor asserts the Church is in Danger under Her Majesty's Administration, it must be intended that he asserts the Church to be in Danger by Reason of Her Majesty's Administration. And therefore if there be any Expression in the Doctor's Sermon which suggests the Church to be in Danger; yet if it be not also therein asserted that the Danger proceeds from Her Majesty's Administration, the Doctor cannot be an Offender within the Meaning and Intention of this Article: And the Doctor denies, that he hath asserted any thing in his Sermon, from whence any such Suggestion can be inferred.

To give your Lordships full Satisfaction in this Point, I shall first take Notice of the several Clauses in the Doctor's Sermon at St. Paul's, which have been cited to make good this Article.

The first Passage quoted for this Purpose, is in Page the 5th, where the Doctor thus expresseth himself: *I shall take the Expression in its full Latitude, without confining it to the express Design of the Place, tho' it were very obvious to draw a Parallel here betwixt the sad Circumstances of the Church of Corinth formerly, and of the Church of England at present; wherein her Holy Communion has been rent and divided by factious and schismatical Impostors; her pure Doctrine has been corrupted and defiled; her Primitive Worship and Discipline prophaned and abused; her sacred Orders denied and vilified; her Priests and Professors (like St. Paul) calumniated, misrepresented and ridiculed; her Altars and Sacraments prostituted to Hypocrites, Deists, Socinians and Atheists; and this done, I wish I could not say, without Discouragement, I am sure with Impunity, not only by our professed Enemies; but, which is worse, by our pretended Friends and False Brethren.*

This is the Passage which is chiefly insisted on to make good this Branch of the Article. My Lords, Is there not too much Truth in this Clause? Hath not the Communion of the Church been rent and divided by some Factious and Schismatical Teachers in Separate Congregations, who have no Orders at all; and by others who refuse to take the Oaths, and will not comply with the Act of Toleration; by Popish Priests, who have drawn away Persons from our Communion to their Church? Have not her Sacred Orders been denied and vilified by the Papists, who pretend Archbishop Parker was consecrated at the Nag's-Head? Are not her Altars and Sacraments prostituted to Atheists, Deists and Socinians, who communicate to qualify themselves for Offices and Places of Trust; and yet, Is there any thing in this Clause can support this Article? Are these Evils charged upon Her Majesty; or is it asserted, that these Mischiefs are owing to, or proceed from Her Majesty's Administration?

The next Paragraph cited to maintain this Article, is in the 14th Page, where the Doctor says, *In short, as the English Government can never be secure on any other Principles, but strictly those of the Church of England; so I will be bold to say, where any Part of it is trusted in Persons of any other Notions, they must be false to themselves, if they are true to their Trusts; or if they are true to their Opinions and In-*

terest, must betray that Government they are Enemies to upon Principle. Indeed, we must do them that Justice, to confess, That since the Sectarists have found a way (which their Fore-fathers, God knows, as wicked as they were, would have abhorred) to swallow not only Oaths, but Sacraments, to qualify themselves to get into Places and Preferments; these sanctified Hypocrites can put on a shew of Loyalty, and seem tolerably easy in the Government, if they can ingross the Honours and Profits of it: But, let Her Majesty reach out Her little Finger to touch their Loins, and these Sworn Adversaries to Passive Obedience, and the Royal Family, shall fret themselves, and Curse their Queen and their God, and shall look upwards.

Here is not one Word of the Church being in Danger by Her Majesty's Administration: He only shews the Danger the English Government may be in by Occasional Conformists put into Offices and Places of Trust. For Occasional Conformists, who are Dissenters, Republicans, Atheists and Deists, that communicate only to qualify themselves for Places, if they are true to their Opinions, cannot be true to the Church of England in which they communicate, cannot be true to the Government by which they are entrusted in such Offices; for they will be always promoting their own Principles in Religion, and their own Forms of Government in the State.

Both Lords and Commons were of Opinion, it was not safe to trust Occasional Conformists with the Guardianship of our Church or Crown, when they agreed to the Bill for preventing Occasional Conformity, which Enacts, *That if any Person, who had any Office Civil or Military, or any Command or Place of Trust under Her Majesty; or if any Person bearing any Office of Magistracy, or Place of Trust in Corporations, who by the Laws are obliged to receive the Sacrament of the Lord's Supper, according to the Rites and Usage of the Church of England, should after their Admission into their respective Offices, and during their Continuance in such Offices, resort unto any Conventicle, Assembly or Meeting, under Colour or Pretence of any Exercise of Religion, in any other Manner than according to the Liturgy and Practice of the Church of England, they should, being convicted thereof, be disabled from henceforth to hold such Office or Offices.* Though this was never Enacted into a Law, yet as it was the Opinion of both Houses of Parliament, I beg Leave to offer it as a Reason, to confirm what the Doctor hath asserted.

My Lords, I shall trouble your Lordships only with one Passage more, which was urged to prove this Article, which is in Page the 15th, where the Doctor hath these Words; *To lay before you the great Peril and Mischiefs of these False Brethren in Church and State; which I shall endeavour to do, by proving that they weaken, undermine, and betray in themselves, and encourage, and put it into the Power of our professed Enemies, to overturn and destroy the Constitution and Establishment of both.* These False Brethren are the Occasional Conformists mentioned in the Page preceding.

I heartily wish, that all who communicate in the Church, were true Sons of the Church; but if, as the Doctor suggests, there are any that communicate at her Altars, who disown her Mission, who refuse to comply with her Liturgy, and are Enemies to her Constitution; if Arians, Socinians, Deists, and almost all Dissenters, and other Enemies to the Church, communicate with her to get Places and

Preferments in Church and State, what Prejudice the Church may receive from such False Brethren, I submit to your Lordships Judgment; begging Leave only to offer to your Lordships, what was said by the Commons at a Conference with your Lordships, upon the Bill for preventing Occasional Conformity; and which, I hope, in an Impeachment by the Commons, will have some Weight with your Lordships.

The Commons upon that Conference were pleased to take Notice, "That when the Corporation-Act was made, the Parliament had fresh in their Minds the Confusions and Calamities that had been brought upon the Nation, by such as pretended to be at the same time in the true Interest of Religion and their Country. That the Parliament by that Act, and afterwards by the Test-Act, thought they had secured our Establishment both in Church and State; and that they had provided a sufficient Barrier to defeat and disappoint any Attempts upon them, by Enacting, *That all in Office should receive the Sacrament of the Lord's Supper, according to the Rites and Usages of the Church of England*; and never imagined a Set of Men would rise up, whose Consciences were too tender to obey the Laws, but harden'd enough to break through any."

Thus, my Lords, having shewn that the Passages cited by the Managers do not maintain this Article, and that the Doctor hath not asserted the Church to be in Danger by Her Majesty's Administration; I will next shew, from what Causes the Doctor doth suggest the Danger of the Church to arise: And of these, Schism is one.

That Schism may distract the Church, a Prayer lately added to our Liturgy tells us. That Separation from the Establish'd Church, which imposeth no Sinful Terms of Communion, is Schism, all the Learned Men of our Church agree; and that there are many People in this Nation that are guilty of Schism, I think no body will deny. And altho' it cannot be imagined, nor is it asserted by the Doctor, that such Schism should grow to such a Head as to endanger the Church, during Her Majesty's happy Administration; yet, what ill Consequence it may be to the Church in another Age, no body can pretend to know, tho' every body may have too much Reason to fear.

So, my Lords, when Men attack the Articles of our Religion and our Homilies, and represent them as Spurious; when they call the Doctrine of Non-Resistance and Passive-Obedience a Blasphemous Doctrine, what Influence that may have hereafter upon our Government both in Church and State, your Lordships are the best Judges.

I submit to your Lordships, if the Queen can be safe, when it shall be averr'd in Print, that there is one on the other Side of the Water that is a *Jure Divino* King, and hath an Hereditary Right. Can the Queen or Church be safe, when all the whole Administration is vilify'd and abus'd as it is in the *Observer*, in this Manner? *Countryman* asks the Question, *Have you any more Knaves to talk of?* Obs. *Honest Countryman, What would you have me to do? If I must run through all the Lists of Knaves, I must bring in all the Courts, all the Employments, all the Classes of Publick Affairs in the Nation.*

Can the Queen be safe, when the Murder of King Charles the First is justify'd in Print, by the *Review* and *Observer*? When the *Wet Martyrdom* of King Charles the First, and *Dry Martyrdom* of King James the Second are said to be all one, and no

Difference between them? I say, How can Her Majesty be safe, when such Rebellious Principles are so publickly avowed? And if Her Majesty be in Danger, can the Church be safe?

All Learned Men that understand our Constitution, have always agreed, that there is such a near Relation between the Church and Monarchy, such a Dependence of one upon the other, that where one falls, the other cannot stand.

Can either Church or Queen be safe, when so great and necessary a Part of our Constitution, our Parliament, is struck at? When it shall be said *that the Members sit in the House to do nothing, making long Speeches without Meaning, and Voting Bills without Design to have them pass?* And when such Rebellious Principles are broached, as I mentioned to your Lordships upon Friday last out of the *Review*, to shew the Necessity of Preaching the Doctrine of Passive Obedience, viz. *If the next Parliament should prove like this, the Nation will be so much the nearer that Crisis of Time, when English Liberty being brought to the last Extremity, must open the Magazine of Original Power?* These are some of the Things alleged by the Doctor to be dangerous to the Church and State.

But the chief Causes from whence the Doctor suggests the Danger of our Church and State to proceed, are Atheism, Prophaneness, and Immorality; for he thus expresseth himself, *Pag. 20. What Reason have we to think but that the National Sins are ripen'd up to a full Maturity to call down Vengeance from Providence on a Church and Kingdom thus debauch'd in its Principles, and corrupted in its Manners; and instead of the True Faith, Discipline and Worship, given over to all Licentiousness both in Opinion and Practice; to all Sensuality, Hypocrisy, Lewdness and Atheism?*

From these Sins it is he apprehends the Church and Nation to be in Danger; and what Judgments have been brought down upon Kingdoms and Nations for these Sins, we have Multitudes of Instances, both in Sacred and other Histories; sometimes they have been deprived of the true Worship of God, and overwhelmed with Idolatry and Mahometanism. Is not the Name of God forgot in the Place of his miraculous Birth? And is not the Light of the Gospel totally extinguished where it at first so gloriously shined? And by what Means? By Infidelity, Prophaneness and Immorality. And may not the same Causes produce the same Effects?

Can *England* be always secure from such Judgments, when some amongst us scarce own the first Person of the Trinity, by whom they were created? But many have the Boldness to deny the Divinity of the second Person, by whom they were redeemed, and many other such Blasphemies and Atheistical Notions are daily propagated and spread abroad among us; of which I shall beg your Lordships Permission to cite some few Instances, of those many we shall offer to your Consideration in the Course of our Evidence; and they are such as I hardly dare name, and as your Lordships will scarce bear to hear.

There is a Treatise call'd, *A brief but clear Confutation of the Doctrine of the Trinity*, Page the 9th, he says, *The Divinity attributed to the Son and Holy Ghost is unscriptural and idolatrous.* Page the 14th, *To be short, Trinitarianism is Polytheism and Idolatry, if there be any such Thing in Nature.*

And a Book called *Brief Notes on the Creed of Athanasius*, speaking of the Trinity and Incarnation, says, *A Belief in these Points is in no Degree necessary, much less necessary before all Things.*

The *Account of the Growth of Deism*, Page 17. says, *Many Doctrines are made necessary to Salvation, which it is impossible to believe, because they are in their Nature Absurdities.* Idem, p. 22. *One of my Old Acquaintance always thought the moral Part of the Bible very good; but he also thought that by the Strength of his own Reason, he could have writ as good a Moral himself.*

These are Sins of a very deep Dye, and may justly draw down very heavy Judgments; and altho' we are very well assured, that the Piety of her Majesty alone is sufficient to avert those Judgments that are due to such Crimes during her own Life; and altho' we are sure, that, by her Majesty's Care, and the Vigilance of Her Ministers, those Sins will not grow to such a Head during her Majesty's Life, as to endanger the Church and State; yet (if not prevented) they may take such Root now, as may hereafter endanger the State, the Church, and even Christianity it self: For as among Men, *Nemo repente fuit turpissimus*, so Heresies and Schisms in the Church, Factious and Seditious Principles in the State, are not invented and arrive to the Height at once, but steal by degrees into the Church and State: And therefore, as in the Body Natural, so in the Body Politick, we must meet the Disease, and prevent the spreading of its Contagion: And one of the best Methods to do it, is by our Ministers shewing the Heinousness of these Crimes, and the dangerous Consequences that attend them. And we submit it to your Lordships, whether the Doctor hath any otherwise asserted the Church to be in Danger, than what may happen to her as the Consequences of such Sins; and whether he any where avers the Church to be in Danger by or under her Majesty's Administration.

As to the Votes of both Houses, we dare not presume to say how far they were design'd to extend: But I humbly submit to your Lordships Consideration, whether the Vote of both Houses in 1705, did relate only to such Suggestions and Insinuations of the Church's Danger, as should be made about that Time, or some short time after; or whether it was intended to have a Prospect, and relate to what should be suggested four Years after; whereas it was impossible for the Wit of Man to foresee what should happen in so long a Time.

We were then, as we are now, engaged in a War with a powerful Enemy; a Pretender, supported by that Enemy, and who, since that Vote, attempted to invade these Kingdoms, if that Army of the French had been successful in Flanders, and the Advantage of the War had turn'd on their Side; and if the Pretender had landed with such a successful and powerful Army of French Papists in Great Britain, I believe it would have been impossible to have made the Generality of the People avoid thinking both Church and State too in Danger under those Circumstances.

To conclude this Branch, If there be any Thing in his Sermon, from whence it can be infer'd that he suggests the Church to be in Danger, yet if it be not suggested to be by Reason of her Majesty's Administration; and if it was not done with a wicked, malicious, and seditious Intent to defame Her Majesty's Administration, and to contradict and arraign the Resolutions of both Houses of Parliament; and unless such Intention plainly appears, without *Innuendo's*, he cannot be guilty within the Intent of this Article.

And as to so much of the third Article, which

chargeth that the Doctor, as a Parallel, mentions a Vote that the Person of King Charles the First was voted to be out of Danger, at the same time that his Murderers were conspiring his Death, thereby wickedly and maliciously insinuating, that the Members of both Houses who pass'd the said Vote were then conspiring the Ruin of the Church; I cannot give a better Answer than the Doctor himself hath given to it, viz.

1. That he doth not draw any Parallel between the Vote concerning the King's Person, and the Vote of the Two Houses.

2. That he does not in his Sermon mention the Vote of the Two Houses.

3. That if he had mentioned it, he would not thereby wickedly and maliciously have insinuated that the Members of both Houses, who pass'd that Vote, were then conspiring the Ruin of the Church; but would have insinuated, that as some Persons were conspiring the Murder of the King, whilst others, no way privy to their wicked Intentions, voted his Person to be out of Danger; so when the Two Houses voted the Church to be in no Danger under her Majesty's Administration, there might be some others who were conspiring the Ruin of the Church, and many others, who by their Vice and Infidelity were drawing down God's Vengeance both on Church and State.

Mr. Dee. **M**A Y it please your Lordships to indulge me a little upon his Article, and I beg leave to make a Distinction, as on the last Article, that is, that these Words, *Danger of the Church*, seem in the Articles to bear one Sense, and in the Doctor's Sermon another. The Danger suggested in the Article, is a Danger under Her Majesty's Administration. I must beg leave to say, these Words were put in, to insinuate, that the Doctor does in his Sermon urge the Danger of the Church to arise from her Majesty's Administration; which, I think, is not to be found there; and if they were omitted, then it will stand only thus, That the Doctor doth affirm that the Church of England is under great Peril and Adversity; and if so, I hope, the Assertion is not Criminal. I can't, by all the Observation I have made on the Doctor's Sermon, find that the Doctor suggests that there is any form'd Body of Men conspiring to overthrow the Church; but the Doctor says, that there are such Men that are false Brethren that endanger the Doctrines and Discipline of the Church. That there is some sort of Danger, appears by the Form of Prayer that is daily offered up for her Safety, and therefore a general Suggestion of Danger would not have answered the End of the Commons to make the Doctor Criminal, without adding the Words *under Her Majesty's Administration*; and if they can shew that the Doctor in any Part of his Sermon has charg'd the Queen with such Administration as endangers the Church, I am sure I should be very much to blame to appear for him at this Bar: but the contrary, I think, appears, when he prays for her Life, with these Words added, *for the Comfort and Support of this Church and Nation.*

My Lords, I shall say no more to that Part of the Article, it having been fully spoken to already, but beg leave to take Notice, that the Managers for the House of Commons have been pleased to say, That the Doctor has reflected upon the Resolutions of both Houses of Parliament, by drawing a Parallel between the Vote relating to the Murder of King Charles, and the Vote of the Two Houses that

that the Church was not in Danger. My Lords, To make a Parallel there must be Two Lines, a Line first given to draw the Parallel Line to; and I beg leave to say, that in the Doctor's Sermon there is no such first Line given; for he has not in all his Sermon taken Notice of any Vote of both Houses. If he has not taken Notice of this Resolution of both Houses in his Sermon, the Law will not imply that he had any Notice of it. For Votes are private Resolutions of the Houses, and always were so till of late they have been published in Print, and the Printing of them will not infer that he had Notice of them. The Doctor's Distinction in his Answer is very true and plain, that he doth not charge the Persons concerned in passing that Vote with being concerned in that odious and execrable Design of carrying on the Murder of that Royal Prince; (and I hope Charity will carry us so far as to think that very many Persons that join'd in that Vote were not concerned in it) but that yet at the same Time they passed that Vote, that bloody Design was carry'd on by a private Junctio of Blood-thirsty Men.

My Lords, I do not admit, but supposing I should admit the Doctor hath contradicted the Resolutions of both Houses, I submit it to your Lordships what Crime the contradicting a Vote of the House of Commons, or the Resolution of both Houses, is. The contradicting a known establish'd Law may be Seditious; but I submit it whether a Vote is so publick an Act, that contradicting it, at least without taking Notice of it, be any Crime, or at least be so high a Crime as to deserve a Censure. It is very certain he may be thought Saucy and Unmannerly to do it, or it may be a Breach of Privilege; but whether your Lordships will interpret it to be a Crime, and such a Crime as will bear an Impeachment for High Crimes and Misdemeanors, I submit to your Lordships.

My Lords, We humbly hope, that notwithstanding any thing yet offered against the Doctor, that your Lordships will be of Opinion, that the acquitting the Doctor of this Impeachment will be a noble and convincing Proof of the undoubted Truth of that Vote, That the Church of *England*, (of which the Doctor is a true, though an unfortunate Son, whilst under a Charge by the Commons of *Great Britain* for High Crimes) under Her Majesty's Administration, is in a safe and flourishing Condition.

Dr. Henckman. **M**Y Lords, We are now upon the Third Article of Impeachment, in which Doctor *Sacheverell* is charged with [*falsely and seditiously suggesting and asserting, That the Church of England is in a Condition of great Peril and Adversity under Her Majesty's Administration.*] If by these Words, *under Her Majesty's Administration*, your Lordships are to understand By the Course and Tendency of Her Majesty's Administration, that Charge we positively deny, and humbly assure ourselves that the Learned Managers have not been able to maintain it, either from the general Scope and Design of the whole Sermon, or from any Passages contained in it.

If by those Words, *under her Majesty's Administration*, is to be understood only during the Time of her Majesty's Administration, then we apprehend that there may be Perils under her Majesty's Administration, which do no ways proceed from such her Administration, and which may be mentioned without any seditious Thought or Intention

of Reflecting upon her Majesty's happy Administration.

If your Lordships look thro' the whole Sermon, it will appear, that he who now stands accused for casting this foul Asperision upon her Majesty, never once mentions her throughout this whole Discourse, but in Terms full of the profoundest Respect and Reverence: In the very beginning of this Sermon, in the second Page, this is reckoned as one chief Part of that Day's Deliverance, which he was then solemnizing, *That this good and pious Relict of the Royal Family sits now happily upon the Throne of her great Ancestors.* In the 19th Page we find him with an honest and hearty Zeal asserting Her Majesty's Right to the Throne, and praying God to bless her in it; and within a few Lines he again repeats that Prayer, *That God would long preserve her on that Throne*, for this very remarkable Reason, *because She is the Comfort and Support of the Established Church.*

Is this, my Lords, the Language of one that would suggest and assert, that very Church to be in a Condition of great Peril and Adversity from her Majesty's Administration? Or can your Lordships presume, that any one can so far prevaricate with God and Man, as openly to thank God for the peculiar Happiness that we now enjoy by her Majesty's sitting on the Throne of her Ancestors, and to beseech him long to preserve her there for the Support and Comfort of the Established Church, and yet assert that that Church is in great Adversity under, that is from her Majesty's Administration?

In this Case your Lordships will suffer me to shew what those Perils are which the Church is said to be in, in this Discourse, and how they do not proceed from her Majesty's Administration.

The Dangers spoken of in this Sermon are either such as arise from the Infidelity and Prophaneness, the Vice and Immorality of the Age, or else such as always have attended the Christian Church from her first Foundation, and always will attend her whilst she continues Militant upon Earth.

That there are Dangers arising to the Church from Infidelity and Prophaneness, is already, I doubt, too evident from those Authors I mentioned under the second Article, and from what the Gentlemen who have spoke before me, have observ'd upon this: If it yet wants a Confirmation, we shall beg leave to lay before your Lordships a black Catalogue of Prophaneness and Blasphemy, not fit to be heard more than once.

As to the Dangers proceeding from Vice and Immorality, the Laws of the Land, and the many Proclamations issued out by Royal Authority upon that Occasion, are an undeniable Evidence of the growing Danger to the Church on that Head, and of her Majesty's special Care to suppress and prevent that Danger. In the Close of those Proclamations Her Majesty declares Her Royal Resolution to punish all manner of Vice, Immorality and Prophaneness in Persons of all Degrees whatsoever, and particularly in such as are near her Royal Person; and these Proclamations are ordered to be read by all Ministers in their respective Congregations at least Four Times in every Year; and they are directed to incite and stir up their Congregations to the Practice of Piety and Virtue, and the avoiding all Immorality and Prophaneness. My Lords, hard is the Fate of Ministers, if they must reprove Prophaneness in Men of all Degrees under Her Majesty's Displeasure; and yet if they once happen to mention Men of Characters and Stations in their publick Discourses,

courses, that too must be made one Part of the Impeachment against him.

My Lords, It was said indeed by a Learned Manager, that the Pulpit was not a proper Place for Complaints of this Nature; that these things ought not to be spoken of in Publick, unless they could be proved; and if they could be proved, those that are known to be guilty should be prosecuted in a due Course of Law. But, my Lords, I humbly apprehend it to be the Duty of a Minister of the Gospel *to be instant in season, and out of season; to exhort and rebuke with all Authority*, and without Distinction. This their Holy Function obliges them to do, and the Dignity of that Function does and ought to protect them in the Performance of that Duty; but that Ministers should be obliged to prosecute every Offender in a Court of Justice, is not yet known to be any Part of their Office; and he that at any time should take that Part upon him, would hardly avoid that Imputation which many People are ready to lay upon the whole Profession.

In the next Place, your Lordships will consider whether the Dangers mentioned in this Sermon are not such as have in all Ages, and under the best Princes, infested the Church.

I appeal to the Reverend Bench of Bishops, whether even in the Apostles Time there were not *Men of unstable Minds* crept in among them; some *carried about with every wind of Doctrine, deceiving, and being deceived*; others *teaching for Doctrines the Traditions of Men*; and whether in the immediate succeeding Ages the Church was not miserably rent and divided by factious and schismatical Impostors. Their Lordships well know that the pious Care of Christian Emperors was not able to prevent the spreading of old Errors, and the continual springing up of new ones; neither has Her Majesty's peculiar Piety and Zeal prevented many Instances of Prophaneness and Irreligion under Her happy Administration; but certainly no Inference ought to be made from an Historical Account, or bare Mention of such like Perils of the Church, as if that was intended to arraign the Administration of those Princes in whose Times they happen'd.

My Lords, That there are such Dangers attending the Church, even under her Majesty's happy Administration, needs no other Evidence than that Form of Prayer which is by Her Majesty's Authority directed to be used in all Churches; in which we beseech God, *That no Sedition may disturb this State, nor Schism distract this Church; and that he would give as all Grace seriously to lay to Heart the great Danger we are in by our unhappy Divisions*. My Lords, this Prayer is enjoined to be used by publick Authority; and particularly mentions the great Danger of the Church, in being at this Time distracted with Schism; and I must submit it to your Lordships Consideration, how hard it is that a Minister may not from his Pulpit mention those Dangers without Offence, which he is specially commanded to pray against in his Desk.

Mr. Dodd. We shall beg leave to produce several Books, wherein there are the strongest Opinions that perhaps your Lordships ever heard of: And we shall first confine ourselves unto them which relate to Blasphemy, Irreligion and Herefy, which we confess are not pleasant to be heard, or fit to be published, if it were not absolutely necessary for the Doctor's Defence.

Mr. Phipps. My Lords, We begin with some Miscellaneous Tracts, published by Mr. Edward

Hickeringill. And we offer them first to your Lordships Consideration, because he was a false Brother; and we think his Tracts will justify the Doctor in what he hath said in relation to the Church being in Danger, from the Blasphemy and other enormous Crimes mentioned in his Sermon.

Mr. Dee. It's in Page 12.

Clerk reads.] ' The second Pre-
' tender to Infallibility is the Bible; *Part 1. p. 12.*
' and that I admit too, so soon as
' 'tis agreed which Chapter and Verse is God's
' Word, and which not, and why.—For as for some
' Verses and Clauses in the Holy Bible, the very
' Penmen thereof did not sometimes know very well
' whether the same were the Dictates of the Spirit
' of God or no.—Sometimes they write—*Thus saith*
' *the Lord*—and not I, but the Lord commands, so
' and so: and then again in a Qualm or Quandary,
' modestly pretend to guessing: *I think also*, says
' *St. Paul, that I have the Spirit of God.*

Mr. Thompson. My Lords, upon what is offered to be given in Evidence, the Managers apprehend there is something that will require their Consideration.

Accordingly the Managers withdrew, and then the Lords adjourned to their House above; and in a short time their Lordships being returned, and seated as before, and the Managers being returned to the Place appointed for them at their Lordships Bar, Proclamation for Silence was made by the Serjeant at Arms.

Mr. Thompson. My Lords, The Managers have consider'd the Nature of the Evidence open'd by the Council; and without troubling your Lordships to observe how material it is for the Prisoner's Defence, submit it to your Lordships, whether such impious and blasphemous Passages as the Council were ashamed to repeat, shall be republish'd in so solemn a Manner, by reading them in Evidence before your Lordships.

Lord Chancellor. Gentlemen, You that are of Council for the Doctor may proceed in your Evidence as you shall think proper.

Mr. Dodd. My Lords, We must own there are a Multitude of Sentences never to be repeated, if it were not necessary for our Defence; but we think it so material for the Doctor's Defence, that we dare not depart from it without your Lordships Order.

Mr. Phipps. My Lords, The Reason that Learned Gentleman gave against reading them, is the very Reason we offer for reading them; for the Doctor ascribes the Danger of the Church to those Blasphemies and impious Doctrines and Tenets, that are so frequently published, and which call for God's Judgments on the Nation.

Mr. Dee. My Lords, we desire he may read in the same Book he was reading before.

Clerk reads.] ' For Sabbathising. The
' Sabbath, Oh the Sabbath—called by *Ibid. p. 17.*
' the cunning Priestcraft, not by the
' Holy Scripture, the Lord's Day, to recommend it
' the better to the unthinking Mob.—Of all the
' other Seven Days the Priest's best Market-Day to
' put off his Wares, and turn them into Money.
' Family Duties are the next plausible
' Piece of Priestcraft Divinity, I *Ibid. p. 21.*
' mean Praying with the Family, (not

‘ that I condemn it) tho’ our Blessed Saviour seems
‘ to condemn it by his Practice and Preaching.

‘ Saying Grace, an universally cry’d
Ibid. p. 23. ‘ up Piece of Divinity, Superstition,
‘ or Priestcraft; for we never read
‘ that Christ or his Apostles said Grace, either be-
‘ fore Meat, or after Meat.

‘ King Saul found to his Cost, that
Ibid. p. 50. ‘ he had better have displeased all
‘ Israel, than Samuel the good High-
‘ Priest; and had better have rent the Clothes off
‘ from his own Back, than have rent Samuel’s Cas-
‘ sock.—It fretted the good old Gentleman; and
‘ in a Passion he said, *God hath rent from thee the*
‘ *Kingdom also, and hath given it to thy Neighbour*
‘ *that is better than thou.*

‘ Then the Lord answered, *Take an*
Ibid. p. 51. ‘ *Heifer with thee, and say I am come*
‘ *to do Sacrifice to the Lord.* The
‘ Policy of Heaven, we see, jumps with our late
‘ Priestcraft in this, to make Religion the common
‘ Covert to hide a Plot.

‘ His Kingdom, which was given
Ibid. p. 52, ‘ to David, because he was a Man after
53. ‘ God’s own Heart, (not in Holiness,

‘ that is not meant: for besides his
‘ Adultery and Murder, his many other Sins, and
‘ cursing his Enemies to the Pit of Hell, is unac-
‘ countable;) but after God’s own Heart is a *Hebra-*
‘ *ism*, and in *English* signifies as much as a Man for
‘ my Turn, he will kill and slay as the Priest directs,
‘ by Orders received from Heaven; he will fulfil all
‘ my Will, faith the High-Priest.

‘ I can by no means perceive that
Ibid. Part 2. ‘ this Commission to Teach, Baptize,
p. 4 ‘ Excommunicate, or Absolve, does
‘ properly or more appertain to a
‘ Grey Fryar, or any Black Coat, more than to a
‘ Grey Coat or Layman.

‘ To say, the Use, (being for God’s
Ibid. p. 14. ‘ Service) sanctifies it: So may a Meet-
‘ ing-House, a Tabernacle, or my
‘ Dining-Room be consecrated, when we pray and
‘ preach there, or say Grace there, *pro hac vice*;
‘ and *vice versa*, it is unconsecrated when Dinner-
‘ time comes, or the Punch-Bowl.

Mr. Dee. *The Rights of the Christian Church* is
the next Book we shall offer to your Lordships.

Clerks reads.] ‘ At the Close of the
Page 105. ‘ Supper, the great Meal with them,
‘ the Master of the Feast distributed
‘ among his Guests small pieces of Bread; and hav-
‘ ing first drank of the Grace-Cup, delivered it to
‘ be handed about: To which Christ, who instituted
‘ no new Rites, superadded the Remembrance of
‘ his Sufferings; and directs his Disciples as often
‘ as they did this, that is, Celebrate such Festivals,
‘ and close them with the *Post-Canium*, to commemo-
‘ rate him after this manner.

‘ Does not every one, as well as
Ibid. p. 108. ‘ the Minister, equally apply the
‘ Bread and Wine to the same Holy
‘ and Spiritual Use, in commemorating the Benefits
‘ received by our Saviour, and in offering up the
‘ same Prayers, and desiring the same Blessings?
‘ And whoever does this with a due Application of
‘ Mind, rightly consecrates the Elements for himself,
‘ since this is the only Consecration they are capable
‘ of: Any thing further than this may rather be
‘ called Conjuratation than Consecration.

Mr. Dee. The next Book we offer to your Lord-
ships is *Blount’s Oracles of Reason.*

Clerk reads.] ‘ Reason is able to
‘ furnish us with enough to make us *Preface, p. 3.*
‘ happy, and that is as much as we
‘ need care for.

‘ When he made his Cavalcade *Ibid. p. 165.*
‘ upon *Asinego*, they extoll’d him as
‘ the Descendant of King David; but his untimely
‘ Apprehension and Death, together with his Neg-
‘ lect to improve the Inclination of the People to
‘ make him King, did allay the Affections of the
‘ Jews towards him.

‘ It seems a very cruel and very *Ibid. p. 49.*
‘ hard thing in this respect, that God
‘ should be said to have tormented, nay, and ruin’d
‘ Mankind, for so small a Fault; and that too com-
‘ mitted thro’ the Levity of a Woman’s Mind.

Mr. Phipps. The next is Dr. Burnet’s *Archæologia*
Sacra.

Clerk reads.] ‘ *Id utique videtur gravissimum, &*
‘ *asperrimum in hac Narratione, quod Gentem hu-*
‘ *manam plexisse, imo perdidisse dicatur Deus ob rem*
‘ *exiguam, & faminilis Ingenii levitate perpetrata.*

Mr. Phipps. The next is, *An Account of the*
Growth of Deism.

‘ But since the Gospel Simplicity
‘ has been worn off, the Priests of all *P. 191, 192,*
‘ Churches have agreed, first, That 193.
‘ it is necessary for all Christian Peo-
‘ ple to communicate at the Lord’s Table. Secondly,
‘ That this Sacrament cannot be rightly celebrated
‘ without the Assistance of a Priest, who must con-
‘ secrate the Elements to the Use for which they are
‘ design’d; whereby the Priest is made absolutely
‘ necessary to the very Being of the Sacrament.
‘ The Priest also making himself Judge of every
‘ one’s Preparation for this Sacrament, has it in his
‘ power to admit to a Participation whom he thinks
‘ fit; as likewise to exclude whom he pleases from
‘ this necessary Means of Salvation: And hereby
‘ he is enabled to make his Terms with his People,
‘ who must be contented to save their Souls upon
‘ what Conditions he will admit. No wonder,
‘ then, that so great a Noise has been made con-
‘ cerning this Sacred Commemorative Repast.
‘ That Christian Communion which you read of as
‘ practised in the Apostles Days, was nothing else
‘ but a Religious Conversation with Christians one
‘ amongst another. ’Twas for Society-sake that
‘ they went from House to House, that they eat
‘ and drank together frequently.—Now it’s plain,
‘ that this sort of Religious Conversation may be
‘ kept up among Christians without either Priest
‘ or Altar, or any set Form of Prayer, or Praise.
‘ It was long after the Apostles were dead and
‘ buried, before the Temples were built, or Altars
‘ erected, or set Orations were made to the People
‘ in Churches. And what if you should further
‘ consider, if there be any Part of this Primitive
‘ Church-Communion that might not have been
‘ performed by a Woman as well as a Man?—
‘ When the Primitive Christians met together to
‘ break Bread, from House to House, had any of
‘ these Women craved a Blessing on that Bread, we
‘ have

' have no Reason to doubt but that God would
' have heard her Prayer.

Mr. Phipps. The next is, *A Letter concerning Enthusiasm.*

Clerk reads.] ' Is the doing Good
Page 59. ' for Glory's sake so Divine a thing?

' Or is it not diviner to do Good even
' where it may be thought inglorious, even to the
' ungrateful, and to those who are insensible of the
' Good they receive? How comes it then, that
' what is so divine in us should lose its Character in
' the Divine Being? And that, according as the
' Deity is represented to us, he should more resem-
' ble the Weak, Womanish, and impotent Part of
' our Nature, than the Generous, Manly and Di-
' vine?

' One would think it were easy to
Ibid. p. 60. ' understand, that Provocation and
' Offence, Anger, Revenge, Jeal-
' ously in point of Honour, or Power, Love of Fame,
' Glory, and the like, belong only to limited Be-
' ings, and are necessarily excluded a Being which is
' perfect and universal.

' It is Malice only, and not Good-
Ibid. p. 61. ' ness that can make us afraid.

' So that we have only to consider,
Ibid. p. 62. ' whether there be such a Thing as a
' Mind that has relation to the Whole,
' or not: For if there be no Mind, we may com-
' fort our selves however, that Nature has no
' Malice.

' For no body trembles to think
Ibid. p. 63. ' that there should be no God, but
' that there should be one.

' I am not a Divine good enough
Ibid. p. 69. ' to resolve what Spirit that was which
' prov'd so catching among the ancient Prophets,
' that even the Prophane Saul was taken by it.

Mr. Phipps. The next is, *A Brief, but Clear Confutation of the Doctrine of the Trinity.*

Clerk reads.] ' The Divinity at-
Page 9. ' tributed to the Son and Holy Ghost,
' is unscriptural and idolatrous.

' This one Fundamental false Prin-
Ibid. p. 10. ' ciple, as well with Jews and Turks,
' as Heathens, has done more Mischief to Chri-
' stianity than all our other Errors besides.

' For my part, I declare I shall ne-
Ibid. p. 11. ' ver more admire at the Absurdity of
' either Papists, Turks, or Heathens;
' be they as gross as they will, I am sure they will
' never be able to exceed this Doctrine.

' To be short, Trinitarianism is
Ibid. p. 14. ' Polytheism, and Idolatry; if there
' be any such Thing in Nature,

' Revelat. 17. 5. *And upon her Forehead was a*
' *Name written, Mystery, Babylon the Great, the*
' *Mother of Harlots, and the Abominations of the*
' *Earth.* And to what I pray, in Popery can that
' Word *Mystery* there so properly relate, as to the
' Trinity?

Mr. Phipps. The next is, *Brief Notes on the Creed of Athanasius.*

Clerk reads.] ' A Belief in these
Page 7. ' Points, that have been always con-
' troverted in the Churches of God,
' is in no degree necessary, much less before all
' things.

' And now I appeal to all Men that have any
' Freedom of Judgment remaining, whether this

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' Creed is fit to be retained in any Christian, much
' less Protestant and Reformed Church? Since it
' subverts the Foundations not only of Christianity,
' but of all Religion, that is to say, Reason and
' Revelation.

Mr. Dee. There is a Book marked with the Let-
ter L, called, *An Account of the Growth of Deism.*

Clerk reads.] ' Many Doctrines are
' made necessary to Salvation, which Page 17.
' it's impossible to believe, because
' they are in their Nature Absurdities. I reply'd,
' that these things were Mysteries, and so above
' our Understanding. But he asked me, To what
' End could an unintelligible Doctrine be revealed?
' Not to instruct, but to puzzle and amuse.

' One of my old Acquaintance al-
' ways thought the moral Part of the *Ibid. p. 22.*
' Bible very good; but then he also
' thought that by the Strength of his own Reason
' he could have written as good a Moral himself.

' If you look over the State of Re-
' ligious, as it standeth in *Christendom,* *Ibid. p. 24.*
' there is no Church whatsoever which

' will accept you as a Member of its Communion,
' but upon some particular Terms of Belief, or
' Practice, which Christ never appointed, and it
' may be such as an honest and wise Christian can-
' not consent to.—It looks like a Trick in all
' Churches to take away the Use of Men's Rea-
' son, that they may render us Vassals and Slaves
' to all their Dictates and Commands. But what
' greater Slavery than to force on Men a Belief of
' such Things as necessary to Salvation, of which
' it's not possible to form an Idea? Though I am sa-
' tisfied there is no such Thing as a Change of
' Bread into the Flesh of Christ, yet I can form an
' Idea that such a Thing may be, that the same
' Power that changed Earth into a Man, may change
' Bread into Flesh; but I can frame to my self no
' Idea of what your Church teacheth in the Sacra-
' ment, *That the Body and Blood of Christ are verily*
' *and indeed taken and received of the Faithful:*
' And when I ask, how can this be understood by
' a Protestant who believeth that there is no other
' Body but that of Bread? I am told that the
' Church means it in a Spiritual Sense. Now I have
' try'd, and find it impossible for me to form to my
' self an Idea of a Body verily and indeed in a
' Spiritual Sense.

' Your Church will require me to
' believe other Absurdities as bad *Ibid. p. 25.*
' as these; as that Kings and Bi-
' shops have Divine Right to that Power which
' they exercise over us; whereas with my own Eyes,
' I saw our great and gracious King accept the
' Crown of *England* as the Gift of the People. And
' I see as plainly that Bishops are an Order of
' Men of their own (not of Christ's) making.
' I can find no Footsteps of any
' Jurisdiction given to the Twelve *Ibid. p. 26.*
' over the Seventy, or indeed over
' any body else.

Mr. Dee. The next is, *The History of Religion.*

Clerk reads.] ' Strange and puz-
' zling Methods of religious Cere- Pag. 310.
' monies and Mysteries, and of va-
' rious Rites of sacrificing, good for nothing but
' to confound and distract the Minds of Men.

' In very deed, Creeds were the
' Spiritual Revenges of Dissenting *Ibid. p. 312.*
' Parties upon one another.

Mr. Dodd. The next is *Asgyl's* Argument.

Pag. 36. 'Clerk reads.] God told *Adam*,
' that if he did eat he should die;
' the Devil told *Eve*, that they might
' eat and not die; and these were the first Words
' spoken to Man by God, or the Devil; upon the
' Truth or Falshood whereof, the very Beings of
' them both were to depend for ever: For which
' ever of them could maintain the Truth of his
' Word against the other, he must have been God,
' and the other the Devil. And therefore God,
' having turn'd the Lye upon the Devil, he is from
' thence call'd a Lyar from the Beginning, and the
' Father of it, and will never be believed again for
' ever. God could not have dispensed with his
' Word, without complimenting the Devil, with his
' Godhead.

Ibid. p. 82. 'What is it that you do, or would
' believe of Christ, or in Christ?
Ans. Why, we believe him for
' our Saviour. Save you! from what? Why, from
' our Sins. Why, what hurt will Sin do you?
' Why, it will kill us. How do you know? Why,
' the Law of God saith so: *In the Day thou eatest*
' *thereof, thou shalt die.* Why, but then will not
' this Saviour save you from this Law, and from
' this Death? No, he'll save us from Sin. Why,
' then it seems you have got a Pardon for Horfe-
' Stealing, with a *Non-Obstante* to be hanged. Do
' but see now what a Jest you have made of your
' Faith. And yet I defy the Order of Priesthood to
' form a better Creed than this, without admitting
' the Truth of my Argument, or to make Sense of
' their own Faith without adding mine to it. It's
' much easier to make a Creed, than to believe it af-
' ter it's made: Nor can any Man really believe any
' Part of the Gospel that doth not believe it at all.
' For it is a Doctrine so dependant upon it self,
' that unless we know the whole of it from the Be-
' ginning to the End, we can't know the Use and
' Reason of any Part of it. Wherefore (notwith-
' standing this Inundation of Death in the World,
' and the Infection of Fear contracted upon Man
' from hence) I am not affrighted from re-assuming
' my Assertion at the beginning, That this long
' Possession of Death over Man, is a Possession
' against Right.

Ibid. p. 97. 'Behold, ye Despisers, and won-
' der! Wonder at what? Wonder to
' see Paradise Lost, with the Tree
' of Life in the midst of it! Wonder and curse at
' *Adam* for an Original Fact, who in the Length
' of one Day, never so much as thought to put
' forth his Hand for him, and us, and pull, and
' eat, and live for ever. Wonder at, and damn your
' selves for Fools of the last Impression, that in the
' Space of 1700 Years, never so much as thought
' to put forth our Hands every one for himself, and
' seal and execute the Covenant of Eternal Life,
' and live for ever.

Ibid. p. 98. 'To be even with the World at
' once, he that wonders at my Faith,
' I wonder at his Unbelief. And
' stare at me as long as you will, I am sure that
' neither my Physiognomy, Sins, nor Misfortunes,
' can make me look so unlikely to be translated, as
' my Redeemer was to be hanged.

Mr. Dee. The next is a Book call'd, *Christianity*
not Mysteries.

'Clerk reads.] God himself, nor
' any of his Attributes are Mystie-
' ries to us for want of an ade-
' quate Idea: No, not Eternity.

'As far as any Church allows of
' Mysteries, so far it is Antichristian, *Ibid.* p. 107.
' and may with a great deal of Ju-
' stice, though little Honour, claim Kindred with
' the Scarlet Whore.

'For to speak freely, Contradic-
' tion and Mystery are but two Em- *Ibid.* p. 134.
' phatick Ways of saying nothing.

'Contradiction expresses nothing by a Couple of
' Ideas that destroy one another; and Mystery
' expresses nothing, by Words that have no Ideas
' at all.

'It will not be amiss to lay down
' a short Parallel of the ancient Hea- *Ibid.* p. 156.
' then, and new-coin'd Christian
' Mysteries. And I shall endeavour so to do it, as
' to make it evident they were one in Nature,
' however different in their Subjects.

Mr. Dee. The next is Sermons and Essays of
Mr. *Wbiston's*.

'Clerk reads.] When the Scrip-
' tures speak of the one God, or *Pag.* 213.
' of one God, they plainly and di-
' stinctly mean, one Original Fountain and Author
' of all Beings whatsoever; or mean thereby one
' Supreme God, the Father only.

'The Moderns call'd these three
' Divine Persons but one God, and *Ibid.* p. 215.
' so introduced at least a new, and
' unscriptural, and inaccurate, if not a false Way
' of speaking in the Church.

Mr. Dee. He makes it an *Errata*, that he has
named the Trinity, and put it out of the Book.

'Clerk reads.] *Errata*, Pag. 123.
' lin. 23, 24. To whom with the *Ibid.* p. 415.
' Father, and the Holy Ghost, read,
' in the Holy Ghost; and *dele* Three Persons and
' one God.

Mr. Dee. The next is, *The Unreasonableness of*
making and imposing Creeds.

'Clerk reads.] But what Creeds
' and Articles of Faith can be pro- *Page* 14, 15.
' duced that are not doubtful and
' disputable? That which goes under the Name of
' the Apostles not excepted. It being neither of
' undoubted Authority, nor indisputable, or unam-
' biguous Sense in some Articles thereof; though
' it be generally received by Christians and as ve-
' nerable for its Antiquity, and professed, or ra-
' ther said, by all, even those who understand not
' what they say when they recite it.

Mr. Dee. The next, *An Account of the Growth*
of Deism.

'Clerk reads.] If those Writings
' which they call Holy Scriptures *Page* 25.
' are of their Side, as they all say
' they are, I make no doubt, but they are of their
' own inventing. And if Jesus Christ their Pa-
' tron laid their Foundation of those Powers,
' which both Papist and Protestant Clergy claim to
' themselves, from under him, I think the old Ro-
' mans

mans did him Right in punishing him with the Death of a Slave.

Mr. Phipps. We shall next shew some Papers that reflect on the Church and Clergy; and shall first offer to your Lordships Consideration the *Rights of the Christian Church.*

Page 47. Clerk reads.] Not only an independent Power of Excommunication, but of Ordination in the Clergy, is inconsistent with the Magistrates Right to protect the Commonwealth.

Ibid. p. 104. The Scriptures no where make the receiving the Lord's Supper from a Priest necessary; nay, not one Instance of the Laity's receiving it so can be produced from thence.

Ibid. pag. 237. It can belong only to the People to appoint their own Ecclesiastical Officers.—It's an inherent fundamental Right of all Communities.

Ibid. pag. 240. None pretend to impose a Conductor or Director, on another in Temporal Affairs, but every one is left to manage them, as he thinks best for his own Interest, as being presumed to understand it better than another; and therefore is to chuse his own Lawyer, Physician, Brewer, Baker, &c. and by the same Reason he ought to chuse his own Spiritual Conductor.

Ibid. pag. 137. It's absurd to imagine every Christian is not capable of such Circumstances, as praying aloud, distributing the Bread and Wine, or (according to the present Mode) of sprinkling an Infant, and repeating a set Form of Words.

Ibid. pag. 402. Have they not inserted this Power of theirs in an Article of the Creed, commonly called the Apostles, viz. *I believe the Catholick Church?*

Mr. Dee. We shall next offer the *Review*:

Vol. 2. N. 112. Clerk reads.] Whether our Fathers had a Necessity to make those exclusive Laws, and impose as necessary their indifferent Things, acknowledged to be so, as Terms of Communion: Nor is this all, but supposing they had; which nevertheless I do not grant; then this Address is further press'd to your Lordships, to examine whether that Necessity does yet continue, or no? Either of which will be the same Thing. For if there either was not a Necessity at the Time of their Enacting, or that Necessity does not yet remain, let which will happen to fall out, the Act of Uniformity, imposing such and such indifferent Things, as Terms of Communion, will appear scandalous to the Church, Injurious to the publick Peace, and a Grievance to the whole Nation.

Ibid. Vol. 3. Numb. 27. *Left it become a new, proverbial Jest, To be as wicked as an English Priest.* p. 106.

Ibid. Numb. 27. p. 107. I cannot but tell him, should I publish the Matters of Fact which I am Master of, with respect to the High-flying Gentlemen of the Clergy; should I give a faithful Account of the most infamous and scandalous Behaviour, the Notorious Lives, the Beastly Excesses, and the furious Treatment of their Brethren the Dissenters, which on a small Search I have been ac-

quainted with; the Inferior Clergy of his Party would appear the most wretched, provoking, abominable Crew, that ever God suffered to live unpunish'd, since he destroyed *Sodom* and *Gomorrab* by Fire from Heaven.

If Words could be made Treason, one third at least of the Inferior Clergy in *England* would be hang'd. Ibid. Vol. 2. Numb. 105. p. 418.

I again appeal to you, Gentlemen, Whether, generally speaking, all over this unhappy Nation, the Clergy are not Three Parts in Five, in a close Conjunction with the Enemies of the Church's Peace, and the profess'd Enemies of the Government?

Others, not so directly, but altogether as fatally, and tending to the same End, with subtle Designs to divide and amuse the People, by Preaching, Writing, and Printing, endeavour to revive the said exploded Doctrines of Non-Resistance, and absolute uncondition'd Obedience, as things the People of *England* ought to think themselves oblig'd by;

which tho' in themselves of no force, yet manifestly tend to unravel the Constitution, to invalidate the Queen's Title to the Crown, and destroy the legal Authority of Parliaments in the Nation. An eminent Proof of which is now depending before the House.

Drunkennes, Oaths, and abominable Lewdness; Ignorance, Negligence, and scandalous Insufficiency; abhor'd Error, Deism and Socinianism, have over-run the Clergy.

You know the Church he means is High-Church, which is a Fiction, a Church of the Brain, supported by a little, insignificant, trifling Number of Brainless People;

and the People of *England* are no more concern'd about that Church, than about the Institutions of Government laid down in *Moor's Utopia*, *Harrington's Oceana*, or *Bacon's New Atlantis*; and all the Canons, Rites, and Ceremonies of that Church are no more to be consider'd by you, or me, than so many Ballads, or *Duck-Lane Penny Histories*.

The Universities have large Endowments, which I fancy may be better employ'd for the publick Good than at present. Let you and I Vote them useless.

Country-M. With all my heart, Master.

Mr. Dodd. My Lords, The next Thing we should go upon, is to shew several Passages which reflect upon the Queen, the State, and Ministry; there are Five or Six Instances which we shall read, and then we shall have done.

Clerk reads.] In short, if *Jure Divino* comes upon the Stage, the Queen has no more Title to the Crown than my Lord-Mayor's Horse: All the People are bound by the Laws of God to depose Her as an Usurper, and restore their Rightful and Lawful King *James* the Third.

The Line of all the World famed for Blood, and that had ravag'd the best Families of the Kingdom. Ibid. Vol. 3. Numb. 122. p. 486.

Ever

Ibid. Vol. 2. ' Ever since the coming of King
Numb. 43. ' James the First to the Crown,
p. 170. ' this Nation has been perplexed
 ' with Divisions, Uneasinesses, Op-
 ' pressions and Murmurings, both
 ' in Sovereign and Subject.

Ibid. Numb. ' Either the Dissenters had Rea-
44. p. 174. ' son for former Discontents, and
 ' Reason to complain of Oppressi-
 ' on, Persecution, and Infringement
 ' of Privileges, or they had not. If they had;
 ' the Church was cruel, and the State unjust before,
 ' in laying those Loads upon them. If they had
 ' not, both Church and State were infatuated and
 ' delirious, in granting them the Toleration, and
 ' Liberties since conceded.

Ibid. Numb. ' If the next Parliament should
46. p. 181. ' pursue the Steps of the last, the
 ' Nation, in my Opinion, will be
 ' so much nearer that Crisis of
 ' Time, when *English* Liberty being brought to the
 ' last Extremity, must open the Magazine of Orig-
 ' inal Power.

Ibid. Numb. ' What can be said for Members
27. p. 106. ' sitting in the House to do no-
 ' thing; making long Speeches with-
 ' out Meaning, and Voting Bills
 ' without Design to have 'em pass?

Ibid. Numb. ' The Balance between 41 and
123. p. 489. ' 88 will appear to run against
 ' him; and the Difference between
 ' the dry Martyrdom of King
 ' James, by his Passive-Obedience Church-Subjects,
 ' and the wet Martyrdom of King Charles the First,
 ' by People that never made any such Pretence, will
 ' appear so small, that it's not worth Dr. D—'s
 ' while to meddle with it.

Observer, ' Country-M. Pray, Sir, are
Vol. 2. Numb. ' there a great many of those People
89. ' alive, that cut off the Head of
 ' King Charles the First?

' *Obs.* No, no; they are dead and gone a
 ' long time ago. However, the Story serves some
 ' Men as Raw-head and Bloody-bones, to affrighten
 ' some, and calumniate others. Now, for my part,
 ' I know nothing of the Business of King Charles I.
 ' I was born since the Restoration; and I have so
 ' high a Value for the Prudence and Justice of our
 ' Forefathers, as not to condemn any of their Actions
 ' for the common Good. We are unkind to our
 ' selves in censuring the Justice of our Forefathers
 ' Actions, and thereby do give a Handle to our
 ' Successors to censure ours. Did our Forefathers
 ' detruncate the Father? Did not we depose the
 ' Son, and put one more Righteous in his stead?
 ' Did we not divest him of all his Regalities, and
 ' make him a Fugitive on the Earth? And may not
 ' future Ages examine the Difference between the
 ' Decollation and the Abdication?

Ib. Vol. 4. ' I recite this, to let you know
Numb. 97. ' the Encouragement the Papists
 ' have had in this Reign; when by
 ' their Interest they can get such as
 ' write against them prosecuted, &c.

Ibid. ' Should I tell you, honest Coun-
 ' tryman, the Accounts I have had
 ' of the Numbers of Popish Priests
 ' and Emissaries come into *England* the first Two
 ' Years of Her Majesty's Reign, it would make
 ' your Hair stand an end.

' They would have but a sorry
 ' Foot Soldier of the *Observer.* *Ibid. Vol. 3.*
 ' ———And yet I have been where *Numb. 15.*

' those People that would send me
 ' durst not come, and where perhaps I have com-
 ' manded better Men than themselves. It has been
 ' my Fortune to be in a fighting Army, under a
 ' General that we now dearly want who did not
 ' use to return from the War, *sine Clade Victor*,
 ' and then ride in Triumph over his Queen on a
 ' Medal.

' I am sorry that the Folly of
 ' some, and the Bribery of others, *Ibid. Vol. 3.*
 ' have brought us into such ama- *Numb. 99.*
 ' zing and dismal Circumstances,
 ' that either our Liberties must be lost, or be main-
 ' tained by a Body that is neither of us, nor from
 ' us.

' I shall produce my self as an
 ' Example of the Arbitrary Power *Ibid.*
 ' of this Parliament; and the Man
 ' that does not acknowledge their Proceedings against
 ' me to be Arbitrary, must assert, that an Arbitrary
 ' Power was never executed.

' Now if this be't Arbitrary,
 ' I don't know what to call so. *Ibid.*
 ' The *Spanish* Inquisitors have so
 ' much Regard to Justice, or the shew of it at
 ' least, that they'll suffer a Man to speak in his own
 ' Behalf, &c.——Now, Countryman, do but con-
 ' sider my Case; I was sentenc'd to the Loss of my
 ' Liberty without being heard.

' Which plainly shews, that what
 ' the Commons condemn'd me for, *Ibid.*
 ' would not bear an Action at
 ' Law.

' My Intent is to inform such
 ' as you, honest Roger, how much *Ibid.*
 ' you have been abus'd by your Re-
 ' presentatives.

' This Parliament is the very Re-
 ' verse of former Parliaments; as *Ibid.*
 ' they were merciful, this was cruel;
 ' as they made good and wholesome Laws to pre-
 ' serve the Liberties of their Electors, these took
 ' away the Freedom of their Electors without any
 ' Law; as they used all Means to keep their E-
 ' lectors out of Jail, these used all Means to put 'em
 ' into Jail.

' *Obs.* Honest Countryman, what
 ' wouldst thou have me to do? If *Ibid. Vol. 2.*
 ' I must run thro' all the List of *Numb. 99.*
 ' Knaves, I must bring in all the
 ' Courts, all the Employments, all the Classes of
 ' Publick Affairs in the Nation.

' I really find the State of *Eng-*
 ' land in general to be thus: Its *Review,*
 ' Trade under a sensible, miserable *Vol. 2. Numb.*
 ' Decay in all its Branches:——Its *2. p. 5.*

' Navy great and flourishing; but
 ' all her well-laid Designs either defeated in their
 ' Preparations, by the miserable Methods, and ill
 ' Government, with relation to Seamen, or disap-
 ' pointed by the ill Conduct or Cowardice of her
 ' Commanders. In Civil Concerns, in the utmost
 ' Confusion of Parties——blending together the
 ' most absurd Contradictions, such as propagating
 ' Religion by a scandalous Ministry,——reform-
 ' ing Manners by debauched Magistrates, and chu-
 ' sing Men to make Laws, by Bribery and Corrup-
 ' tion.

Mr. *Phipps*. My Lords, we shall offer but one Passage more, and that is out of *The Divine Rights of the British Nation vindicated*.

Clerk reads.] 'And if he will but stay till the end of this present Session of Parliament, he'll find several new Powers annex'd to the Regal Office, and perhaps some made void and repealed for the Publick Good.

Mr. *Dodd*. My Lords, we have now done with our Proofs; we have gone over the Heads of Blasphemy, Irreligion and Heresy; the Church reflected on; the Queen, Ministry, and all Orders of Men reflected upon and abused. We have cited these Books and Passages, not to reflect on the Government, but as those which put the Doctor in some Heat and Concern both for the Church and State; and we hope your Lordships will make the best Construction of the Doctor's Intentions in this Matter.

Mr. *Phipps*. If Blasphemy and Irreligion can endanger the Church; if Treason and Rebellion can endanger the Nation, I think, with great Submission, the Doctor has made good his Answer; and therefore I hope he is not guilty of any Part of this Article.

Mr. *Dee*. My Lords, I beg leave that we may apply some Part of the Proofs we have read to-day to the Fourth Article.

Mr. *Phipps*. My Lords, The other Article, I fear, will be longer than will be fit to trouble your Lordships with now; we shall be ready to proceed when it is your Lordships Pleasure.

Then the LORDS Adjourned to their House Above.

Tuesday, March 7. The Eighth Day.

THE Lords coming down into *Westminster-Hall*, and being seated in the manner before-mentioned, Proclamation was made by the Serjeant at Arms as follows:

Our Sovereign Lady the Queen doth strictly Charge and Command all manner of Persons to keep Silence, upon Pain of Imprisonment.

Then another Proclamation was made: *Henry Sacheverell*, Doctor in Divinity, come forth, save thee and thy Bail, else thou forfeitest thy Recognizance.

The Doctor appearing at the Bar accordingly, with his Council, as before:

Lord Chancellor. Gentlemen, you that are Council for the Prisoner may proceed in his Defence.

Mr. *Dodd*. IF your Lordships please, we will proceed to the fourth Article. That Article contains several Heads: 1. *That the Doctor suggests Her Majesty's Administration tends to the Destruction of the Constitution.* 2. *That there are Men of Characters and Stations in Church and State, who are False Brethren, who undermine and betray, and put it in the Power of others to overturn and destroy the Constitution.* 3. *That the Doctor charges her Majesty, and those in Authority under Her, with a general Male-Administration.* 4. *That he persuades the Subjects to keep up a Distinction of Faction and Parties, instils Jealousies, foment Divisions, and stirs up the Subjects to Arms, and perverts several Texts of Scripture.*

My Lords, As to the First, the Doctor is so far from suggesting that her Majesty's Administration tends to the Destruction of the Constitution, that he

has not, as we apprehend, said any thing that can bear such a Construction. The Doctor denies, that he has made any Mention of Her Majesty's Administration in Church or State in his Sermon: Therefore, How can he argue that it tends to the Destruction of the Constitution? It has not been proved. But he takes all Opportunities to speak of the Blessings we enjoy under her Majesty's Government; prays for Her Preservation; and that She may long Reign for the Comfort and Support of the Church; professes what he spoke proceeded from a tender Concern for Her Majesty and Her Government: So that we humbly apprehend there was little Occasion for such a Charge against him.

The Second Part of the Article is, *That there are False Brethren, that are Men of Character and Station in Church and State, who undermine and betray, and put it in the Power of others to overturn and destroy the Constitution.* Now the false Brethren by him described, are Persons who propagate false Doctrines, who give up the Discipline and Worship of the Church, who are for Neutrality in Religion, or who wish well to the Church, but do not shew their Zeal in obeying her Precepts, and defending her Rights. These are the False Brethren intended; and this is very different from the Allegation in the Impeachment. As to that Part of the Charge, of *putting it in the Power of others to destroy the Constitution*, he does not mention Men of Characters and Stations in this Place; but, as I take it, in *Pag. 15.* where this Passage is supposed to be contained; and yet it is Twelve Pages after, before these Words are mentioned. They are not joined together, as is supposed by the Article; and speak nothing of that Matter. It is a Conjunction of Passages widely different from, and not relating to one another. The Betrayers of the Constitution, to whom the Doctor does refer, are such as by Writing endeavour to subvert the Foundation of our Church and State; such as are of a Latitudinarian Principle, *who neither believe her Faith, own her Mission, submit to her Discipline, or comply with her Liturgy.* My Lords, These are the Heads, and Persons, that the Doctor refers to; and not such Persons or Things, as are pretended by the Article.

As to a General Male-Administration under Her Majesty, he abhors the Charge; has no where said it: Always, as a good Subject, mentioned Her Majesty with the profoundest Duty and Respect; nor does he tax any in Authority with a Male-Administration. And surely it is not sufficient to charge the Doctor, as if he had fallen foul on the Ministry, when there is no Proof of it, and when there is no Passage in his Sermon, as we apprehend, that tends to it. The Doctor has on all Occasions, as a good Subject, justified her Majesty's Title; and particularly at the Beginning of this War, he preach'd a Sermon at *Oxford*, before the University, therein justifying Her Majesty's Title to the Crown, and Her entering into the War against *France and Spain*; wherein he has very clearly demonstrated these Two Points. And as to the Charge of endeavouring to keep up Distinction of Parties, he is so far from it, that he complains of those that have divided us with a Distinction of High and Low Churchmen; *They have villanously divided us with knavish Distinctions*: And what could he mean by all this, but a Service to the Government; and that they which raise such false Insinuations, such Fears and Jealousies, are the People he intended, and complains of?

And

And as he has done that, so he takes all Opportunities to pray, *that we may be one Fold under one Shepherd*, and that all invidious Distinctions might be laid aside.

My Lords, The next Thing is, The raising these groundless Fears and Jealousies, that are suggested. As to that, the Passage we read before is quite opposite: The Doctor rebukes them, that do it as ill Christians, and ill Subjects; and earnestly sets forth the Mischiefs of them. He is so far from encouraging it, that he has upon several Occasions severely censured it. And as to stirring up Her Majesty's Subjects to Arms and Violence, he abhors it, and throughout his Sermon asserts the Doctrine of Non-Resistance; which is quite contrary to this Part of the Charge, altho' he conceives it to be the Ground of the Impeachment. Sure there is not any one Passage, that tends to excite the Subjects to Arms, in his Sermons.

My Lords, There was Notice taken of a Passage (that has little in it) exciting Christians to *put on the whole Armour of God*: But sure that is distinguished from the Arms of Flesh and Blood: It cannot be so misinterpreted, as to be understood of any Earthly Power whatsoever; for as it is in the Scripture, so it is in the Doctor's Sermon, *the whole Armour of God; Patience, Submission, &c.* This is the Armour he excites Christians to put on; nothing of fleshly Arms.

As to the Charge of perverting several Texts of Scripture, to make ill Impressions on the People; he denies it, and had no ill Impression to make on any Person whatsoever: His Work was to do good, and make good and religious Impressions on his Hearers. But he thinks it hard, when he cites Texts of Scripture against Vice and Immorality, by a Construction in Prejudice of the Preacher, those Texts should be said to be applied to particular Persons. The Story of the Prophet, in the Second Book of *Kings, Chap. vi.* as printed in the Doctor's Sermon, is mistaken; but the Two Reflections made upon it, are very unnatural, and not credible. The first Inference was, That he had it by Hearsay, and that he had not read it. Sure your Lordships cannot think, but that he, that is a Doctor of Divinity, has read every Chapter in the Bible: He, that has been a Student in the University of Twenty Years standing, and more, and constantly keeping to the Church, certainly none can think but he has read the Bible. But then it is turn'd the other way upon him; That, taking it to be so, then he represents himself to be the Prophet that could see the Danger, and makes the Lords and Commons the People that were blind.

My Lords, This, I suppose, was intended to be wittily said; but if it be seriously (and without Raillery) considered, there is no Wit or Sense in it. He mentions not the Lords and Commons at all: But it is true, he, as a Preacher, warns the People to have their Eyes open, to see the Dangers of Sin and Vice; so that we apprehend, there is no Ground, from that Passage, to charge the Doctor with corrupting the Scripture.

My Lords, The next Text that is quoted against the Doctor upon this Head, is, *Blow the Trumpet in Sion; sound an Alarm.* Now it is urged by the Gentlemen Managers, That this can be for nothing but for War; and this (it's pretended) was only to be done in Time of War, when the Priests with the Silver Trumpets were to sound in Battle. But, my Lords, this cannot have that Construction; for whoever looks into the Scripture, particularly into the

Prophet *Joel*, and other Places, (where that Expression is used) will find it to proclaim a Fast: They were to blow the Trumpet, to signify the Generality, and that all should take notice of it. The Allusion is carried by an Elegancy to the Trumpet, to shew the Generality of it, and that all the People should humble themselves before the Lord. Now, to make this Sedition, to infer it to be to excite the People to War and Rebellion, is not right Reasoning, nor is there the least Colour for it.

Another Quotation he makes is much pressed upon the Doctor, where speaking of the Church, he cites that Passage out of the *Lamentations: Her Adversaries are chief, and her Enemies at present prosper.* This is press'd upon us, as if the Doctor had an Eye in it on the Ministry. But this, we think, is straining the Words beyond their Sense or Meaning: For, first, he does not say her Adversaries are the chiefest, but in the lowest Degree of Comparison, her Adversaries are chief; that is, that amongst her Adversaries there are some considerable Persons, some Men of Estates and Figure. And this, I think, appeared Yesterday in Pamphlets that were read, some whereof are supposed to be wrote by no mean Persons; the Doctor cites the Words of Scripture, and we think it can have no ill Construction. As to the second Part of the Expression, *Her Enemies at present prosper*, they are the Words of the Prophet; and how true in the present Case, we must submit to your Lordships, upon what has been already offered, whether any ill Construction can, or ought to be made of them. Neither the first nor second Part of these Words are determined to any particular Persons; we cite the Words themselves; they are not determined to any Person whatsoever; and so we hope no Offence can be taken at them, nor any such Inference drawn from them, as hath been endeavoured to be represented to your Lordships. The Doctor declares in his Sermon, as we formerly mentioned, and read to your Lordships, that he hoped what he had spoken would be without any Offence, as it proceeded from an honest and good Intention, and a tender Concern for Her Majesty's Person and Government, and an hearty Zeal for the Honour and Safety of our excellent Church and Constitution: And so we hope your Lordships will construe and intend it. And so we submit this Article, and the Doctor's Defence, with all Humility, to your Lordships. We shall read no more than two or three Proclamations: The first is against Vice and Immorality, and to stir up Magistrates to take care to execute the Laws. A second takes Notice that Her Majesty's Commands had not been obeyed nor the Laws executed to suppress Vice, and commands the Magistrates to be careful to do their Duty herein: And, thirdly, a Direction that this Proclamation shall be read to the People out of the Desk. And sure the reading them there, and preaching them, or the Subject Matter of them in the Pulpit, are consistent together.

Mr. Phipps. **M**Y Lords, We are now humbly to offer to your Lordships Consideration, our Answer to the fourth and last Article of the Impeachment, to which we think there is no Necessity of giving any Answer, because we humbly apprehend there is not any Offence charg'd upon the Doctor in that Article; for the Article saith, that *the Doctor doth falsely and maliciously suggest, &c.* Now to suggest can amount to no more than to insinuate, and is far short of an Averment

or Assertion; and whether a bare Suggestion or Infination can be a sufficient Foundation to ground an Impeachment, is humbly submitted to your Lordships. But since 'tis made an Article against the Doctor, we humbly hope we shall give as full an Answer to the Suggestions and Infinitions contain'd in that Article, as we have to the Offences charged in either of the other Articles.

The first Part of the Article saith, *That the Doctor doth falsly and maliciously suggest that Her Majesty's Administration, both in Ecclesiastical and Civil Affairs, tends to the Destruction of the Constitution.* In answer to which 'tis humbly offered, that the Doctor doth not any where mention Her Majesty's Administration, either in Ecclesiastical or Civil Affairs. He esteems it one of the greatest Blessings and Deliverances, *That her Majesty now happily sits on the Throne of Her Ancestors*; he prays, *that God would long preserve Her, for the Comfort and Support of the Church*; he professeth, *That what he speaks proceeded from a tender Concern for Her Majesty and Her Government, and an hearty Zeal for the Honour and Safety of our excellent Church and Constitution*; he solemnly declares, *That his only Aim and Intention was earnestly to contend for the Safety, Rights and Establishment of her Majesty, together with those of the Church.* And how after all this it can be inferred, he suggests that her Majesty's Administration, in Ecclesiastical and Civil Affairs, tends to the Destruction of the Constitution, I cannot imagine. I humbly submit, whether such a Charge can be infer'd from his Sermons, without carrying Innuendo's farther than ever hath been attempted.

As for that Part of the Fourth Article, which chargeth, that *the Doctor doth suggest that there are Men of Characters and Stations in the Church and State, which do themselves weaken, undermine and betray, and do encourage and put it into the Power of others, who are professed Enemies, to overturn and destroy the Constitution and Establishment*: The Doctor denies he suggesteth any such things concerning Men of Characters and Stations.

I can't but observe what Art hath been used to make up this Article, and I do not doubt but your Lordships will be of that Opinion; for the Doctor in Page 22, mentions Men of Characters and Stations, but does not mention Men of Character and Station in Church or State; but says, *there are Men of Character and Stations that shift and prevaricate with their Principles, and start from their Religion upon any Occasion of Difficulty.* Which is a Charge upon them in their private Capacity, and does not charge them with any Misbehaviour in their Stations, or in any thing relating to the Publick Administration; nor does he mention in that Place their weakening, undermining and betraying, or the encouraging or putting it in the Power of our profess'd Enemies to overturn and destroy the Constitution and Establishment.

And in Page 15, where he mentions *the weakning, undermining and betraying in themselves, and the encouraging and putting it in the Power of our professed Enemies to overturn and destroy the Constitution and Establishment of both*: There he does not mention Men of Character and Station, but chargeth the weakning, &c. on the False Brethren in Church and State; so that he thinks it very hard that a Part of one Sentence in Page 22, should be brought back seven Pages, and coupled with Part of another Sentence, Page 15, and put together as one Sentence, to make an Article of High Crimes and Misdemeanors;

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whereas one of the Sentences hath no manner of Relation to, or Dependance upon the other, and neither of the Sentences alone can amount to or be charged as a High Crime and Misdemeanor.

By this Method they might have charged him with High Treason, or any other Crime. Nay, my Lords, by this transposing and altering of Sentences, by taking a Part of one Sentence and coupling it with Part of another, they may make the Scripture it self speak Blasphemy.

But suppose it had been one entire Sentence, had this been a Ground for an Impeachment? By Men of Characters and Stations, must Men of the highest Characters and Stations be necessarily understood? No, my Lords: Are not inferior Officers, even Constables, Mayors, Justices of the Peace, Officers of the Militia, Deputy-Lieutenants, Officers of the Army, Officers of the Customs, and other Branches of the Revenues, all Men of Station? And are not some of the Stations very good ones? And are not many of the Persons that enjoy them Men of Characters too? And if among all these there may be found some whose Consciences are so tender, that they think it a Sin to communicate with the Church upon any other Account than to qualify themselves for their Offices and Stations; and such who vilify her Orders, calumniate, misrepresent and ridicule her Priests and Professors: Is it a High Crime and Misdemeanor in the Doctor to call such Persons False Brethren, and to suggest that they are Enemies to our Constitution, and that they endeavour to weaken and undermine it? And yet this is all that can be infer'd from these two Pieces of Sentences put together, to form this Article. And does this bring the least Blemish or Reflection on the Ministry, or those of the Highest Character and Stations in the Church? By no means: For the Ministry presumes that Men in those inferior Stations are well-affected to our Constitution, when they qualify themselves according to Law, by taking the Sacrament and Oaths; and if any of them are not so, it cannot be presumed to fall under the Notice of the Ministry: And in many Cases, if they did know it, yet it would not be in their Power to redress it. I remember one Instance, in an eminent Borough in this Kingdom. It was proved, at the Hearing of an Election for that Borough, that the Mayor declared that no Person should be admitted into the Corporation and qualified to Vote for Members of Parliament, but such as were Dissenters from the *Test*; so that there may be Mayor, Aldermen, and the whole Corporation who may take the Sacrament in the Church of *England*, and the Oaths, and yet every one Dissenters: And they may elect Persons into much higher Stations, if they please, which are equally disaffected to our Church, and it is not in the Power of her Majesty or the Ministry to help it. And when there are such found among us, whether the Doctor, when he chargeth them for being False Brethren, can be said to reflect on the Ministry, can be said to be guilty of High Crimes and Misdemeanors, I submit to your Lordships.

The Learned Gentleman who spoke first to this Article, seemed to allow that Men of the highest Characters and Stations were not intended; but he objected, that to charge the inferior Magistrates with a Neglect of their Duty, is charging the Government with Male-Administration; in which I cannot concur with him. But as this Case is, I take it to be plain, that to charge inferior Officers or Magistrates with a Neglect of their Duty, can-

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not reflect on Her Majesty's Administration; for there are Magistrates which Her Majesty cannot remove; there are Neglects which Her Majesty or Her Ministry cannot be presumed to know, as I before mention'd. And to set this in a true Light, and to give a full Answer to this Objection, we have Her Majesty's Authority to vindicate the Doctor in this Point; for Her Majesty chargeth the Magistrates with a Neglect of their Duty, and carrieth the Charge higher than can be inferr'd from the Doctor's Sermon, I mean the several Proclamations that have been issued by Her Majesty, by the Advice of her Privy-Council (which are Her Ministry) for suppressing Profaneness and Immorality. Those Proclamations take Notice of the several Acts of Parliament against Profaneness and Immorality, and charge the inferior Magistrates with a Neglect of their Duty, in not putting those Laws in Execution. And is it an Offence for the Doctor to mention that in his Pulpit, which hath been so often repeated by her Majesty under Her Great Seal?

It has been objected, That the Doctor, speaking of the Church, says, That *Her Adversaries are Chief*. This is a Quotation out of Scripture, which signifies that they are Mighty; but that this reflects on the Ministry, or Her Majesty's Administration, I cannot apprehend.

But it is also objected that the Doctor, Page 5, saith, *That the Communion of the Church hath been rent and divided by Faction and Schismatical Impostors, &c.* Is the saying this is done with Impunity, a Reflection on the Administration? That Blasphemy, Atheism and Profaneness have been justify'd in Print; that the Worship and Discipline of the Church hath been profaned and abused, her Orders denied and vilified, her Priests and Professors calumniated, misrepresented and ridiculed; that Trumpets have been sounded to Rebellion; that Her Majesty and Her whole Administration have been reflected on, I think was sufficiently proved to your Lordships Yesterday; and that it hath been done with Impunity hitherto, I believe will not be denied, for I have not heard that any of these bold Offenders have yet been punish'd; and that the inferior Magistrates have neglected their Duty in that respect, we have Her Majesty's Authority for it. But that this is a Reflection on Her Majesty, or Her Ministry, is totally denied; for the Execution of the Laws against such Offenders is within the Province of inferior Magistrates; and God forbid that the Faults of inferior Magistrates should be charged upon her Majesty. The several Proclamations issued out by Her Majesty, by the Advice of Her Privy-Council, shew, Her Majesty and Her Ministry have done all that in them lies to suppress Blasphemy, Profaneness, and other Vices; and that the Fault and Neglect lies entirely at the Door of the inferior Magistrates: And this sufficiently answers the Objection, that what is charged upon inferior Magistrates cannot reflect on Her Majesty, or Her Ministry. And this is also a full Answer to that Part of the Fourth Article, which accuseth the Doctor with charging Her Majesty, and those in Authority, both in Church and State, with a general Male-Administration; to which I would only add what the Doctor hath said in his Answer to this Article, viz. "That he abhors the Thoughts of bringing
" any Charge against Her Sacred Majesty, whom he
" never mentions but in Terms of the profoundest
" Duty and Respect; that he doth not charge those
" in Authority with any Male-Administration; that
" he doth not so much as mention the Word Male-

Administration, nor any other Word Synonymous
" with it, or from whence it can be inferr'd, or in
" which it is or can be imply'd.

As to such Part of the Fourth Article, which chargeth, that *the Doctor, as a publick Incendiary, persuades her Majesty's Subjects to keep up a Distinction of Factions and Parties*; he invites the Dissenters to leave their Schism, and come sincerely into the Church: He complains of those who have villainously divided us with the knavish Distinctions of High and Low Church. He wisheth we were all one Fold under one Shepherd; and that all those invidious Distinctions, that distract and confound us, were lost.

If wishing that People would leave their Schism, and come sincerely into the Church; that we were all one Fold under one Shepherd, makes a Man a publick Incendiary; if blackning those that divide us with knavish Distinctions with the Character of Villainous; and wishing that all those invidious Distinctions which distract and confound us were lost, be to keep up Distinctions of Factions and Parties, the Doctor is Guilty; but if not, then he conceives there is nothing in his Sermons which can be a Foundation for the Charge in this Branch of the Fourth Article.

But it hath been objected, That tho' the Doctor invites the Dissenters to come into the Church, yet he invites them upon his own Terms: And I hope, my Lords, they shall never come in upon any other Terms than their conforming to the Doctrine and Discipline of the Church. I hope I shall never see the Constitution of our Church weakened, and her Pales and Fences broken down, to let her Enemies into it.

As to the other Part of the Article, which chargeth the Doctor with instilling groundless Jealousies, and fomenting destructive Divisions among her Majesty's Subjects, there is no Foundation for it; for, on the contrary, he rebukes and condemns those who by false Insinuations, and raising groundless Jealousies and Fears, embroil and bring it into Confusion.

As to that Part of the Fourth Article, which chargeth, That *the Doctor excites and stirs up Her Majesty's Subjects to Arms and Violence*; if Preaching up Passive Obedience be to stir up People to Rebellion; if Preaching up the Illegality of Resistance be to excite Her Majesty's Subjects to take up Arms against Her, I own there is a sufficient Ground in his Sermon for this Charge; but otherwise, there is not one Passage in the Sermon to warrant this Accusation.

I do admit, the Doctor, in the last Page of his Sermon, hath this Exhortation of St. Paul's *Put on the whole Armour of God, that ye may be able to stand against the Wiles of the Devil; for we wrestle not only against Flesh and Blood, but against Principalities, against Powers, against the Rulers of the Darkness of this World, against Spiritual Wickednesses in high Places*. I pray, my Lords, What is it that the Doctor in the Words of St. Paul advises his Auditors to resist? Is it not *the Wiles of the Devil*? With what Armour are they to resist? 'Tis with *the Armour of God*. What is the Armour of God? Are Guns, or Swords of Iron or Steel, the Armour of God?

The Learned Manager that spoke to this Point said, the Doctor could not mean the spiritual Armour, because he departed from the Apostle's Spiritual Meaning. And to make good this Charge, he useth the same Method that was taken to make up the first Part of this Article; for the Words cited by the Doctor are in the Eleventh and Twelfth

Verfes

Verfes of the Sixth Chapter of St. Paul to the *Ephesians*; and to find out the Doctor's Meaning, he goes back to the Thirty-first Verfe of the Fourth Chapter, where St. Paul faith, *Let all Bitternefs, and Wrath, and Anger, and Clamour, and Evil-speaking be put away from you, with all Malice.* And why this fhould be alledged to fhew what the Doctor means, when in the Words of St. Paul he advifeth his Auditors to put on the Armour of God, I cannot imagine. If he had read but two Verfes after thofe Words cited by the Doctor, he would have found the Armour of God to be *The Sword of the Spirit, the Shield of Faith, the Breast-plate of Righteoufnefs, and the Helmet of Salvation*; and the Doctor could mean no other Armour: And how Her Majesty, or thofe in Authority under Her, can be refifted by this Armour, or what Violence Her Majesty's Subjects can ufe with thefe Arms, I fubmit to your Lordships. 'Tis plain, that the Principalities, Powers and Rulers here meant, are not Earthly Principalities, Powers and Rulers; but the *Principalities, Powers and Rulers of Darknefs*, againft which Swords and Guns are but a very weak and feeble Defence. Thefe Things being confider'd, I think there is nothing to be collected from this Paragraph, that can excite Her Majesty's Subjects to Arms and Violence; unlefs it be, to *take the Armour of God, to refift the Devil and all his Works*; which, I hope, is not a High Crime and Misdemeanor.

As a further Evidence that the Doctor excites Her Majesty's Subjects to Arms and Rebellion, it is objected, That the Doctor, in his Sermon, *Pag. 26.* fays, *Let us therefore, being well affur'd how much our Cause deserves, and how much at present it requires our bravest Refolutions, bold faft our Integrity and Religion without wavering, and earneftly contend for the Faith which was once deliver'd to the Saints.* And is not this wholefome and religious Advice? The more ftrongly and openly the Cause is oppugned, the braver Refolution it requires to defend it. The Cause of Religion is attack'd by Atheifts and Deifts; the Cause of Monarchy, by Affertors of Republican and Seditious Principles; the Cause of the Church, by Papifts and Sectaries of all forts; and therefore it requires our bravest Refolutions to defend the Church, the Queen, and the Conftitution, with the fame Zeal they are attack'd, as the Doctor explains himfelf; *Not doubting, if we fhew the fame Courage, and indefatigable Zeal and Labour to defend, as our Adverfaries to reproach, divide and ruin our Church; neither their united Malice nor Power, nor all the Plots and Machinations of Rome, nor the very Gates of Hell it felf, fhall ever be able to prevail againft Her.* And fhall this be conftrued to excite Her Majesty's Subjects to Arms and Violence?

As to the laft Part of the Article, which chargeth, That the Doctor doth wickedly wrest and pervert divers Texts of Holy Scripture: It feems, the Printer of the Second Edition miftook one Text. If the Doctor had perverted, or wickedly wrested the Text, he muft have been fubject to a Profecution in another Place; but it would not have been a Ground for an Impeachment of High Crimes and Misdemeanors.

To conclude.—My Lords, If condemning the Dethroning and Murdering the Royal Martyr King Charles the Firft, be to caft black and odious Colours on his late Majesty and the Revolution; if the averring the utter Illegality of Refiftance to the Supreme Power in all things lawful; if Preach-

ing the Doctrine of Paffive Obedience and Non-Refiftance, which hath been enjoined by our Church, and confirmed by the Legiflature, and is the Doctrine of all Chriftian Churches, fhall be conftrued to be a Reflection on the Revolution, and a greater Reflection on it now, than the Preaching of the fame Doctrine was in the Reign of his late Majesty, who was the Happy Instrument of that Revolution: If the Doctor be a Criminal for Preaching that Doctrine which the Right Reverend Fathers of our Church, and other Eminent Divines, have preach'd, with the Approbation and Applaufe of the Crown, and both Houfes of Parliament; then the Doctor is guilty of the High Crimes and Misdemeanors in the firft Article.

And if to wifh that Diffenters, who qualify themfelves according to the Act, may enjoy the full Benefit of it; if to defire the Laws to be put in Execution againft fuch who will not comply with the Terms prefcribed by the Act, and againft Atheifts, Deifts, and fuch who frequent no Religious Worfhip at all, and are particularly excepted out of the Act of Toleration; and if to affert, that a Sentence ratified in Heaven cannot be reverfed on Earth, be to affirm the Toleration unreafonable, and the Allowance of it unwarrantable; then the Doctor is alfo guilty of the High Crimes in the Second Article.

And if to affert the Prejudice the Church receives by Schifm and Occafional Conformity; if the fhewing the heavy Judgments which may be brought down upon a Church and Nation, by Blafphemy, Atheifm, Frophanenefs and Immorality; if to fhew the Danger the Queen and Church are in, by the rebellious Principles that are daily broach'd and publifh'd, be to affert the Church is in Danger under Her Majesty's Adminiftration; the Doctor is likewife guilty of the Crimes in the Third Article.

And laftly, If to pray for Her Majesty's long Continuance on the Throne, for the Comfort and Support of the Church and Nation; if to fhew that the Laws againft Atheifm, Blafphemy, Frophanenefs and Irreligion, be not put in due Execution by inferior Magiftrates; that is, if to affert in his Pulpit what Her Majesty, by Advice of her Miniftry, hath afferted in Four Proclamations, be to reflect on Her Majesty and Her Miniftry, and to charge Her Majesty with Male-Adminiftration in Church and State; and if exhorting the People to *put on the Sword of the Spirit, the Shield of Faith, the Breast-plate of Righteoufnefs, and the Helmet of Salvation, to refift the Devil, and all the Powers of Darknefs*, be to excite Her Majesty's Subjects to Arms and Violence againft her Majesty; and if Preaching up Paffive Obedience and Non-Refiftance, is to ftir up People to Rebellion; then the Doctor is guilty of the High Crimes and Misdemeanors in the Fourth Article; efpecially, if ftain'd, foreign and unnatural Inferences, Innuendoes and Innuendo's are to pafs for Proof. But otherwife I pre-fume to fay, the Doctor is not guilty of any of the Offences charged in either of the Articles; and I humbly hope, your Lordships will be of that Opinion.

Mr. Dec. **M**Y Lords, This Article is fhort of the former Articles, in the manner of the Charge. The firft Part of it is a Charge upon the Doctor, That he *fuggefts only, That Her Majesty's Adminiftration tends to the Deftruction of the Conftitution.* As to this Part of the Article, (as

has been observed) there is no Passage in the Sermon mentioning Her Majesty, but with the greatest Respect, and with hearty Prayers for Her. The Words *Ministers*, and *Ministry*, are not found in the whole Sermon: Therefore, to find any Charge on them by the Doctor, we must look to the Second Part of the Article, which charges the Doctor with suggesting, *That there are Men of Character and Stations, who are False Brethren, and do undermine the Constitution, and endeavour to betray the Church; and consequently charges Her Majesty with a General Male-Administration.*

My Lords, As to this Part of the Charge, viz. That the Doctor doth suggest, that Men of Characters and Stations are Underminers of our Constitution, it is not to be found in any Part of the Sermon: But if he doth suggest, that Men of Characters and Stations (not saying of what Characters, or what Stations) are False Brethren, (if your Lordships take notice what those Men are, whom the Doctor calls False Brethren) it will not be a sufficient Ground for a Charge of High Crimes and Misdemeanors. There are Four Sorts of Persons, that the Doctor charges as False Brethren: Those that propagate False Doctrines; Those that give up the Discipline of the Church; Those that are for a Neutrality in Religion; and Those that own themselves to be of the Church, but live not according to her Rules. Now to say, that there are some Men of Character and Stations in the Nation that are False Brethren, within some one or other of these Descriptions, I wish I could say it was not true. But when the Doctor comes to charge some Persons as Underminers of the Church and Constitution, they are described to be either those Persons that subvert the Fundamentals of Religion, as Atheists, Deists, *Socinians*, and such like; or Occasional Conformists, Persons that creep into the Church, only with a Design to do it a Mischief. And I think these Persons may be justly said to be Underminers of the Church.

My Lords, There is a General Charge against the Doctor, *That he excites the People to Rebellion.* If this could be naturally infer'd from his Words, he must be guilty of Self-Contradiction, and ought rather to be pitied as a weak, foolish Man, than punished as a cunning Incendiary. For when he hath so positively affirmed the utter Illegality of Resistance to the Supreme Power, if any Thing had dropp'd from him in the same Assembly tending to Rebellion; he would have expos'd himself to the utmost Ridicule.

My Lords, Some Things have been observed out of the Preface to his Sermon at *St. Paul's*: One Expression is that of sounding a Trumpet. I should not have thought this worth taking notice of, but that some of the Gentlemen did lay some Strefs on it, as if this were founding an Alarm, exciting People to Arms: But I conceive, that the Words out of the Mouth of the Doctor, bear the same Sense as out of the Mouth of the Prophet. But for fear that he should be misconstrued, the Doctor explains himself by the Words immediately following, and shews, that such Prohibition or Restraint laid on the Clergy, as are there suggested, are expressly contrary to the Command of God. His Words are these: *We are told by these Men, who would shut both our Eyes and our Mouths, in order the more effectually to undermine and destroy us, that the Pulpit is not a Place for Politicks; and that it is the Business of a Clergyman to preach Peace, and not sound*

a Trumpet in Sion; so expressly contrary to the Command of God, to cry aloud, and spare not. So that these Words do plainly interpret what the Doctor meant by sounding a Trumpet.

My Lords, There was another Thing taken notice of from this Preface, and that was the Encouragement he gives to People to Arms and Violence, against such as would destroy the Church, &c. The Words of the Doctor are these: *If honest Men will sit still, and give up their Cause through want of Courage, or a just Sense of the dangerous Attempts of our Enemies; we may, without the Spirit of Prophecy, foretel what will become of our Constitution, when it is so vigorously attacked from without, and so lazily defended from within.* This was looked upon as dividing the People, and exciting them to make Resistance. But if the Gentlemen had looked a little before, in the same Paragraph, they would have found who the Assailants he mentions were; and then they would not, I conceive, have blamed the Doctor, for encouraging the People to make a vigorous Defence. The Assailants are those that make rebellious Appeals to the People, as the only Judges of Right and Wrong, and the Dernier Resort of Justice and Dominion: These, he says, are the fashionable Methods now made use of to undermine the Church and Legislature, by breaking in upon the Prerogative of the Crown, by threatening them with imaginary Legions, and a Popular Tribunal, where their Authority is to be tried and determined. To put a stop to this Thing, is what he says is the Intent of his Discourse. Now if these are the Persons that attack the Constitution, that appeal to the People as the only Judges of Right and Wrong, if these are the Assailants, surely the Doctor may encourage the People vigorously to defend themselves against them.

My Lords, There was one Thing more taken notice of by the Gentlemen Managers, That the Doctor had given great Offence to the Commons, by an Expression he has made use of, by way of Exclamation, in the Close of his Answer to the Articles; and that runs thus: *Hard is the Lot of the Ministers of the Gospel, if when they cite the Word of God in their General Exhortations to Piety and Virtue, or in their Reproofs of Men's Transgressions, or where they are Lamenting the Difficulties and Conflicts with which the Church of Christ, whilst Militant here on Earth, must always struggle; the several Texts and Passages by them cited, shall be said to have been by them meant of particular Persons and Things, and shall be construed in the most Criminal Sense, and be made by such Construction one Ground of an Impeachment for High Crimes and Misdemeanors.* If this Supposition, as the Doctor has put it, be turned into a Position, he hopes you will pardon him for his Exclamation. If Generals have not been tied to Particulars, to make up these Articles, then the Doctor had no Reason to make this Exclamation: But if the Doctor's Sermon hath been so treated, in order to frame the Articles against him, then he is not blameable for that Expression.

My Lords, The Doctor has never before been charged with Disloyalty to the Government: He hath always been a Man of that Probity, and of so blameless a Life and Conversation, that he hath not been so much as attack'd on that Account. And when a Man of his Character is brought before your Lordships, for a Sermon preached in a publick Congregation, for a Doctrine that is the Doctrine of the Church of *England*, and for which he has

has the Authority of so many of the Fathers of that Church, as well as of many of her Learned Sons: For him, I say, to be brought before your Lordships (by an Impeachment) on that Account, surely he may be allowed to say this: His Lot (at least) is hard, that he should be made the first, and so solemn Example; when he only followed so many and great Examples, as have been set him from the Beginning of the Reformation down to this Time. And when your Lordships consider the Circumstances of the Doctor, I hope your Lordships will think, that the Defence of this Prosecution, must be a sufficient Punishment for any Crimes he is charged with, and of which he can be supposed guilty: And so I submit him, and his Cause, to your Lordships Justice.

Dr. Henckman. **M**Y Lords, In the General Preamble to the Articles of Impeachment, Doctor *Sacheverell* is said to have preached and published Two Discourses, with an *Intention to defame Her Majesty's Administration*; and this last Article contains several particular Charges, of a very high Nature, and great Malignity, against Her Majesty's Happy Administration.

For a General Answer to this Article, I must beg your Lordships Patience, to look back again upon those Passages of this Sermon, which I humbly offer'd to your Lordships Consideration under the Third Article, which will set the Doctor's Intentions in a clear Light. In one of them, he readily acknowledges the great Blessing we at present enjoy, by Her Majesty's happily sitting on the Throne of Her Ancestors: And in the other Places, where he mentions Her Majesty, it is with great Respect, and hearty Addresses to God, long to preserve Her on that Throne; and at last concludes with this solemn Protestation; That what he had then spoken, *proceeded from a good Intention, and tender Concern for Her Majesty's Person and Government, and a hearty Zeal for the Honour and Safety of our Excellent Church and Constitution.*

My Lords, Some Regard is to be had to the Declarations of every honest Man, in relation to his own Thoughts and Intentions, which are known only to God and his own Conscience: And certainly, when a Priest of the Church of *England* does, in the Presence of God, and the Face of the Congregation, solemnly declare, That what he speaks is with a tender Concern, and hearty Zeal for Her Majesty's Person and Government; no loose Words, or distant and unconnected Expressions, ought to be construed to a direct contrary Sense of so express a Declaration. My Lords, The Sense of these Words is plain and obvious to every Man's Understanding: But if a Passage in the Two and Twentieth Page of this Sermon, in it self, and as it stands in its proper Connection, (not Criminal,) must be construed by what is said in the Fifteenth Page, little relating to the same Purposes, and both these Passages explain'd by a Third still farther distant; by such a Method, the most inoffensive Discourse may be made blameable, and it will be very difficult to make any Defence.

My Lords, It has been objected by the Learned Managers, That the Doctor chose an unseasonable Time, and an improper Place, to vent his Notions in. But how does it appear, that either the one or the other was of his own Choice? Does it not rather appear, that he was called to perform that Duty by the publick Magistrate; and that both the

Time and Place were of his Appointment? Or how can it, at this Time, be thought unseasonable, to maintain the Doctrine of our Church, when such Swarms of infamous Libels are daily published in Opposition to it? Or what Place can be more proper for this Purpose, than that in which such Libels usually first appear, and most prevail? Whether the Doctor performed his Duty, by Preaching that Doctrine there, which the Rubrick of our Liturgy expressly commands him to teach on that Day, must be submitted to your Lordships: And certainly it will always be thought proper, on that Day that our Church and State were delivered from a most horrid Conspiracy, to preach against the Sin of Rebellion: Upon that Day that the Whole Nation was delivered from a Popish Conspiracy, it will always be proper to shew, that Resistance of the Higher Powers is the Doctrine of Papists, and first proceeded from them. It is well known to your Lordships, what the General Duty of Ministers obliges them to; but upon State-Days, when they are commanded by Supreme Authority, and directed by the Rubrick, what Subject to treat of; it would be Contempt in them not to obey the Commands of their Superiors, or not to insist upon that Doctrine which they are peculiarly ordered to explain. And I humbly apprehend, that those Reverend Prelates, some of whose Expressions were lately read to your Lordships, would not have received the Thanks of this Honourable House, if they had not adapted their Discourses to the Solemnity of that Day, which they then celebrated.

My Lords, Upon a general View of this and the other Articles, the whole Charge will appear to be supported, not by any one plain Proposition, but by Inferences and suppos'd Constructions. It has been my Endeavour, under every Article, to lay before your Lordships one or more clear Passages of this Sermon, which sufficiently declare the Author's Intention as to that Article; and I must leave it to your Lordships Consideration, how far an Insinuation or Inference will be outweighed by an express Declaration. If there are any Words in this Discourse which seem to bear a doubtful Meaning, your Lordships will in all Cases incline to the most favourable Side; and in this Particular, the Character and Function of a Minister will deserve some more than ordinary Allowance. My Lords, It is a known Rule in the *Roman Law*, *In ambiguis orationibus maxime sententia spectanda est ejus qui eas protulisset.* Where-ever Words are capable of a double Construction, there the Intention of the Speaker is chiefly to be looked after, and attended to. Every Man has a Right to explain his own Intentions; and the darker and more obscure Expressions of his Discourse must be construed by those Passages which are more plain and explicit. This is a Rule in all Civil and common Cases between Man and Man; but in Criminal Cases, there that Law exacts a stricter and a nicer Proof: Where-ever the Life or Liberty of a Citizen is concerned, there the Proofs ought to be *Luce meridiana clariora*, as evident as the Sun at Noon-day, and such as will convince every one at first Sight.

My Lords, I mention these Maxims of the *Roman Law* only as they are agreeable to the common Sense and Understanding of Mankind, as Rules of Reason and Equity, which your Lordships have always governed your selves by, and always will. The last of 'em I mention with the greater Confidence, because I find it has once already received the

the Sanction of this honourable House, in Sir Samuel Bernardiston's Case; in which it is declared, *That Innuendo's or supposed Constructions ought not to be allowed; for all Accusations should be plain, and the Crimes ascertained.* This, my Lords, has once been the Resolution of this Honourable House, and we humbly hope your Lordships will not depart from a Precedent so well established. My Lords, one Part of this last Article is, That the Doctor has wrested several Texts of Scripture to seditious Purposes; but it has not yet appeared that he ever harboured one seditious Thought: Whether he has perverted any Texts of Scripture will be best explained by himself, when your Lordships shall be pleased to hear him.

Mr. Dodd. My Lords, We desire to read two or three Proclamations: The First is to direct the Magistrates to put the Laws in Execution against Prophaneness and Immorality; and that not being duly observed, the Second Proclamation takes notice thereof, and directs the Magistrates to put the same in Execution: And there are two subsequent Proclamations to the same Purpose.

Clerk Reads.] *By the Queen, A Proclamation, for Restraining the Spreading False News, and Printing and Publishing of Irreligious and Seditious Papers and Libels.*

ANNE R.

Whereas by an Act of Parliament made in the Third Year of the Reign of King Edward the First, It is Enacted, that none be so hardy to tell or publish any false News or Tales, whereby Discord, or Occasion of Discord or Slander may grow between the King and his People, or the great Men of the Realm; and that he that doth so, shall be taken and kept in Prison until he hath brought him into Court which was first Author of the Tale. And by another Act made in the Second Year of the Reign of King Richard the Second, it is declared, That the devising, speaking and telling such false News and Tales, was likely to occasion great Peril and Mischiefe to, and the quick Subversion and Destruction of this Realm: For the preventing whereof, it is thereby Enacted, That none be so hardy to devise, speak or tell any false News, Lyes, or other false Things, of Prelates, Noblemen, and Officers of the Crown therein named, whereof Discord, or any Slander, might arise within this Realm, under the Pain ordained by the said Statute of King Edward the First. And by another Act made in the Twelfth Year of the Reign of the said King Richard the Second, it is Enacted, That when any such shall be taken and imprisoned, and cannot find him by whom the Speech be moved, that he shall be punished for such his Offence. And whereas the preventing of the spreading and publishing of false News and Tales, and the Writing, Printing and Publishing of Heretical, Blasphemous, Irreligious, Treasonable, Seditious and Scandalous Books, Pamphlets, Libels and Papers, is a Matter which requires our Publick Care, and is of great Concernment; especially considering, that by Reason of the general Licentiousness of the Times, since an Act for preventing Abuses in Printing Seditious, Treasonable and Unlicensed Books and Pamphlets, and for regulating of Printing and Printing-Presses, made in the Thirteenth Year of the Reign of Our late Royal Uncle King Charles the Second,

and continued by an Act made in the Fourth Year of the Reign of the late King William and Queen Mary, expired, many Evil-disposed Persons have Written, Printed and Published divers Heretical, Blasphemous, Irreligious, Treasonable and Seditious Books, Pamphlets, Papers, and many false, infamous and scandalous Libels, and do continue such their unlawful and exorbitant Practices, endeavouring thereby to traduce and reproach the Ecclesiastical and Temporal Government of this Kingdom, and the publick Ministers of the same, and the Proceedings and Members of both Houses of Parliament, and other our loving Subjects, to the high Dishonour of Almighty God, and the endangering the Peace of these Kingdoms, contrary to the said Statutes, and the common Laws of our Realm: We therefore (with the Advice of our Privy-Council) do by this Our Royal Proclamation Charge and Command all our Subjects, of what State or Condition soever they be, That they do not henceforth presume, either by Writing, Printing or Speaking, to tell or publish any false News or Tales, contrary to the Statutes before-mentioned; nor Write, Print, Publish or Sell, or cause to be Written, Printed, Published or Sold, any Heretical, Blasphemous, Irreligious, Treasonable, or Seditious Books, Papers or Pamphlets, or any scandalous Libels, reflecting upon us, or upon the Ecclesiastical or Temporal Government of this Realm, or any of our publick Ministers or Officers, or on the Proceedings of either of our Houses of Parliament, or any the Members thereof, or upon any other of our loving Subjects. And we do hereby further declare, That we will proceed with the utmost Severity and Rigour of Law, against all such Persons who shall be Guilty of any the malicious and unlawful Practices aforesaid: We being resolved, as much as in us lies, to suppress the said Enormities by a more strict and exemplary Punishment of all such Offenders herein, as shall hereafter be discover'd: To the Discoverers whereof we will give all due Encouragement. And we do hereby straitly charge and command all and singular our Judges, Justices of the Peace, Sheriffs, Mayors, Bailiffs, and all other our Officers and Ministers whatsoever, to take effectual Care for the speedy Apprehension, Prosecution and Punishment of all such Persons, who shall at any Time hereafter be found Offenders herein.

Given at Our Court at Whitehall, the Twenty-Sixth Day of March, 1702. In the First Year of Our Reign.

GOD save the QUEEN.

Mr. Dodd. Now read the Second. Read the Date first.

Clerk Reads.] *Given at Our Court at St. James's, the Five and Twentieth Day of February, 1702. In the First Year of Our Reign.*

By the Queen, a Proclamation for the Encouragement of Piety and Virtue, and for Preventing and Punishing of Vice, Prophaneness and Immorality.

ANNE R.

Whereas on our Accession to the Throne, we thought fit, by the Advice of our Privy-Council, to issue out our Royal Proclamation for the Encouragement of Piety and Virtue, and for the Preventing and Punishing of Vice, Prophaneness and Immorality: And whereas we have been informed, that our Laws mentioned in the said Pro-

Proclamation have not been executed according to our just Expectation and Commands: We most seriously and religiously considering, That it is an indispensable Duty on us, to be careful, above all other things, to preserve and advance the Honour and Service of Almighty God, and to discourage and suppress all Vice, Prophaneness, Debauchery and Immorality, which are so highly displeasing to God, so great a Reproach to our Religion and Government, and (by Means of the frequent ill Examples of the Practicers thereof) have so fatal a Tendency to the Corruption of many of our loving Subjects, otherwise religiously and virtuously disposed, and which (if not timely remedied) may justly draw down the divine Vengeance on us and our Kingdoms: We also humbly acknowledging, That we cannot expect the Blessing and Goodness of Almighty God, (by whom Kings and Queens reign, and on which we entirely rely) to make our Reign happy and prosperous to our self and our People, nor hope for the Divine Assistance to deliver us from the great and imminent Dangers which our Kingdoms, and the true Protestant Religion established among us, are in this present Juncture threatned with, without a religious Observance of God's Holy Laws. To the Intent therefore that Religion, Piety, and good Manners may, (according to our most hearty Desire) flourish and increase under our Administration and Government; We have thought fit (by the Advice of our Privy-Council) to issue this our Royal Proclamation; and do hereby declare our Royal Purpose and Resolution to discountenance and punish all manner of Vice, Prophaneness and Immorality in all Persons, of whatsoever Degree or Quality, within this our Realm; and particularly in such as are employed near our Royal Person: And that for the greater Encouragement of Religion and Morality, we will, upon all Occasions, distinguish Persons of Piety and Virtue by Marks of our Royal Favour. And we do expect and require, That all Persons of Honour, or in Place of Authority will give good Example by their own Virtue and Piety, and to their utmost contribute to the discountenancing Persons of dissolute and debauch'd Lives, that they, being by that Means reduced to Shame and Contempt, for their loose and evil Actions and Behaviour, may be thereby also enforced the sooner to reform their ill Habits and Practices, and that the visible Displeasure of good Men towards them, may (as far as it is possible) supply what the Laws (probably) cannot altogether prevent. And we do hereby strictly enjoin and prohibit all our loving Subjects, of what Degree or Quality soever, from playing on the Lord's Day at Dice, Cards, or any other Game whatsoever, either in publick or private Houses, or other Place or Places whatsoever; and do hereby require and command them, and every of them, decently and reverently to attend the Worship of God on every Lord's-Day on Pain of our highest Displeasure, and of being proceeded against with the utmost Rigour that may be by Law. And for the more effectual reforming of all such Persons, who by Reason of their dissolute Lives and Conversations are a Scandal to our Kingdom; our further Pleasure is, and we do hereby strictly charge and command all our Judges, Mayors, Sheriffs, Justices of the Peace, and all other our Officers and Ministers, both Ecclesiastical and Civil, and all other our Subjects, whom it may concern, to be very vigi-

lant and strict in the Discovery, and the effectual Prosecution and Punishment of all Persons who shall be guilty of excessive Drinking, Blasphemy, prophane Swearing and Cursing, Lewdness, Prophanation of the Lord's-Day, or other dissolute, immoral or disorderly Practices; and that they take care also effectually to suppress all Bawdy-Houses, publick Gaming-Houses and Places, and other disorderly Houses; and to put in Execution the Statute made in the nine and twentieth Year of the Reign of our late Royal Uncle King Charles the Second, intituled, *An Act for the better Observation of the Lord's Day, commonly called Sunday*; and also an Act of Parliament made in the ninth Year of the Reign of our late dear Brother King William the Third, intituled, *An Act for the more effectual suppressing of Blasphemy and Prophaneness*; and all other Laws now in Force for the punishing and suppressing any of the Vices aforesaid; and also to suppress and prevent all Gaming whatsoever, in publick or private Houses on the Lord's Day; and likewise, that they take effectual Care to prevent all Persons keeping Taverns, Chocolate-Houses, Coffee-Houses, or other Publick Houses whatsoever, from selling Wine, Chocolate, Coffee, Ale, Beer, or other Liquors, or receiving or permitting Guests to be or remain in such their Houses on the Lord's-Day, (except in Case of Necessity and Charity) as they will answer it to Almighty God, upon Pain of our highest Displeasure. And for the more effectual Proceeding herein, we do hereby direct and command all our Judges of Assize and Justices of the Peace, to give strict Charges at their respective Assizes and Sessions, for the due Prosecution and Punishment of all Persons that shall presume to offend in any the Kinds aforesaid; and also of all Persons that contrary to their Duty, shall be remiss or negligent in putting the said Laws in Execution; and that they do at their respective Assizes and Quarter-Sessions of the Peace, cause this our Proclamation to be publickly read in open Court immediately before the Charge is given. And we do hereby further charge and command every Minister in his respective Parish-Church or Chapel, to read or cause to be read this our Proclamation, at least four Times in every Year, immediately after Divine Service, and to incite and stir up their respective Auditories to the Practice of Piety and Virtue, and avoiding of all Immorality and Prophaneness. And to the end that all Vice and Debauchery may be prevented, and Religion and Virtue practised by all Officers, private Soldiers, Mariners, and others, who are employed in our Service by Sea or Land; We do hereby strictly charge and command all our Commanders and Officers whatsoever, That they do take care to avoid all Prophaneness, Debauchery, and other Immoralities; and that by their own good and virtuous Lives and Conversations, they do set good Examples to all such as are under their Care and Authority; and likewise take care of and inspect the Behaviour of all such as are under 'em, and to punish all those who shall be guilty of any the Offences aforesaid, as they will be answerable for the ill Consequences of their Neglect herein.

GOD save the QUEEN.

Mr. Dodd. My Lords, There are two subsequent Proclamations pressing Magistrates to put the Laws in Execution in this Case; but they are to the same Purpose, therefore I think we need not spend your Lordships

Lordships Time to read them: They are to the same purpose with the last, taking notice that the Magistrates had not done their Duty as required.

My Lords, We have now done our Defence; only we have one Petition to make, That your Lordships would be pleas'd to hear the Doctor speak for himself: There are some things more proper for him to give an Account of, than for his Council. We apprehend the most proper Time will be after the Gentlemen Managers for the House of Commons have replied; but we thought it proper to mention it to your Lordships now, and humbly submit it to your Lordships.

Mr. *Phipps*. My Lords, The Reason why we troubled your Lordships with reading those Proclamations, was to shew your Lordships, that the inferior Magistrates being negligent of their Duty in putting the Laws in Execution against Prophaneness, her Majesty put out another Proclamation to quicken them to it; therefore when the Doctor charges the Magistrates with a Neglect of their Duty, it cannot be understood to be a Reflection on the Queen or the Ministry, because you see what great Care her Majesty has taken: So that we think this last Article is sufficiently clear'd by these Proclamations. One thing, my Lords, I think we have not troubled your Lordships with, and that is the Journal of your own House in the Case of Sir *Samuel Barnardiston*: If the Gentlemen of the House of Commons think it otherwise, we are ready to read it.

Sir *Joseph Jekyll*. My Lords, I have the Commands of the Gentlemen employed in this Service with me, to mention to your Lordships, that they are under a great Surprize, that the Council for the Doctor should take upon them to propose to your Lordships, that the Doctor might speak after the Commons Reply: I have Instructions (since the Doctor's Council have referred some Part of the Defence to himself) to tell the Doctor, that if he has any thing to say for himself, now is his Time before the Commons reply; the Commons claiming it as their Right to speak last.

Mr. *Dodd*. My Lords, we submit to it. Doctor, go on.

Dr. *Sacheverell*. MY Lords, The Defence made by my Council has been so full and particular, and the Trial itself drawn out into so great a Length, that I should not add to your Lordships Trouble by saying any thing for my Self, did I not think that in such a Cause as this, (wherein the Doctrine of our Church, the Dignity of that Holy Order to which I belong, and even the Common Interest of Christianity itself, are so nearly concerned) it becomes me not to be altogether silent.

For, my Lords, it has been owned by some of the Managers for the Honourable House of Commons, that tho' I am the Person impeached, yet my Condemnation is not the Thing principally aimed at. I am, it seems, an insignificant Tool of a Party, not worth regarding; the avowed Design of my Impeachment is, by the means of it to procure an Eternal and Indelible Brand of Infamy to be fixed, in a Parliamentary Way, on all those who maintain the Doctrine of Non-Resistance, and to have the Clergy directed what Doctrines they are to preach, and what not. And therefore, as Insignificant as I am in my Self, yet the Consequences of my Trial (if rightly represented to your Lordships by some of those Gentlemen) are of the highest Moment and Importance.

Since I am the unfortunate Occasion of bringing these Matters in Judgment before your Lordships, it will behove me, I think, after what has been pleaded in my behalf, by my Council learned in the Law, to say somewhat also for my Self, in order to clear the Innocence of my Intentions, and remove that Load of Guilt and Infamy, which may be laid upon me, should your Lordships determine, (as, I trust in God, you will not) that the Articles of Impeachment Exhibited, have been made good against me.

With your Lordships Permission then, I shall lay before you some few General Remarks, which in my humble Opinion may be added to what my Council have already observ'd, concerning the Methods taken by the Managers for the Honourable House of Commons, to Prove and Support the Articles of their Charge. And shall then, with your Lordships leave, say somewhat severally to the Articles themselves, which may serve to remind your Lordships of what my Council before offered more at large, and with greater Advantage.

My Lords, The Charge brought against me in these Articles is of a very High, and Heinous Nature; and had it been as clearly made out, as it has been strongly affirmed, it would justly have exposed me to a very severe Sentence. But the more heinous the Charge is, the more evident and undeniable, I should think, the Proof ought to be. And how, my Lords, has this Charge been supported in the several Articles of it? By plain, direct, and express Passages produced, and read to your Lordships out of my Sermons; or by Intentments, unnecessary Implications, and strain'd Constructions? By laying entire Sentences before your Lordships, and relying upon what was manifestly contain'd in them; or by piecing broken Sentences, and conjoining distant and independent Passages, in order to make me speak, what I never thought of?

I am unacquainted, my Lords, with the Methods of legal Proof, and little thought I should have had this Occasion of enquiring into them. But, as far as I am able to comprehend any Thing of this Nature, I should think, that there cannot be a clearer Indication that I am not guilty of having asserted what I am charg'd by the several Articles to have said, than that so many Hours Learning and Eloquence have been employ'd in proving me to have said it. Had I really affirm'd those Propositions for which I am accused, my Sermons being before your Lordships, the Places wherein such Propositions were directly contained might have been referred to, and read, with the same Ease as my Council refer'd to the Passages contained in the several Writings, and Sermons of the Reverend Fathers, and other Eminent Divines of our Church, wherein they Taught the Doctrine of Non-Resistance in the same Extent as I maintained it, or in Terms much stronger.

These Passages produced by my Council, were barely Read to your Lordships: No Argument, no Colours were used, because none were necessary, to prove what Propositions were laid down in those Passages. Whereas, to prove me guilty of having asserted what is laid to my Charge, after my Sermons and Prefaces were read to your Lordships, much Art and Industry were used to persuade your Lordships, that such Assertions were really contained in them.

My Lords, When my Words were capable of Two Senses, the worst and most invidious, though
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at the same Time the most *strained* and *unnatural Construction*, has been always made of them. Nay, when my Words were so *plain* and *express*, that it was *impossible* to put any *criminal Glosses* or *Colours* upon them, I have been accused of *meaning* the *direct contrary* to what I have said: And when I pressed the Duty of *Allegiance to the Queen*, your Lordships were told, that it was most *certain*, I meant the *Pretender*.

To *Aggravate* my Guilt, I have been *accused* not only for what I am *supposed* to have said, but for what I am allowed *not* to have said: Not only for what I have taken notice of in my *Sermons*, but for what I have *passed by unobserved*: I have been charged with *Negative Crimes*; as if what I *omitted* to say, had been *omitted with Design*, and my *Silence* itself were *Criminal*.

These, my Lords, are the Methods, that have been made use of to *prove* me guilty of *Crimes*, which if proved, might affect my *Liberty* and *Fortune*; no *favourable Allowances* have been made to a *Minister of the Gospel*, discharging the *Duty* of his *Function*, and rebuking *Vice* and *Irreligion* with an *honest* and *well-meant Zeal*, but sometimes perhaps carrying him into *Expressions* too open, and unguarded. I could add, my Lords, if such a Complaint might not be thought *improper* from one in my *Circumstances*, that, in the course of my *Accusation*, I have been stiled a *Criminal*, and treated as such by some of these *Honourable Gentlemen*, with a Degree of *Scorn* and *Indignity*, from which I hoped my *Sacred Profession*, my *present unhappy Condition*, and a *Regard* to this *Solemn* and *Awful Judicature* might have screened me.

But, my Lords, I lay aside all *Complaints* of this Nature, and with your Lordships leave shall proceed to make some few, short *Observations* upon the several *Branches* of the *Charge* Exhibited against me.

I am charged, my Lords, in the *first Article*, with having Maintained, *That the necessary Means*, used to bring about the *late Happy Revolution*, were *Odious* and *Unjustifiable*; in Proof of which it has been urged, that I have in *General Terms* asserted, the *utter Illegality of Resistance to the Supreme Power* upon any *Pretence whatsoever*. My Lords, the *Resistance* in that Passage by me *condemned*, is no where by me applied to the *Revolution*; nor is it applicable to the *Case of the Revolution*, the *Supreme Power* not being then *resisted*.

My Lords, I neither expressly apply'd my Doctrine of *Non-Resistance* to the *Case of the Revolution*, nor had I the least *Thoughts* of including the *Revolution* under my general Assertion. I expressed this Doctrine in the same general *Terms*, in which I found it deliver'd by the *Apostles of Christ*. I taught it as I had learnt it, from the *Homilies* of our Church, and as I was enjoined to teach it, by the *Articles* of our Religion. I used no *other Language*, than what had been used by our *first Reformers*, by a continued Series of *Right Reverend Prelates*, and other *Celebrated Divines* now with God, and by many of those *Venerable Fathers*, before whom I stand, and what is perfectly agreeable to the *Laws* and *Statutes* of this Realm. I had little Reason to apprehend that I could ever have been accused by the *Gentlemen of the House of Commons* to your Lordships as a *Criminal*, or as an *Asperser of the Memory of the late King*, for preaching this Doctrine; when *others*, who preached the same Doctrine, in the same *Terms*, before their late Ma-

jesties, before our present Gracious Sovereign, (whom I pray God long to Preserve!) before each *House of Parliament*, before this very *House of Commons*, have met with *publick Approbation*: But since it is my *singular Misfortune* to be *Accused*, for what *others* have received *Thanks*, in some Instances convey'd to them by several of the *Managers themselves*, I do with all humble Confidence rely upon your Lordships *Justice*; not doubting but that the *Learned Judges*, if thought necessary to be consulted, will declare, what I have in this *Case* asserted, to be warranted by *Law*, and the *Right Reverend the Bishops* will affirm it to be the *Doctrine of the Gospel*.

The Doctrine I preached being the *Doctrine of the Homilies* of our Church, not expressed only in a few particular Passages of those *Homilies*, but perfectly agreeable to the *whole Tenor*, the main Scope and Design of them; and those *Homilies* being established by the *Thirty Nine Articles*, as containing godly and wholesome *Doctrine*; and those *Articles* being confirmed by the 13th of Queen *Elizabeth*; and that Statute being made *Perpetual* and *Fundamental* to our Constitution by the *late Act of Union*; I leave it to your Lordships to consider, how far the *Condemnation of me*, on the Account of that Doctrine, may affect, and shake the *present Frame* of the *British Constitution*, in Church and State, and tend to dissolve the *Union of the two Kingdoms*.

My Lords, Upon the *second Article*, I would humbly pray your Lordships to consider, that I have no where in my Sermon shewn any the least Dislike of the *Indulgence granted by Law to the Dissenters*; that, on the contrary, I have declared my *Approbation* of it in the *most express Terms* imaginable, which I beg leave once more to repeat to your Lordships out of my Sermon preach'd at St. Paul's. I would not (I there say) be *misunderstood*, as if I intended to cast the least *invidious Reflection* upon that *Indulgence* which the Government hath condescended to give them; which I am sure, all those, who wish well to our Church, are ready to grant to *Consciences truly Scrupulous*; let them enjoy it in the full Limits the Law hath prescribed.

My Lords, This then was, and still is my sincere Opinion; nor am I conscious that I have uttered *one Word* inconsistent with it. I have indeed *blam'd*, and perhaps with some Warmth and Earnestness *blam'd*, the *Abuses* which Men of *no Consciences*, have made, of the *Legal Exemption*, granted to *Consciences truly scrupulous*: Nor could I think that those *Reprehensions* of mine, would have drawn upon me the Displeasure of any *sincere Christian*, which were levelled against *Hypocrites*, *Socinians*, *Deists*, and such as, under the Umbrage of that *Act*, which permits *Protestant Dissenters*, and those only, to serve God, every Man in his own Way, think themselves at Liberty to be of no *Protestant Congregation*, of *no Religion* at all. I will farther ingenuously own to your Lordships, that I had in my Eye some *Abuses* made of that *Act* by the *Dissenters themselves*; who, I am told, do (both *Pastors* and *People*) rarely observe the *Qualifications* prescribed by that *Act*; and who erect *Seminaries* for educating Youth in *Principles* opposite to the *Doctrine*, *Discipline*, and *Worship* of our Church: Whereas that *Act* was intended for the *Ease* of those, whose Minds through the unhappy Prejudices of Education, were already estranged from the Church; not, as I humbly conceive, to indulge

Men in taking the most effectual Methods to *Propagate and Perpetuate* their *Schism*.

My Lords, Of any Favours to Dissenters granted, or intended by the *Law*, I have no where complained. Of *Toleration*, a Word unknown to our *Laws*, and implying, as I am informed, much more than our *Lawgivers* designed, if I have said any Thing *Offensive*, I may, I hope, reasonably presume, that it will not be judged by your Lordships in any wise to reflect on that *Act of Exemption*, which I have spoken of in Terms, no ways, I think, misbecoming a good Subject, or betraying any want of *Christian Moderation*. Nor is there, my Lords, any want of it, I conceive, in affirming that *this Act*, which relieves some Dissenters from legal Punishments, to which they were before obnoxious, hath not any ways altered the *Nature of Schism*, or extinguished the *Obligations to Church-Communion*; which is an *Evangelical Duty*, incumbent on all Christians, by the *Rules of the Gospel*, *Antecedent* to all *Secular Laws*, and can by no *human Power* be *Dispensed* with. If the *Church of England*, my Lords, imposes no *unlawful Terms of Communion*, as She certainly does not, then all *Separatists* from her *Communion*, will, notwithstanding the *Indulgence*, continue to be Guilty of *Schism*; The Consequence of which *Guilt*, may still rest upon their *Souls*, however it may cease to Affect their *Bodies or Estates*. For as no *human Law* can render that *Lawful* which God hath *forbidden*, so neither can it make that *Void*, which God hath *commanded*.

My Lords, I am accused, under this Head, of maintaining, that *it is the Duty of Superior Pastors to Thunder out their Ecclesiastical Anathema's against Persons entitled to the Benefit of the Toleration*; I hope, it hath evidently appeared to your Lordships, that I advance no such *Position*. Sure I am, that my Words do not in *themselves* carry such a Meaning, nor does the *Connexion* of my Discourse require that Sense, or easily admit it. *Schismatics*, my Lords, are not the only Persons against whom *Ecclesiastical Censures* may be denounced; *the Works of Darknes*, which I referred to, as fit to be *reproved*, in that Part of my Sermon, where I speak of *these Censures*, are of the same Kind with those mentioned by the *Apostle*, whose Words I produced, all *lewd and immoral Practices*; against these, my Lords, and against *Heresies*, and *Blasphemies* (a black Catalogue of which has been display'd before your Lordships) I thought the *Anathema's* of the Church would be well employed; such *Anathema's*, I doubt not, my Lords, would be *ratify'd in Heaven*, and would therefore, by any *Power on Earth*, be *irreversible*.

As to Archbishop *Grindal*, though I may seem to have used some undue Asperity of Expression concerning him, yet I charged him with nothing but what I had good Grounds for, from our *Historians*: It hath been made appear to your Lordships, that, on the Account of his *Remissness in Church-Government*, he lived and died under the High Displeasure of Queen *Elizabeth*; and whether therefore he, or that glorious Queen, shall bear the Blame of his Disgrace and Sufferings, is with all Humility submitted to your Lordships.

I hope, my Lords, I stand clear in your Opinions, of the Charge advanced against me, in the *two first Articles*; and as my own Conscience acquits, so I trust your Lordships will acquit me, of whatever is laid to my Charge in the *Third*.

My Lords, I neither have suggested, nor do in my Conscience believe, that the Church is in the

least Peril or Adversity from Her Majesty's Administration. So far am I from any such Thoughts, that I am entirely satisfied of Her being a most affectionate Nursing-Mother to it. But I hope I may say without Offence, that the Church may be in Peril from other Causes, without any Reflection upon Her Majesty's Government, or any Contradiction to Her Royal Proclamation, and the Resolution of both Houses of Parliament, four Years ago. If the Church be in Danger, when the Christian Religion is evidently so, I hope it will be thought no Crime to say, it has scarce ever been in greater Danger than it is now, since Christ had a Church upon Earth. For besides that Deluge of Prophaneness and Immorality, which overpreads the whole Kingdom; besides the Variety, and growing Strength of those Schisms which weaken and divide us, and of those Heterodox Opinions, and damnable Heresies, which are daily published and propagated among us; I verily believe, that never were the Ministers of Christ so abused and vilify'd, never was the divine Authority of the Holy Scriptures so arraigned and ridiculed, never were Infidelity and Atheism it self so Impudent and Barefaced, never were such horrid Blasphemies printed in any Christian State, from the Foundation of Christianity to this Day.

Out of the many Instances of this Kind, which, being ready at hand, I could have produced to your Lordships, I have Selected a few only; but those such, as I am persuaded your Lordships could not hear without Horror and Astonishment. Pardon me, my Lords, if my Apprehension of the sad Consequences we may expect from such crying Abominations, have forced from me some Expressions, which upon a less Occasion might seem too harsh and vehement. A Man that dreads no Danger from such unparalleled Iniquities, that do as it were call down God's severest Judgments upon that poor Church and Nation, wherein they are openly and daringly committed, must be dead in his Love for his Country, and Religion. If I have disclosed such a frightful and detestable Scene of Impiety, which by reason of your Lordships high Stations and great Employments, might possibly lie undiscovered to your Sight before; I shall think my self happy, whatever shall befall me, if I may by God's Grace become the mean Instrument, of putting a Stop to that overflowing of Ungodliness and Blasphemy, which as yet no Laws, no Proclamations, how well soever design'd, and how often soever repeated, have been able to restrain.

Nor ought I, my Lords, to forget, tho' it was forgotten by the honourable Managers, another Ground of Danger arising to this Church from the Attempts of Popish Emisaries, by me mentioned, I hope without the least Offence, in my Sermon at St. Paul's; where I say, *It were highly to be wished that those excellent Laws, made for the Defence and Security of the Church, were at present put strictly in Execution; for the Roman Catholick Agents, and Missionaries, that swarm about this great City, as 'twere in Defiance and Contempt of them, were never more busy in making Proselytes to their Superstition and Idolatry, and perverting and debauching Her Majesty's Subjects in every Corner of our Streets*. I have not, my Lords, been called upon to prove the Truth of this Passage, nor has it been reckoned among the false Insinuations I have made that the Church is in Danger. I pray God, the Church may be in no Danger, upon any of these Accounts! Her Majesty, your Lordships, and the Commons, have indeed provided against these Dangers by wholesome Laws, and I hope, I did not exceed the Limits of my

my *Function*, when, being called to Preach before *Magistrates*, I exhorted them to prevent *these Dangers*, by putting *those Laws* strictly in Execution.

Just had been the *Indignation of the Honourable House of Commons*, Just would be your Lordships most severe *Resentments*, if by any *Parallel* by me drawn, I had insinuated that the *Members of both Houses, who passed the Vote concerning the safe and flourishing Condition of the Church, had been then conspiring its Ruin*. I have already purged my self from this *Imputation*, by observing, that the *Parallel*, ascribed to me, implies, that they who Voted *King Charles the First* to be out of *Danger*, and those who *Conspired his Death*, were the very same *Persons*, whereas it is certain they were not; for, my Lords, the *Vote* about the *King's Safety* was passed by *Lords and Commons* a *Year and half* before his execrable Murder, which had been contrived by the *Army*, and was perpetrated by a *pretended Ordinance* of a *small Remnant of the House of Commons* (not a *tenth Part of the whole*) after the rest of the *Members* had been *Imprisoned or Secluded*, and without the *Concurrence of the House of Peers, who totally rejected it*. You have had, my Lords, a very different *Representation of this Fact* made by one of the *Learned Managers*: But this, my Lords, is the *real Truth*, as recited in the *Act of Parliament* for the *Attainder of the King's Murderers*; and is an *Evidence*, that I could not possibly mean by any *odious Parallel* to insinuate, that the *Members of both Houses, who passed the Vote concerning the Safety of the Church, were then conspiring its Ruin*.

I humbly crave your Lordships *Patience* yet a little farther, whilst I speak to what is alledged in the *Fourth Article*, which charges me with many *Crimes* of a very *high and flagrant Nature*; none of which have been endeavour'd to be prov'd upon me, otherwise than from *supposed Suggestions*, and *undetermined Expressions*; and I must still, with your Lordships Leave, humbly *insist* upon it, that where the *Expressions* are *doubtful*, there the *favourable Sense* is always to be *preferred*.

After all that has been said by the *Learned Managers for the Commons*, What Minister of State, I beseech your Lordships, have I been *proved to reflect upon, directly or indirectly*? Where, and how do I, by any *Suggestion*, charge Her Majesty, or *those in Authority under Her, with a general Male-Administration*? How do I persuade Her Subjects to keep up a *Distinction of Parties and Factions*, while I reprove those who divide us by *knavish Distinctions*, and while I persuade my Fellow-Subjects to *lose and forget them*? How is it possible, I should stir up the *People to Arms and Violence*, when I am endeavouring to convince them of the utter *Illegality of Resistance upon any Pretence whatsoever*? These Things, my Lords, seem to be *Inconsistent*, unless a Man may be thought a *Rebel* for *Recommending Loyalty*, or *Seditious* for preaching against *Sedition*.

I remember, indeed, at the Opening of this Charge against me, that one of the *Managers for the House of Commons*, vouchsafed to offer his charitable Assistance towards *Reconciling this seeming Inconsistency*; for he was pleased to suppose that, when I spake against *resisting the Sovereign*, I had not our *gracious Queen*, but some other *Person* in view; and that I might therefore agreeably to my *Principles of Non-Resistance*, stir up the *People to Arms and Violence* against Her Sacred Majesty. Your Lordships will once more pardon my Earnest-

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ness, if I call God to witness, that I utterly detest any such *traitorous Intention*; and I should in my own Opinion be unworthy of the *Name of a Christian*, if I could give my self leave to cast such a *black, and groundless Imputation* upon any one in like Circumstances with mine, who had given all possible *Evidences of his Duty and Affection* to the *present Government*. My Lords, I have taken the *Oaths of Allegiance to Her Majesty*, and that of *Abjuration* against the *Pretender*; and when therefore I preach'd the *Doctrine of Non-Resistance*, it is most apparent, that the *Government*, which I persuaded my Fellow-Subjects not to *Resist*, is the *present Government*; and I humbly conceive, that the *present Government* can never be *Overtaken*, if it be *never Resisted*.

How true a *Zeal and Affection* I have always born to her Majesty's *Person and Government*, I leave to be judged by your Lordships, and the *whole World*, from those *publick Demonstrations* which I have given of it, at all Times when I had occasion to make mention of *either*. I hope your Lordships will pardon me, if I refer to some of my own *printed Expressions*, as an evident Proof of my unfeigned *Duty and Allegiance*. "If, to call it the most inestimable Blessing this Nation could enjoy, that Her Majesty, the good and pious Relict of the Royal Family, sits now happily upon the Throne of Her Ancestors; If to pray, that God may long preserve Her for the Comfort and Support of the Church, as the only Security, under God, it has to depend upon; If, earnestly to contend for the Safety, Rights, and Establishment of Her Majesty, together with those of the Church; If, to vindicate Her Majesty's Title to the Crown against the Usurpations, Pretences, and Encroachments of Her Adversaries, and to assert Her Right to the Throne to have been so clear, manifest, and undoubted, that even Her worst Enemies (could such a pious Princess be supposed to have any) must acknowledge it: That She was proclaim'd as 'twere by the Voice of God, in the universal Joy, Satisfaction, and Unanimity of Her Subjects; that Her personal Merit exempted from that, made her worthy of a brighter Diadem than She wears: If, to persuade her Subjects with the most hearty Zeal, and Generosity, to enter into a necessary War, for the Defence of Her Majesty, and the common Preservation of our Church, Liberties, and Constitution, against a powerful Adversary; If, to beseech God to prosper so good an Undertaking, to give an happy Event and Issue to such a Rightful Cause, to crown our Arms with Victory, and to make them as successful, as they are just and honourable; And that, in order to this, we are all bound, both in Duty to God and our Sovereign, as well as by our own Interest, unanimously, and heartily to assist and support her under this great Undertaking, as far as our Prayers, and Estates, Lives, and Fortunes can serve Her; If, to persuade Her Subjects, that the great and threatening Dangers of our Enemies, should have that just Effect upon us, to unite us, as much in our Resolutions and Affections, as they do in our common Interests, Apprehensions, and Troubles; If, to set out the Blessings we enjoy in the wise Constitution of our Government and Laws, in the most refin'd Policies of our Parliament and Ministry, in the Strength and Number of our Armies, Fleets, and Confederates, in the Care and watchful Vigilance, the Courage, Resolution and Conduct of our General, and above all in the Piety and Prudence

dence of our *most gracious QUEEN*; If, to affirm that She daily gives fresh Instances of Her Wisdom, in the happy Administration of Her Government, and in nothing more shews Her Policy, and distinguishing Judgment, than in making Choice of such Ministers of State, who are acceptable to their Country, and express such a Zeal and Steadiness in its Service and true Interests, and whom nothing could bribe, or betray into a Party, wherein it might any ways seem to be endanger'd; If, with the most ardent Requests to implore God's Providence, which through so many Dangers and Difficulties has rais'd up, and preserv'd Her Majesty, to carry on these glorious Undertakings with Success, that She may be able to Restore and Settle the Peace of *Europe*, in its just Rights and Limitations; and that, as God has bestow'd a Crown upon Her in this World, as the Reward of these heroick and pious Designs, so, after a long Reign here, he would advance Her to an higher Throne in Heaven, and dignify Her with a glorious and immortal Crown hereafter;" If this, my Lords, I say, is *falsely and maliciously to Suggest*, that Her Majesty's Administration both in Ecclesiastical and Civil Affairs, tends to the Destruction of the Constitution; If this be charging Her Majesty, and those in Authority under Her, both in Church and State, with a general Male-Administration; If this be, as an Incendiary, to persuade Her Subjects to keep up Distinctions of Factions and Parties; If this be Instilling groundless Jealousies, fomenting destructive Divisions, and stirring up Her Majesty's Subjects to Arms and Violence, against any but Her Enemies; then, my Lords, I am Guilty of this Article of Impeachment; otherwise I am innocent.

My Lords, I have always thought it my Duty, upon all publick Occasions, to assert these Principles of Loyalty and Subjection to the Supreme Power, whenever I had a proper Call so to do; of this there are numberless Witnesses in those several Places to which I have belong'd. One of these I beg leave of your Lordships particularly to mention, *Magdalen College in Oxford*, whereof I am at present an unworthy Member; and which by the known Sufferings of the whole Body for the Church and Constitution, contributed as much towards the late happy Revolution as any Society in the Kingdom: To which Honourable Society I humbly appeal for my Character and Behaviour. I could also appeal for the same to a Right Reverend Lord, that now sits on the Bench of Bishops.

Had it been fit to have troubled your Lordships with Evidences of my hearty Affection to the present Government, I could have produced them in great Abundance, from the Persons with whom I have convers'd, from the Gentlemen whom I have bred up, and from the Congregations to which I have preach'd. If my Principles had any Tendency towards Alienating the Affections of Her Majesty's Subjects, surely some one Instance of my Disloyalty to the QUEEN, some favourable Expressions toward the Pretender, some Indications of my Dislike to the present Settlement, and the Protestant Succession, might have been pitch'd upon, and expos'd to your Lordships, in order to justify the Charge of Sedition against me. But I cannot but with Pleasure observe to your Lordships, that from the whole Course of my Actions, no one Instance of that kind is ali'dg'd, or so much as pretended.

My Lords, The Charge of wickedly wresting divers Texts of Scripture lies very heavy upon me,

as a Christian, and Minister of Christ. If I am Guilty of it, there is another Tribunal, another Bar at which I am to appear, and where by that Scripture, which I have wrested, I shall be judg'd and Condemn'd. In the mean time, my Lords, I hope that those, whose particular Profession, and Studies qualify them to be the most competent Judges of such Matters, will absolve me in this Particular.

Upon the whole, therefore, my Lords, I hope it appears that I am not guilty of any of the Crimes of which I am accus'd; that I have Transgress'd no Law of the Land, neither Statute, nor Common Law, relating either to Her Majesty, or to my Fellow Subjects, or to the Church, or to the State: And that I may with all Humility apply to my own Case, the Words of that blessed Apostle, whose Doctrine I defend, and whose Example I hope I shall have the Grace to follow, *Neither against the Law, nor against the Temple, nor against Caesar, have I offended any thing at all.*

What I have hitherto humbly offered to your Lordships relates to my Words and Actions; and as to the Thoughts and Intentions of my Heart, which are known only to God, and my own Conscience, and which are affirm'd in my Impeachment to be wicked, seditious and malicious; I call the Searcher of Hearts to witness in the most solemn, and religious Manner, as I expect to be acquitted before God, and his Holy Angels, at that Dreadful Tribunal, before which not only I, but all the World, even your Lordships, who now sit in Judgment upon me, must appear, to be Acquitted or Condemn'd; that I had no such wicked, seditious, or malicious Intentions; that there is nothing upon Earth, I more detest and abhor: That my Designs were, in every respect, directly contrary. I had no Intention to asperse the Memory of His late Majesty, to traduce, or condemn the late Happy Revolution, or to arraign the Resolutions of both Houses of Parliament. So far was I from designing to undermine and subvert Her Majesty's Government, and the Protestant Succession as by Law Establish'd, that it was my sincere Intention to exert my best Endeavours for their Security. So far was I from intending, to persuade her Majesty's Subjects to keep up a Distinction of Parties and Factions, from instilling groundless Jealousies, fomenting destructive Divisions among them, or exciting and stirring them up to Arms and Violence, that my Aim was to persuade them to lay aside all Distinctions, to unite in one, well-compacted Body, to be Obedient to their Governors, and to support the present Establishment. So far was I from designing to defame Her Majesty's Administration, or to infuse any undutiful Thoughts of Her, that I not only pay Her all Honour and Obedience, but am from the bottom of my Soul zealously, and affectionately Loyal to Her; being entirely persuaded, that the Church is so far from being in Danger from Her, that She is as heartily affected to its Establishment, and Prosperity, as I hope I have always shew'd my self to be to Her Sacred Person, and Government.

As to the Protestant Succession by Law Establish'd, tho' the Doctrine which I preach'd tends to the Security of it, (as I heartily desire every thing by me spoken should tend) yet having no Occasion in either of my Sermons to take Notice of it, I do no where in those Sermons mention it, nor say any thing that can be Interpreted to have any View towards it. Therefore tho' I cannot with my best Application apprehend, how it comes to be said in the Preamble

to my Impeachment, that I had designed to undermine and subvert it, yet I shall gladly take this Opportunity, of declaring my self before your Lordships upon *that Subject*. It is my sincere and hearty Prayer, that God would prolong the Life of Her Most Sacred Majesty, whose *Exemplary Goodness and Piety*, give us the best Hopes we have of averting that *Vengeance*, which is due to the *Wickedness* of the Age we live in; that He would bless Her Councils at Home, and Her Arms Abroad, and make Her Reign exceed that of Her Renowned Predecessor Queen Elizabeth, in Length, as well as Glory. But when the *Inheritrix of the Blessed Martyr's Crown*, and *Piety*, when She, the *Desire of our Eyes*, and the *Breath of our Nostrials*, shall full of Years, and Honour, be Gathered to Her Fathers, and exchange Her Temporal for an Immortal Crown; (since we are deprived of *that Prince*, Her Royal Offspring, whose *Loss* no true Lover of his Country, and of the *Royal Family* can reflect upon without a *Bleeding Heart*, and whom God in his Anger took from us, because we were unworthy of so inestimable a Blessing,) I earnestly beseech God, in defect of *Future Issue* from Her Majesty, to Perpetuate the Succession of the Crown, as it is *Established* in the most illustrious House of Hanover, which I look upon as, next to his Providence, the best Guard we have against Popery and Arbitrary Power, the best Security of our Church, and of the Constitution of our Government, which is the Glory and Happiness of our own Nation, and the Envy of all others. And I cannot yet apprehend, how the Doctrine, which I have taught, tends to weaken or undermine it; nor on the other side, how the Doctrine of Resistance, which brought Her Majesty's Royal Grand-Father to the Block, (supposing it a true Doctrine) comes to be mentioned, or thought of, much less to be industriously maintained, as a necessary and indispensable Duty, under the most mild and gracious Administration of the best of Queens. Nothing seems more strange than that Resistance should be so carefully taught under such a Government, unless it be that Non-Resistance should overturn it.

So far was I therefore from having any of those wicked, malicious, or seditious Designs, which are laid to my Charge, that my Intentions were, on the contrary, to instil the Principles of Loyalty and Obedience into my Fellow-Subjects, and withal to put a stop to that Torrent of Lewdness, Irreligion and Atheism, of which I have given your Lordships so many flagrant Testimonies.

Those outrageous Insults upon God, and Goodness, are so Provoking, that they may excuse some Heat, and Severity of Expression in a Minister of Christ, who has a just Sense of Religion, a due Concern for the Discharge of his Holy Function, or for the Honour of his Maker and Redeemer. And if any Objection be made against me, for Treating with an Unbecoming Bitterness such Daring Rascals, who defy the Living God; I beg leave to Reply in the Words of a Reverend Father of our Church, Let them consider what Moderation and Temper, a Man had need be of, that in this Nation, and this Age, shall speak against Faction, Rebellion (I add Deism, Tritheism, and all sorts of Heresy, Blasphemy, and Atheism) without extraordinary Severity. Nay, it is our Duty in such Cases, to express our selves with Warmth and Sharpness, according to the Example of our Blessed Saviour; who, tho' Meekness it self, could not but shew the utmost Indignation at the Prophaning the House of God. This is not, my Lords, to rail, but to rebuke; and those, who

ridicule, or censure us for it, either have not, I presume, or will not own they have, a right Notion of the Dignity of our Office; will not consider, that we are the Ambassadors of Christ, that we are commanded, in his Name, to exhort, and rebuke with all Authority; and that our Authority is derived from those to whom it was said by our Blessed Saviour, He that despiseth you, despiseth me, and he that despiseth me, despiseth him that sent me: Whatever Expressions therefore in my Sermons may have slipped from me, which seem so far liable to Exception, as to carry a Sense I never intended (as he must be an Happy Speaker indeed, whose Words are altogether unexceptionable) yet I humbly hope, the above-mentioned Provocations will plead my Excuse, or that, at the very worst, some hasty, or even violent Expressions, shall not be deemed High Crimes and Misdemeanors. I desire it may be farther considered by your Lordships, that I could have no Temporal Interests to serve by the Doctrines I advanced; and therefore could have no Design in view, but to discharge my Duty to God, as a Minister of Christ, and to my Sovereign, as a Faithful, and Loyal Subject.

My Lords, These Things being humbly offered to the Consideration of your Lordships, I hope, that what I have already suffered, as a supposed Criminal, will be thought sufficient Punishment for one, who has offended against no Law yet in Being. It must be thought no little Grief and Vexation to any ingenuous Man, to be brought to this Bar, under the least Suspicion of such Crimes as are laid to my Charge; but for a Person of my Function to have an Accusation of this Nature alledged against him, so heinously reflecting upon his Holy Character, is such a foul Blot, as though his Innocence should at last be cleared by your Lordships, upon the most undeniable Evidence, must leave a Scar upon his good Name; which is to all Men dear, but much more so to those, whose whole Capacity of doing good in the World principally depends upon it.

My Lords, As the Matter of my Charge was highly criminal, so the Form and Manner of it ran in such general, and uncertain Terms, that 'twas impossible to know the Grounds of my Accusation; or how to defend my self, when I knew not where I should be attack'd. So that after I had provided as particular an Answer as such a general Accusation would admit of, the Commons were pleased in their Replication to say, that there were several Things in it Foreign to the Charge. To the great Misfortune of falling under the Displeasure of that Honourable House, I might add, That of a long and close Confinement, and of an Expence no ways proportion'd to my Circumstances. These, my Lords, are Afflictions which can be conceiv'd by no Body so well as by him, who has been so unhappy as to feel the Weight of them. And among these I reckon it not the least of my Sufferings, that I have been for so long a time debarr'd, from taking heed to that Flock, over which the Holy Ghost hath made me an Overseer. For even since I have had my Liberty, by the Favour of your Lordships admitting me to Bail, I have purposely avoided doing any Part of the Duty of my Function, or even appearing in Publick, lest it should occasion any Tumult or Disturbance; as my necessary Attendance on your Lordships from time to time, has since been thought unhappily to have done, without any Fault of mine, or the least degree of Encouragement given by me, which I profess, in the Presence of God, to abhor.

All these Circumstances, my Lords, being consider'd, together, with the *Publick Manner*, the *Length* and *Solemnity* of my *Trial*, before so August a Court of Judicature, by which Means *I am made a Gazing-stock, both by Reproaches, and Afflictions, and a Spectacle to the whole World*; I have stood in this Place Day after Day, to hear my self Accus'd of the *blackest Crimes*, and openly revil'd; I have been represented as a *Papist* in Disguise, as a *Rebel*, as an *Enemy to Her Majesty's Person and Government*, and a *Favourer of the Pretender*, tho' I have abjur'd him, (but not forgot him, as a Learned Person was pleas'd to say) that is, as the worst of *Perjur'd Villains*: I have been call'd an *insignificant Tool of a Party* on the one Hand, and a *most dangerous Incendiary* on the other; nay, an *Angel*, that is a Devil, *detach'd from the Infernal Regions*: All these things, I say, being consider'd, (and your Lordships I am sure, in tender Compassion to me, will consider them,) it is most certain, that, whatever be your Lordships Determination concerning me, I cannot escape without being a very great Sufferer, and I shall have been abundantly punish'd, tho' I should have the Happiness to be by your Lordships at last Acquitted.

Yet I cannot Reflect without Comfort, (the greatest of Comforts next to that of a good Cause, and a good Conscience) that I Answer for my self this Day before the most Illustrious Assembly in the World, the whole Body of the Nobility of Great Britain; whose Princely Extraction, and High Quality, whose Magnificent Titles, and Splendid Fortunes, whose Hereditary Candor and Generosity, inherent in Noble Blood, inseparable from the Birth and Education of Peers; in a word, whose Solid Judgment, and exact Skill in the Laws of this Realm, so eminently Qualify them for the final Determination of Justice; who are neither to be sway'd by Hopes, over-ruled by Fears, nor misled by any False Prejudice or Passion. If it must be a Man's Misfortune to labour under such hard Circumstances as mine, it is no small Mitigation of them, that he Pleads his Cause before such Judges, who, he knows, will Decide it with the strictest Impartiality, Equity, and Honour.

And, when I consider that I now stand, and am Judg'd for some of the Doctrines of that Gospel, which God deliver'd unto our Fathers, and you, my Lords the Bishops, their Successors, have receiv'd from Christ and his Apostles, as the sacred Depositum of the Church, to be maintain'd inviolably in its Primitive Simplicity; when I consider, what is the Cause for which I am this Day call'd in Question; that it is One of those Eternal Truths, which you are so Solemnly commission'd to Teach, and earnestly Contend for; when I consider, that 'tis what our Blessed Lord and his Apostles seal'd with their precious Blood, and so many Primitive Martyrs maintain'd even in the midst of Flames, so many Learned Bishops, and Confessors recommended to Posterity in their immortal Writings, as the distinguishing Badge, and Glory of our Reformation; nay, when I consider, that 'tis what you your selves have already supported with incontestable Reason, and Authority; it is no small Satisfaction to me to think, that as your Lordships are my Judges, so, I hope in God, you must be my Advocates. What a Guilt, as well as Disgrace, would it justly devolve upon the Clergy, to recede from any Principle of our excellent Church, especially from what has been so long retain'd, and boasted of, as its peculiar Character! By abandoning which we must relapse into some of the worst Doctrines, even of Popery it self, and render

our selves the most contemptible, as well as inconsistent Church in the World! I think, I may therefore with Confidence use the Words of the Great Apostle to his Accusers; Having obtain'd Help from God, I continue unto this Day, witnessing both to small and great; saying none other Things than those which the Prophets and Moses (I may add, Christ and his Apostles,) did say.

For, my Lords, if I have committed any Faults or Errors in Expression, yet as I insist upon my Innocence with respect to all the High Crimes laid to my Charge, so I must still insist upon all the Doctrines which I have taught, as being agreeable to the Word of God, and to the Doctrine of our most excellent and truly Apostolical Church, and which we of the Clergy are oblig'd both by Subscription, and Oath to acknowledge, and defend. And how hard are our Circumstances, if we must be punish'd in this World for doing that, which if we do not, we shall be more heavily punish'd in the next! What a Condition are we in, if we are commanded to cry aloud and spare not, to exhort, rebuke, in Season and out of Season, on the one Hand, and prosecuted, imprison'd, ruin'd on the other! If this be our Case, who indeed is sufficient for these Things? And truly how may we of the Ministry above all Men living, apply to our selves those Words of the Apostle, *If in this Life only we have hope in Christ, we are of all Men most miserable*: But our Comfort is, that our Hope in Christ is not only in this Life. Justly might we be reproach'd, and deserve some of those Reflections, which in these Licentious Times are so plentifully pour'd upon us, were we not ready to Practise the Doctrines we preach, of Self-Denial, taking up our Cross, and patient Submission to Sufferings and Afflictions! For my own Part, it matters not what becomes of me, nor is my Deliverance, or Ruin, of any Moment to the World; or, if it be, I am not only ready to be bound, but to die, could I by that do Service to my Queen, my Church, or my Country; neither count I my Life dear, so that I might finish my Course with Joy, and the Ministry which I have received of the Lord Jesus. But may God so direct your Lordships, that through me a Wound may not be given to the Doctrines of the Scriptures, and of the Church, which Christ hath purchas'd with his own Blood.

And so, with all Humility and Resignation, I submit my self to your Lordships Judgment; be it what it will: One Thing I am sure it can never take from me, the Power of *Wishing and Praying*, and (whether in Prosperity or Adversity, whether I am Acquitted, or Condemn'd) I shall always pray for the Queen my Sovereign, for your Lordships my Judges, and for the Commons my Accusers; most earnestly beseeching Almighty God, to deliver all Orders, and Degrees of Men amongst us, from all false Doctrine, Heresy, and Schism, from Hardness of Heart, from Contempt of his Word, and Commandment; from Envy, Hatred, and Malice, and all Uncharitableness.

Then the LORDS adjourned to their House Above.

Thursday, March 9. The Ninth Day.

THE Lords coming down into Westminster-Hall, and being seated in the manner before-mentioned, Proclamation was made by the Serjeant at Arms as follows:

Our

Our Sovereign Lady the Queen doth strictly Charge and Command all manner of Persons to keep Silence, upon Pain of Imprisonment.

Then another Proclamation was made: *Henry Sacheverell*, Doctor in Divinity, come forth, save thee and thy Bail, else thou forfeitest thy Recognizance.

The Doctor appearing at the Bar accordingly, with his Council, as before:

Lord Chancellor. Gentlemen, you that are Managers for the House of Commons may proceed to your Reply.

Sir Joseph Jekyll. **M**Y Lords, Doctor *Sacheverell* and his Council having concluded what they had to offer to your Lordships, I shall enter upon the Province assign'd to me, in further Execution of the Commands of the House of Commons, which is, to Reply to the Defence made for the Doctor to the first Article of the Commons Charge.

My Lords, I shall take Notice, first, of the Concessions made by the Doctor's Council; secondly, of the Exposition they have put upon those Passages of the Sermon, which have been relied on by the Commons to maintain this Article; and, thirdly, of the Acts of Parliament, the Homilies, the Books, the Sermons, the Pamphlets and the Gazettes, which the Doctor's Council have call'd for to be read to your Lordships.

And if I shall satisfy your Lordships, that the Concessions made by the Doctor's Council are a Departure from the Defence made for him in his Answer, that they are extorted by Necessity, and are likely to be retracted when this Turn is serv'd; if I shall shew your Lordships, that their Exposition of the Passages in the Sermon, is contrary to the plain Meaning of those Passages; if I shall shew, that the Acts of Parliament, the Homilies, and the other Prints that have been produc'd, are either immaterial, or condemn the Doctrine laid down in the Sermon; and if I shall shew, that this Criminal, for so I must call him, since the House of Commons have call'd him so; (whether he will be so in the Event, I agree, rests only in your Lordships Judgment); if, I say, I shall shew he is guilty of a most heinous Offence, I shall not doubt of your Lordships Justice.

My Lords, The Concessions are these, That Necessity creates an Exception to the General Rule of Submission to the Prince: That such Exception is understood or implied in the Laws that require such Submission: And that the Case of the Revolution was a Case of Necessity.

These are Concessions so ample, and do so fully answer the Drift of the Commons in this Article, and are to the utmost Extent of their Meaning in it, that I can't forbear congratulating them upon this Success of their Impeachment; That in full Parliament this erroneous Doctrine of unlimited Non-Resistance is given up and disclaim'd. And may it not, in After-Ages, be an Addition to the Glories of this bright Reign, that so many of those who are honour'd with being in Her Majesty's Service, have been, at your Lordships Bar, thus successfully contending for the National Rights of Her People, and proving they are not precarious or remediless.

But to return to these Concessions; I must appeal to your Lordships, whether they are not a total Departure from the Doctor's Answer; whether there is one Word in the Answer which looks that Way.

In his Answer he takes Notice, that the general Assertion in his Sermon, of the utter Illegality of Resistance, is a colourable Pretence for the Article; but does he add the Restriction or Limitation to it, which hath been now thought necessary, and hath been insisted upon as most material for his Defence? No, my Lords, but the quite contrary; for these are the Words of his Answer, *The said Henry Sacheverell doth with all Humility aver the Illegality of Resistance, on any Pretence whatsoever, to be the true Doctrine of the Church of England.* Now, could any thing have been more material for him in his Answer, than adding these Restrictions to his general Assertion in his Sermon, which his Council now say he intended, tho' he did not express? Or if that was his Intention, could he possibly have forgot it, when the Frame of his Answer was under Consideration?

But now he sees the Resolution of the Commons, and the Endeavours of those who have their Commands to carry on this Prosecution, to bring him to Punishment; now he sees your Lordships daily Attendance upon this Trial, and your Attention to the Charge against him; now he sees, if he had abided by his Answer, he must have been condemn'd, or *the Revolution*; these are the Motives which have prevail'd upon him to tolerate his Council to make these unwilling Concessions, and have extorted them from him.

And how little these Concessions ought to avail him, your Lordships will see, when you consider how likely it is he will retract them when this Turn is serv'd. May we not then expect he will use this very Argument of Necessity, the Coercion or Restraint he is under by this Prosecution, as an Excuse for these Concessions? And when your Lordships are told, that it is the Duty of Divines (whose Office it is to explain the Scripture to the People) to inculcate this Doctrine of Non-Resistance in the most unconfined and unlimited Terms they are able, and mentally reserve the Exception to themselves; when Authorities have been produced for asserting this Doctrine in such a manner as to exclude any Exception whatsoever, and the Doctor himself did not expressly come into these Concessions, it is certain they ought not to be of any Avail to him.

Your Lordships will therefore give me Leave to consider the Exposition which hath been put on those Passages, which the Commons relied on for Proof of their First Article: And I shall shew that Exposition to be contrary to the plain Meaning of those Passages.

My Lords, I readily agree, that no strain'd Innuendo's, or suppos'd and forc'd Constructions (which are the Words used in the Reason given for reversing the Judgment in *Sir Samuel Barnardiston's* Case) ought to be admitted, to explain the Meaning of the Doctor, in order to prove him Criminal. I think the Principles laid down upon the Reversal of that Judgment are solid and just; and therefore nothing but express Words, or a necessary Implication collected from a Man's Words, can make him an Offender. But I would not have it gone away with, that there must be express Words of Scandal to make a Man Criminal; indirect or oblique Scandal has in all Times been met with and punish'd in the ordinary Courts of Justice; and if it were otherwise, that which aggravates the Crime (the Subtlety or Contrivance of it) would prevent the Punishment: And therefore it is, that Ironical Scandal,

Scandal, nay, even dumb Scandal (Scandal by Pictures, or by Signs) as is mention'd in the Case de *Libellis Famosis*, in my Lord Chief Justice Coke's Fifth Report, is punishable by Law. The only Caution necessary in these Cases is, that the Construction or Interpretation be not strain'd or forc'd. And, my Lords, in this Case we have not only a seditious Meaning plainly collected from the Doctor's Words, but express Criminal Words, a false Suggestion, that his late Majesty, in his Declaration, disclaim'd the least Imputation of Resistance, introduc'd for a malicious and seditious Purpose.

My Lords, The First Article has been rightly divided into three Parts. The Doctor is charg'd with suggesting and maintaining, First, *That the necessary Means used to bring about the Revolution, were odious and unjustifiable*. Secondly, *That his late Majesty in his Declaration disclaim'd the least Imputation of Resistance*: And, Thirdly, *That to impute Resistance to the Revolution, is to cast black and odious Colours on his late Majesty and the Revolution*.

The two last Branches, my Lords, are Particulars. The first is the General; and if the two last are proved, such Proof makes out the first: But I shall consider the Answer given by the Doctor's Council to the Proof of the two last Branches in their Order, and proceed to consider the Answer that has been given to the proper Proofs of the first.

My Lords, The first Proof of this Branch was the general Assertion of *the utter Illegality of Resistance upon any Pretence whatsoever*. It hath been said in Answer to this, that this is spoken of the Supreme Power, which is the Legislative Power, and then there ought to be no Exception whatsoever.

But, my Lords, that the Doctor did not mean the Supreme Legislative Power, but the Supreme Executive Power, is evident,

First, From the Account he presently gives of those that oppose his Principle of Non-Resistance, which runs all along upon the Person of the Prince only, as *cancelling their Allegiance, calling their Sovereign to an Account, Dethroning and Murdering him*.

Secondly and Principally, From his bringing in the Case of the Revolution, as urg'd by those who are Adversaries to his Principle of Non-Resistance. Now the Revolution is not, cannot be urg'd as an Instance of the Lawfulness of any thing, but of resisting the Supreme Executive Power acting in Opposition to the Laws; and this the Doctor himself admitted, when he told your Lordships that *the Supreme Power was not then resisted*. This is therefore the Supreme Power he affirms it is utterly unlawful to resist.

But it was said by one of the Doctor's Council, *That the Non-Resistance the Doctor preaches up, is the utter Illegality of Resisting the Supreme Power in all Things Lawful*, for those Words, *in all Things Lawful*, make part of that Sentence. My Lords, I admit they do; but those Words are relative to his Assertion concerning Active Obedience, and not Passive, as will appear by reading the whole Sentence. *The grand Security of our Government, and the very Pillar upon which it stands, is founded upon the steady Belief of the Subjects Obligation to an absolute and unconditional Obedience to the Supreme Power in all things Lawful, and the utter Illegality of Resistance on any Pretence whatsoever*. The one

dividing Member of the Sentence is, *the Obligation to Obedience in all Things Lawful*; the other, *the Illegality of Resistance on any Pretence whatsoever*; the one is restrain'd, the other unlimited. It must be taken therefore (notwithstanding these Objections) That the Doctor asserts the utter Illegality of Resistance to the Supreme Executive Power, though acting not in Conformity, but in Contradiction to the Laws.

My Lords, I go on to the second Proof of the first Branch of this Article, which is, the Doctor's Insinuation that the Parliament disown'd the Resistance at the Revolution, by *declaring that they set the Crown on the King's Head on no other Title than of the Vacancy of the Throne*. One of the Council thought fit to stand to this Fact, because the Vacancy of the Throne is mention'd in the Bill of Rights; and he says, there is no other Fact there stated. I beseech your Lordships, Does not the same Act take Notice of the Male-Administration of K. James, and his Abdicating the Government, as the Means by which the Throne became void? And I may appeal to your Lordships Journal, and the Journal of the House of Commons, whether the Word *Abdicated* was not used rather than the Word *Deserted* (after a Conference between the Two Houses) for this Reason, insisted on by the Commons, that that Word *Abdicate* included in it Male-Administration, which the Word *Desert* did not.

The same Council said, the *Act for preventing Vexatious Suits*, urg'd by the Commons as a Parliamentary Declaration, justifying the Resistance at the Revolution, was only for Indemnifying those that acted at that Time, and was no more than was done in the Reign of Edward the Third, after Edward the Second was Dethroned. This surely is no manner of Answer to the Declaratory Part of that Law, which takes Notice of the King's undertaking a glorious Enterprize, for delivering the Kingdom from Popery and Arbitrary Power; and that divers Subjects, in Aid and Pursuance of that Enterprize, did several Acts of Violence and Resistance; and this Law declares such Acts were necessary, and ought to be justify'd. And I can't but observe this by the way, that the Parliament and the Doctor are of different Opinions; the Parliament thought that Resistance ought to be justify'd; the Doctor thinks not; and if so, then Doctor Sacheverell doth suggest and maintain, that the necessary Means used to bring about the Revolution were odious and unjustifiable.

I come now, my Lords, to the second Branch of the First Article, the Doctor's Assertion, *That his late Majesty in his Declaration disclaim'd the least Imputation of Resistance*; and the Doctor's Answer to it.

My Lords, His Council admit this Assertion is in the Sermon, and that this Assertion is not true; but they say it was a Mistake only in the Doctor, that the Doctor has express'd himself somewhat obscurely, and now he has explain'd himself, that Explanation ought to be receiv'd. The Doctor meant, they say, Conquest; and so he had explain'd himself not only in the Marginal Note, but in the Sermon it self. My Lords, if this were so, I admit it would be a good Defence; but that this was not a Mistake, or rather was a wilful one in the Doctor, and that he thereby design'd to Traduce the Memory of his late Majesty and the Revolution, I shall shew from what his own Council insist on.

They

They say the Doctor must mean Conquest, because the Prince of *Orange*, who was no Subject, but a Sovereign Prince, could not be said to resist according to the common understanding of that Word. Now, my Lords, it is true, the Prince of *Orange* could not be said to resist, and so could not disclaim Resistance for himself; but could he not be join'd and assisted by the Subjects of the Realm, who might be said to resist, and were invited by him so to do? Doth not this appear by the whole Tenor of his Declaration, and even by the Passages quoted by the Doctor? And since his late Majesty could not be said to resist, but the Subjects, who, upon his Invitation, join'd with him, could; and the Resistance of Subjects is what the Doctor is speaking against; it is plain, that the Doctor speaks of the King's disclaiming the Resistance of those who join'd with him, and not his own Resistance. And therefore I cannot see that the Quotation of the Passage out of the Prince's Declaration, at the bottom of that Page, doth make out that he meant Conquest, by Resistance in his Sermon; or if it did, Would it excuse the Doctor's Preaching this Part of his Sermon, which was done without referring to that Passage?

But it is said, he has explain'd that he meant Conquest by Resistance in the Body of the Sermon, because he says *the Parliament burnt a Libel that would have pleaded the Title of Conquest, by which Resistance was supposed.* But that this Passage doth not make out that he meant Conquest by Resistance, is evident, from his making Resistance not to be Conquest, but only an Ingredient in it. And by representing Resistance and Conquest to be the same thing with the Doctor, he is made to say, that the Parliament burnt a Libel that would have pleaded the Title of Conquest, by which Conquest is supposed.

It is plain therefore that Doctor Sacheverell hath asserted, that his late Majesty in his Declaration disclaim'd the least Imputation of Resistance; and disclaim'd it at a Time, if you'll believe the Doctor, when he was exhorting the Subjects of King *James* to resist, and was joining with them, and encouraging them in it; than which it is impossible there can be a greater Reflection on his late Majesty, or the glorious Cause he then had in hand.

My Lords, I come now to consider the Proof of the Third Branch of the first Article, and the Answer that has been given to it. The Third Branch is this, *That to impute Resistance to the Revolution, is to cast black and odious Colours upon his late Majesty and the Revolution:* The Proof is, that Part of the Sermon wherein the Doctor asserts, *That the Adversaries to the Doctrine of Non-Resistance, who urge the Revolution in their Defence, are the greatest Enemies to that and his late Majesty, and the most ungrateful for the Deliverance, in endeavouring to cast such black and odious Colours upon both: How often must they be told, &c.* The Answer to this is, That the Persons the Doctor describes, as casting black and odious Colours on his late Majesty and the Revolution, are not those who impute Resistance to the Revolution, of whom he affirms nothing, but those new Preachers and new Politicians, who teach Antimonarchical and wicked Doctrines, and who urge the Revolution in Defence of 'em.

My Lords, if the Doctor had meant these Persons, he would have shewn them, which he certainly might have done, that what was acted at the Revolution, did not in the least justify their Opinions; but he declining this, and placing the

Defence of the Revolution on a false Fact, known to be so to himself and to the whole Nation; and this, taken together with his introducing these Men as defending their Principles by the Revolution, leaves the Load of these detestable Opinions on the Revolution, and not only condemns the Resistance at the Revolution, but brands it.

But it is said, my Lords, that the Clause, *Our Adversaries think they effectually stop our Mouths, &c.* relates to the Defence of these Antimonarchical Principles, and not to the general Proposition of the utter Illegality of Resistance upon any Pretence whatsoever; and if so, I agree there is no Foundation for this Branch of the Article; and whether he is guilty of this Branch or not, turns entirely on this Question.

My Lords, I little thought such a Construction would have been endeavour'd, by a wrong Recital of this Clause in the Sermon, by the Doctor in his Answer; for there it is said, as from the Words of the Sermon, *That they, that is,* says the Doctor, *these new Preachers and new Politicians, urge the Revolution in defence of such Principles;* when your Lordships see the Words of the Sermon are, *Our Adversaries think they effectually stop our Mouths, and have us sure and unanswerable on this Point, when they urge the Revolution of this Day in their Defence.* This therefore brings the Case of the Revolution urged by these Adversaries, to the Point or Proposition he had before laid down, which was the utter Illegality of Resistance on any Pretence whatsoever; and not to the Defence of divers Antimonarchical Principles, taught by the new Preachers and new Politicians. And this is still plainer, if your Lordships consider that the Doctor's Reply to these Adversaries, by denying there was any Resistance at the Revolution, can only relate to the Point of Non-Resistance he had before asserted; and which Resistance, if it were not denied, must stand condemn'd by the Doctor's Proposition.

As little, my Lords, did I expect to hear from one of the Doctor's Council, that there are twenty or thirty Lines between the General Proposition and this Clause; since if there be a Connection between this Clause and that Proposition (which I have already shewn there is) it is not the Intervention of so many Lines will hinder it; and if there had been no Connection, their being close together would not have made one. And by this manifest Connection, the Doctor hath brought this general Position, of the Unlawfulness of all Resistance, to bear upon the Revolution. Which I hope may serve for an Answer to the same Gentleman, who says, It is one thing to lay down the General Rule without making the Exception, and another thing not to make the particular Exception out of that Rule; for the Doctor has mentioned the Revolution, but not in order to except it, but to include it.

Indeed, my Lords, the Learned Doctor, who is of his Council, pretends to have found out the Exception in the Sermon, Page the 10th, because he finds the Word *Necessity* there: The Words are these, *Only this Maxim in general I presume may be establish'd for the Safety, Tranquillity and Support of all Governments; that no Innovation whatsoever should be allowed in the Fundamental Constitution of any State, without a very pressing, nay, unavoidable Necessity of it.* But if the Doctor had but read to the End of the Sentence, he would have found Doctor Sacheverell condemns all that bore a Part in the Revolution, before a Law was made about it: The Words that follow are these, *And whosoever singly,*

or in a private Capacity should attempt it, is guilty of the highest Misdemeanor, and is an Enemy to that Politick Body of which he is a Member. And if that Sentence respects the Revolution, then Doctor Sacheverell condemns all from the highest to the lowest, who, in their private Capacity, joined with the Prince of Orange, or assisted in bringing about the Revolution. This is the Thing he is now charged with; not condemning the Revolution as a Thing settled by Law, but the Necessary Means used to bring it about. But if the Doctor instructed his Council to insinuate, that there was any Innovation in the Constitution wrought by the Revolution, it is an Addition to his Crime. The Revolution did not introduce any Innovation; it was a Restoration of the ancient Fundamental Constitution of the Kingdom, and giving it its proper Force and Energy.

Indeed, all the other Council differ'd from that Learned Civilian, and maintain'd, that Doctor Sacheverell did not, nay, ought not, to make any Exception; and one of 'em said, if Clergymen, instead of preaching up the general Rule of Obedience, were permitted to state the several excepted Cases, such Exceptions would in time devour all Allegiance. My Lords, If the Doctor had pretended to have stated the particular Bounds and Limits of Non-Resistance, and told the People in what Cases they might, or might not resist, he would have been much to blame; nor was one Word said in the Articles, or by the Managers, as if that was expected from him: but on the contrary, we have insisted, that in no Case can Resistance be lawful, but in Case of extreme Necessity, and where the Constitution can't otherwise be preserv'd, and such Necessity ought to be plain and obvious to the Sense and Judgment of the whole Nation; and this was the Case at the Revolution. And there is no Difference between a Divine's mooted and putting Cases of lawful Resistance, and excepting the Resistance at the Revolution out of the general Rule of the Illegality of Resistance, on a Day, when he was oblig'd not only to commemorate the Revolution, but the Resistance, the necessary Means used to bring it about, as appears by the Service appointed for that Day?

And, my Lords, Is a House of Commons, who are vindicating that Revolution only, to be represented as if we were calling upon Divines to state the Cases wherein Resistance is lawful, and wherein not? A Task unfit for any one, and more especially for them to meddle with: And are we, by such Suggestions as these, to be defam'd and insulted, and represented as promoting Anarchy and Confusion?

My Lords, There can be no Order or Regularity, if the Constitution, the beautiful Frame of a Legal Monarchy, which this Nation hath so long enjoy'd and prosper'd withal, be destroy'd or given up. What Inclination has the present Age shewn to submit to Arbitrary Power; or rather, what hath been wanting in it to shew the contrary?

But I go on, my Lords, to consider an Argument made use of by another of the Doctor's Council, That it was needless for him to except the Case of the Revolution, for that was known to every body, and had often been approv'd by the Legislature. I beseech your Lordships, Could the Doctor know this, and not only not except that Case, on a Day appointed to give solemn Thanks for it, but introduce it for no purpose but to leave it under the Condemnation of the General Rule of Non-Resistance?

And by this Method the Doctor has brought his General Rule to bear upon the particular Case of the Revolution. For he takes but one way of acquitting the Revolution, which is by laying down that for Truth, which every Man knows to be false; and they that assert this Truth, he says, *cast black and odious Colours on the late King and the Revolution:* Which makes out that Dr. Sacheverell doth suggest and maintain, *that to impute Resistance to the Revolution, is to cast black and odious Colours on his late Majesty and the Revolution.*

I am sensible how tedious I must have been in this nice tracing the Answers given by the Doctor's Council to our Proofs of this first Article; but because the Judgment of the Case will depend very much upon it, I am sure I shall have your Lordships Pardon.

And now, my Lords, What a Representation is here of that Glorious Transaction, the late happy Revolution! The Part the Subject had in it, is represented as contradicting the express Command of God in Scripture, and destructive of all Governments: his late Majesty is represented as encouraging this pernicious Wickedness, and disowning it at the same time: Give me Leave therefore, on behalf of the Nation, and the Memory of his late Majesty, its Deliverer, to state this Affair shortly, and in another Light to your Lordships.

The Subjects resisted, the late King join'd his Army with the Arms of Resistance; and if the Nation at that time had not had Recourse to that Remedy, how abject and how miserable must they have been! If we look into the Histories of other Countries, Have not the best and happiest Nations been most tenacious of their Liberties? And while they have continu'd so, and withstood Absolute Power, they have been prosperous at home, and considerable abroad: But when they have fallen from this Zeal, and Industry, which is the Foundation of their Prosperity at home, and Magnanimity, which makes them considerable abroad, have deserted them, they have sunk into Sloth and Effeminacy. Can any one therefore, with any Colour, say, That Resistance, in Cases of extreme Necessity, has worse Consequences than unlimited Subjection?

Let us now turn our Eyes a little on the Part our late King had in the Revolution. Did he not undertake a most hazardous Enterprize, to procure us Happiness at home, and to give us that Weight abroad, which this Nation had long enjoy'd, but at that Time was deprived of? And with what Care and Anxiety, even to the last Moment of his Life, did he labour to secure these Blessings to us!

Let us look beyond his Time, and since, for the Sense of the Nation upon this Point. What Satisfaction did the Nation take, in the Assistance his renowned Predecessor (Queen Elizabeth) gave to the oppressed Provinces, our then Good Neighbours, and our now Potent Allies? How zealously did the Nation promote the Assistance King James the First gave to the injured Prince Palatine, against the Emperor his Superior Lord? And what Resolution and tender Concern for the persecuted *Rochellers*, did King Charles the First shew and express? And has not Her Majesty assisted the *Spaniards*, against a Prince acknowledged by them, and seated on the Throne? Nor did Her Goodness, which is as extensive as Her Power, overlook the poor Estate of the People in the *Cevennes*, or neglect to give them all possible Assistance, against their King exercising a cruel Dominion over them.

These,

These, and many more Instances which might be fetched from other Countries, are so many Authorities against this Doctrine of unlimited Non-Resistance.

And now, my Lords, I come to consider the Authority the Doctor pretends to have for it: His Council say, They have Acts of Parliament for this Doctrine; I shall not mention the particular Acts, because they are well known, but consider them under Three Heads. First, Those Acts that were before the Restoration. Secondly, Those after the Restoration, and before the Revolution. And, Thirdly, Those after the Revolution.

My Lords, As to those before the Restoration, I readily admit they condemn Resistance generally; they don't mention any Exception. The Council of the other Side have furnish'd me with an Answer to 'em: They say, These, and all other Laws, have an Exception imply'd in them. The Wisdom of the Law, in not expressing the Exception, is plain: It is neither decent, nor probably would have a good Effect, to put odious Cases, such as a Prince's Overturning the Constitution. The Roman Law did not provide against Parricide, nor doth the English Law neither; since it hath no distinct Punishment for that kind of Murder, tho' it hath some for others, which are called Petty Treasons. Laws are framed upon a View of ordinary and common Cases: *Ad ea quæ frequentius accidunt jura adaptantur*, is a known Maxim, and of great use in the Exposition of Laws. And if our Legislators had been ask'd the Question, Whether they meant by those Laws to make all other Laws, and even those Laws themselves of no Validity? (Which, if Absolute Power cannot be withstood, would be the certain Consequence;) Would not they have answer'd, Nothing was farther from their Thoughts? And if it be *Maledicta Expositio quæ corrumpit Textum*, apply'd to any particular Law; what a cursed Exposition must that be, which corrupts, or rather annuls the Text of all the Laws at once?

My Lords, The next Head of Acts, are those after the Restoration, and before the Revolution. I do admit those Laws go farther than the former, and seem to condemn all Resistance, and in such Terms, as to exclude any Exception whatsoever. My Lords, What I have said relating to the former Laws, may be apply'd to these. But further, I desire it may be considered, these Legislators were guarding against the Consequences of those Pernicious and Antimonarchical Principles, which had been broached a little before in this Nation; and those large Declarations in Favour of *Non-Resistance*, were made to encounter, or obviate the Mischief of those Principles; as appears by the Preamble to the fullest of those Acts, which is the *Militia Act*, in the 13th and 14th of King Charles the Second. The Words of that Act are these: *And during the late Usurped Governments, many Evil and Rebellious Principles have been instilled into the Minds of the People of this Kingdom, which may break forth, unless prevented, to the Disturbance of the Peace and Quiet thereof: Be it therefore Enacted, &c.* Here your Lordships may see the Reason that inclined those Legislators to express themselves in such a manner against Resistance: They had seen the Regal Rights swallowed up, under the Pretence of Popular ones; and it is no Imputation on them, that they did not then foresee a quite different Case, as was that of the Revolution; where, under the Pretence of Regal Authority, a total Subversion of the Rights of the Subject was

advanced, and in a manner effected. And this may serve to shew, that it was not the Design of those Legislators to condemn Resistance, in a Case of Absolute Necessity, for preserving the Constitution, when they were guarding against Principles which had so lately destroy'd it.

But now, my Lords, let us see how the Laws run after the Revolution. Your Lordships will find, that the Resistance at the Revolution is not only approved of in express Terms, by the Act for preventing vexatious Suits; and indeed, every Act passed since the Revolution, is an implicit Approbation of it; but the Declaration of the Unlawfulness of taking Arms against the King on any Pretence whatsoever, (required to be taken by the Corporation-Act, the Militia-Act, and the Act of Uniformity,) is now repealed. There was another Act mentioned by one of the Doctor's Council, the Act for regulating Select Vestries: That Act expired in King Charles the Second's Time, and was never continued. The first Gentleman that spoke for the Doctor, said, in Answer to the Repeal of this Declaration, by a Clause in *the Act of the First of King William and Queen Mary, for abrogating the old Oaths, and appointing new ones*; that it is a very tender Repeal, if it be one. I did not, my Lords, well understand his Meaning; but I am sure, that is a very tender Answer, if it be any at all. My Lords, if it be thought that this Declaration, as it is enjoined by the Corporation-Act, is not repealed, because the Corporation-Act is not particularly mentioned in the Clause of the Act of the First of King William and Queen Mary, which repeals the Declaration; I answer, After the Militia-Act, and the Act of Uniformity are mentioned, there follow general Words; *Any Law or Statute to the contrary notwithstanding*: And this repeals the Declaration as to that Act, as well as to the other Two Acts. And this Opinion has prevailed universally; and if it were otherwise, there is scarce a Corporation in England, but would be dissolved by the Incapacity of their Members.

But the same Council argued, That the Doctrine mentioned in that Declaration must be the true Doctrine, or the Declaration would not have been enjoined and taken so long as it was; and the Repeal don't make the Proposition false: and we might as well argue the *Solemn League and Covenant* to be a Lawful Oath. My Lords, As to the Declaration against the Covenant, that was considered as a Temporary Thing only, and, by the Act of Uniformity, was to cease upon the 25th of March, 1682. and therefore not at all to be compared with the other Declaration, which was intended to be perpetual. As to the Truth of the Doctrine in this Declaration which was repealed, I'll admit it to be as true as the Doctor's Council assert it; that is, with an Exception of Cases of Necessity; and it was not repealed because it was false, understanding it with that Restriction; but it was repealed, because it might be interpreted in an unconfined Sense, and exclusive of that Restriction; and being so understood, would reflect on the Justice of the Revolution: And this the Legislature had at Heart, and were very jealous of; and by this Repeal of that Declaration, gave a Parliamentary, or Legislative Admonition, against asserting this Doctrine of Non-Resistance in an unlimited Sense.

My Lords, I must confess, I did not expect to hear the Association and the Abjuration-Oath brought in as asserting this Doctrine; if they do, this may serve to account for their taking them who believe

that Doctrine, which otherwise perhaps they would be at a loss to find an honest Reason for. But, my Lords, Doth engaging to stand by, and assist one another against all the King's Enemies, or swearing to defend the King or Queen against all Traitorous Conspiracies, signify any more than what is implied in the old Oath of Allegiance? There is, my Lords, indeed something more in the Association and Abjuration-Oath; for the Person taking them in his late Majesty's Time, declared, That he believed in his Conscience King *William* was Rightful and Lawful King of this Realm. This certainly put the Conscientious Taker of 'em upon a Consideration, of the Foundation on which that Right and Title was built. And since there was no Foundation for it but the Revolution, and that Revolution was founded on Resistance; how those could bring themselves up to take that Association, or that Abjuration-Oath, who believed that Resistance unlawful, I am at a loss to know.

My Lords, Upon this Head of these several Acts of Parliament that have been mentioned, I beg leave to observe, That as it is not to be supposed it was the Original Intention of any Laws to enervate the Force of all the Laws, so your Lordships see, there are since the Revolution Laws that do exclude any such Supposition, and do affirm that indefeasible Inheritance which the People have in the Laws.

My Lords, the next Part of the Evidence offered by the Doctor, was the Homilies; which are said to be confirmed by Act of Parliament, because the Articles of the Church of *England* are so; and the thirty fifth Article approves the Homilies, as containing Godly and wholesome Doctrine; and the Clergy are oblig'd to read and subscribe those Articles.

My Lords, I believe it will be admitted, that no more is intended by that Subscription, but that the Doctrine contained in the Homilies is right in the main, and not that every Sentence in 'em is so: For in this last Sense, I believe, never any Divine subscribed the Articles; and it will be hard to name any Preacher, or Writer of Note, who has not contradicted some Passage or other in them: Nay, as to one, the general and approved Practice of the Church is against it; I mean that Passage, which condemns the Use of Organs in Churches.

And surely, my Lords, the Sense of the Homilies can't be found out, by reading select Passages out of them, (as was done in the Doctor's Defence) but by observing the Frame and Tendency of the whole: And I may appeal to your Lordships, and especially to my Lords the Bishops, whether those who compiled the Homilies against Rebellion, seem'd to have had at all under their Consideration the Case of a total Subversion of the Constitution. It's plain, the main Design of those Homilies was against the Risings of the Popish Faction, and the plausible and popular Pretences made use of by them for supporting their Rebellions. Did not that great Queen, in whose Time the latter Book of Homilies was compiled, explain Her own Opinion on this Point, by the Assistance she gave to the *Hollanders* against the *Spanish* King, their Sovereign? Did not the Parliament explain Themselves, by the Supplies given to the Queen for that Purpose? And did not the Clergy explain Themselves likewise, by the Supplies granted in Convocation, in Favour of that Assistance? Can it therefore be imagined, the Homilies intended to condemn that Resistance, which the Queen and the whole Nation, nay, even the Clergy themselves assembled in Convocation, approved of? And I dare

say, if Doctor *Sacheverell* had read any of the Homilies against Rebellion, which he says he is commanded to do, if there be no Sermon on the fifth of *November*; I say, if he had read any one of them to his Congregation at *St. Paul's*, not one of his Auditors would have thought the Revolution condemned by the Homily, whatever they might have thought of the Doctor.

My Lords, That which we accuse him for, is, That he lays down this general Doctrine of Non-Resistance, in Terms exclusive of any Exception; and, not content with that, points out the Revolution, for Men to compare it with, and condemn it by. How much better would it have become the Doctor, to have imitated that Zeal which appears in the Compilers of those Homilies, for a Protestant Queen against a Popish Faction, than to arraign the Revolution, upon the defaming of which, the Hopes of a Popish Faction against a Protestant Queen are built?

My Lords, Let us now consider the other Books, or Writings, the Doctor has produced to justify his Doctrine: These are chiefly, if not all of them, the Labours of Divines; and I will place them in these two Classes, Those before the Revolution, and those since. And, my Lords, I will say, If this Question of Submission were left by the Divines, to those who make the Municipal Laws of their Country, or the Nature of Laws in general, their Study; and they would confine themselves to the pressing a Legal Submission only, founded (as it is by the Law of *England*) on common Consent, and common Good; it would be much more for the Honour of Religion, and the Peace and Felicity both of the Sovereign and the Subject.

And this will be very manifest, if your Lordships call to mind but two of the Doctor's Quotations before the Revolution, which were read to your Lordships: The one is a Passage out of Bishop *Sanderson*, the other the *Oxford* Decree in 1683.

My Lords, Bishop *Sanderson* (and he only of all that have been quoted) has put the Case of Resistance for the Preservation of Church and State, which are but other Words for the Constitution; and has delivered this Doctrine of Non-Resistance in such unlimited and bold Terms, as I shall not repeat, to create a second Displeasure in this great Assembly. And I willingly admit, he was a very learned, judicious, and pious Prelate: And if so great and good a Man fell into such indiscreet, indecent and shocking Expressions on that Subject, as did visibly affect such an Assembly as this, one would think it should discourage others from delivering that Doctrine in such a Latitude.

The next is the *Oxford* Decree, which condemns all Resistance whatsoever: But, my Lords, it is observable, that in the same Decree, there is a Condemnation of this Proposition that I am going to read to your Lordships; *That it is lawful to preclude the next Heir from his Right and Succession to the Crown*: And yet at the same Time, the condemning this Proposition, that is, the *holding, affirming, or maintaining* the contrary Proposition, was (by the 13th *Eliz. Cap. 1*) made High Treason in her Time, and a Forfeiture of Goods and Chattels ever after. And how the Law now stands as to that Particular, by the *Act for securing her Majesty's Person and Government, and the Succession of the Crown of Great Britain in the Protestant Line*, every one knows. And, my Lords, when we find so great and learned a Body criminally erring in a Point so Fundamental, and upon which our Prospect of Happiness to future

ture Ages doth, under God, depend; ought it not to discourage particular Divines, from pretending to determine Points of Law and Policy? For my own Part, I should hope, that that University's having fallen in at first so heartily with the Revolution, is as sincere a Condemnation of the Doctrine of unlimited Non-Resistance, as their solemn taking the Abjuration-Oath is a publick Profession that a Parliamentary Exclusion is lawful.

As for all the Passages which have been read to your Lordships out of the Books or Sermons of Divines before the Revolution, in Favour of Non-Resistance, your Lordships may observe their Reasons reach only so far, as when the Mischief is not Universal; or if it be Universal, where it is tolerable, and not so mischievous as a Civil War. I shall not mention any Passages in them, (which have not been read) to limit the Generality of the Expressions concerning Non-Resistance; because I avoid bringing in any Thing, which hath not been given in Evidence. But how candid the Doctor's Collections have been, your Lordships may judge by that Quotation out of my Lord Bishop of Salisbury's Book, where there is an express Exception of the Case of subverting Fundamentals: But your Lordships may see the same Candor shining out in several Passages of the Doctor's Sermon, with respect to that Reverend Prelate, whose Services, my Lords, (before, and at the Time of the Revolution) will never be forgotten by one Part of the Nation, nor forgiven by another.

My Lords, I now come to the Sermons and Writings since the Revolution: And I may appeal to your Lordships, whether they don't most plainly condemn the Doctor; those, I mean, where we had the Fortune to be ready to call for other Passages to be read out of the same Book. Does not my Lord Bishop of Lincoln expressly mention the Case of the Revolution, and justify the Resistance then used? How carefully does his Grace the Archbishop of York limit this Doctrine of Passive Obedience, which the Doctor says ought to be deliver'd in the most unconfined Terms? And it is by his Grace's Notion of this Doctrine, that the Commons desire this Cause may be judged and determined. I beg Leave to read again to your Lordships his remarkable Words: *Care must be taken, that this general Doctrine be not misapplied in particular Countries. Though Non-Resistance or Passive Obedience be a Duty to all Subjects, and under all Governments, yet it is not expressed the same Way in all Places; but both the Objects and the Instances of it do vary in different Nations, according to the different Models of their Government. To speak this as plainly as I can: As the Laws of the Land are the Measures of our active Obedience, so are also the same Laws the Measure of our Submission. And as we are not bound to obey, but where the Laws and Constitution require our Obedience; so neither are we bound to submit, but as the Laws and Constitution do require our Submission.*

This, my Lords, is the Doctrine the Commons are maintaining, and are calling this Criminal to an Account for contradicting. If our Obedience and Submission is not to be extended to the Prejudice of the Constitution, the Resistance at the Revolution, for preserving the Constitution, stands justified, and the Doctor's unlimited Doctrine of Non-Resistance stands condemned.

How prudently does his Grace, my Lords, caution the Doctor, and the rest of the Clergy, in another Part of his Sermon, by these Words? *If,*

indeed, a Preacher should in the Pulpit presume to give his Judgment about the Management of publick Affairs, or to lay down Doctrines (as from Christ) about the Forms and Models of Kingdoms or Commonwealths, or to adjust the Limits of the Prerogative of the Prince, or of the Liberties of the Subject in our present Government: I say, if a Divine should meddle with such Matters in his Sermon, I do not know how he can be excused from the just Censure of meddling with Things that nothing concern him. This is indeed a practising in State Matters, and is usurping an Office that belongs to another Profession, and to Men of another Character. And I should account it every whit as undecent in a Clergyman, to take upon him to deal in these Points, as it would be for him to determine Titles of Lands in the Pulpit, which are in Dispute in Westminster-Hall. And how well the Doctor has observ'd this necessary Caution laid down by his Grace, I leave your Lordships to consider.

My Lords, I have purposely omitted taking notice of any Writings, except such as were produced by the Doctor, and I am satisfied how superficially I have considered them: But, in general, I may appeal to your Lordships, whether in the lowest Ebb of Liberty, there have been wanting those in this as well as other Countries, who have denied this slavish Doctrine of unlimited Non-Resistance; whether since the Revolution this Nation has been so ungrateful to their Deliverer, or unthankful for their Deliverance, as to want those who have maintain'd the Principles of the Revolution, and have shew'd them to be as agreeable to the Christian Religion, as they are to the Nature of that excellent Government we live under, which is that of limited Monarchy.

And yet notwithstanding the unanswer'd Performances of divers, both of the Clergy and Laity, upon this Subject, the Doctor has the Boldness to affirm his Doctrine to be the Doctrine of our Blessed Saviour and his Apostles.

My Lords, I can't mention this, without the deepest Concern for the Honour of the Christian Religion. I beseech your Lordships, What is Liberty but Justice, and what is Justice, but doing to every one as we would be done by? And nothing, I think, is likelier to promote the Practice of this Christian Precept, than spreading a true Sense and Love of Liberty, that Principle which casts out of us a narrow Regard to ourselves, and introduces a diffusive Benevolence to others.

And against this Principle it is, that the Doctor has offended.

My Lords, I have endeavour'd to shew that the Charge in the First Article stands prov'd against the Doctor, and that this Proof remains unanswer'd; and if so, his being a Minister of the Gospel, his having taken the Oaths to the late King, and to Her present Majesty, his being a Fellow of that College which was in a particular manner delivered by the Revolution, are all of them Aggravations of his Offence, (if it can be aggravated;) and which, if prov'd, his own Council admits, brings a foul Imputation on Her Majesty and Her Government, makes Her Government an Usurpation, and her Subjects Rebels; and that no Punishment can be too great for him.

My Lords, I never saw that Criminal for whom I had not a hearty Compassion, but there is both Compassion and Justice due to the injur'd Innocent. Your Lordships have before you on the one hand, the Care and Concern of Doctor Sacheverell; on the other, the Honour and Prosperity of a wise and brave

brave Nation, who as they have thought nothing too much to give or hazard to defend their Liberties against a Foreign Enemy; so they hope your Lordships Justice on this Offender, will secure those Liberties against Domestick ones.

Mr. Solicitor General. **M**Y Lords, I am commanded by the Commons to join with the Learned Gentleman who spoke last, in Replying to the Defence that has been made upon the First Article of this Impeachment, which the Commons insist upon to be well-grounded, and fully prov'd, notwithstanding the several Objections and Excuses that have been offer'd by Doctor *Sacheverell* and his Council.

One of the Doctor's Council has agreed, That if he has asserted, that the Resistance used to bring about the Revolution was Unlawful, no Punishment can be too great for him: But what they have offer'd to your Lordships in his Defence is, That no such Position can be made out without the help of *Innuendo's* and forced Constructions, which infer a Meaning contrary to the Natural Sense and Import of his Words; and this way of charging a Man with a Crime, they truly say, is not agreeable to the Rules of Law, and would contradict one of the Reasons given for the Judgment of the House of Lords, in the Case of Sir *Samuel Barnardiston*: And if this was the Case, it would not become the Commons of Great Britain, who have such an Affectionate Regard to the Laws and Liberties of their Country, to proceed upon an Impeachment so ill-grounded. But when the Commons had so fully and particularly proved the Assertions charged upon the Doctor by this Article, they little expected to have heard that his Words had been wrested to wrong Meanings, and made to speak what he never thought: And therefore, since the Question depends altogether upon Construction, and your Lordships have been told that the Passage upon which this Charge is grounded, has not been fully stated, the Commons must give you the trouble of Reading the Passage at large, as it stands in the Sermon; that your Lordships may judge, whether they have not taken his Words in the common and ordinary Sense, and given them the only Meaning they can bear.

The Passage is in these Words.

"The grand Security of the Government, and the very Pillar upon which it stands, is founded upon the steady Belief of the Subjects Obligation to an Absolute and Unconditional Obedience to the Supreme Power in all Things lawful, and the utter Illegality of Resistance upon any Pretence whatsoever. But this Fundamental Doctrine, notwithstanding its Divine Sanction in the express Command of God in Scripture, and without which, it is impossible any Government, of any Kind or Denomination in the World, should subsist with Safety, and which has been so long the Honourable and Distinguishing Characteristick of our Church, is now, it seems, quite exploded and ridicul'd out of Countenance, as an Unfashionable, Superannuated, nay (which is more wonderful) as a dangerous Tenet, utterly Inconsistent with the Right, Liberty, and Property of the People; who, as our New Preachers, and New Politicians teach us, (I suppose by) a New and Unheard-of Gospel, as well as Laws have, in Contradiction to Both, the Power invested in them, the Fountain and Original of it, to Cancel their Allegiance at pleasure, and call their Sovereign to Account for High Treason against his Supreme Subjects, forsooth!

"Nay, to Dethrone and Murder him for a Criminal, as they did the Royal Martyr, by a Justiciary Sentence: And, what is almost Incredible, presume to make their Court to their Prince, by maintaining such Antimonarchical Schemes. But God be thank'd! neither the Constitution of our Church or State is so far alter'd, but that by the Laws of both, (still in Force, and which I hope for ever will be) these Damnable Positions, let them come from the Pulpit or the Press, either from *Rome* or *Geneva*, are condemned for Rebellion and High-Treason. Our Adversaries think they effectually stop our Mouths, and have us sure and unanswerable on this Point, when they urge the Revolution of this Day in their Defence. But certainly they are the greatest Enemies of that, and his late Majesty, and the most Ungrateful for the Deliverance, who endeavour to cast such Black and Odious Colours upon both. How often must they be told, that the King himself Disclaim'd the least Imputation of Resistance in his Declaration; and that the Parliament declar'd, That they set the Crown upon his Head, upon no other Title, but that of the Vacancy of the Throne? And did they not Unanimously condemn to the Flames (as it justly deserv'd) that infamous Libel that would have pleaded the Title of Conquest, by which Resistance was supposed?"

And the Question now before your Lordships is, Whether by these Words he has asserted, *That his late Majesty in his Declaration disclaim'd the least Imputation of Resistance; and that to impute Resistance to the Revolution, is to cast Black and Odious Colours upon his late Majesty and the Revolution*; which are the Assertions charg'd upon him in this Article, as *Suggesting and Maintaining, that the necessary Means used to bring about the late happy Revolution were odious and unjustifiable*: Now that there was Resistance in the Revolution, and that such Resistance, in a case of that absolute and unavoidable Necessity, is consistent with the Doctrine of the Church, and the Fundamental Law of the Kingdom, is agreed by the Council; and they have endeavour'd to convince your Lordships, that the Doctor has asserted nothing to the contrary; for they say, "The Resistance which the Doctor affirms the King to have disclaim'd, was only a Resistance which tended to Conquest; and that the Doctor did well to wipe off this Imputation, for the Parliament had declared it injurious to his rightful Title to the Crown, and had order'd a Treatise to be burnt, which Suggested a Title by Conquest; and that the Doctor having his Eye in that Expression on the matter of Conquest, expressed the same by Resistance, which was applicable to the Subject-Matter before, and therefore ought not to be wrested to any other Purpose."

This, my Lords, is the Turn which the Council would give to the Doctor's Assertion, *That the King disclaim'd the least Imputation of Resistance*. And indeed the Words of the Sermon are so plain and particular, that they are forced to have Recourse to this Evasion of a Resistance by Conquest: But I wonder Gentlemen can argue in this manner, and at the same time speak of reading the Words with Candor and Ingenuity; when 'tis most apparent that there is no previous Discourse of a Title by Conquest, or of any Treatise in which it had been asserted, that could give occasion for his vindicating the late King from any such Imputation, or to which these Words can in any Construction be applied; for the Doctor says nothing of Conquest 'till after he had asserted that the King disclaim'd the least Imputation of Resistance; and

and then he goes on and lays another Foundation for the Settlement upon the Revolution, by grounding it upon the Vacancy of the Throne, before he says any thing about Conquest, or mentions the Book which had pleaded that Title; and even then he condemns that Title for no other Reason but because it implied Resistance; which plainly shews, that his Argument was carried on upon the Subject of Resistance, and not upon that of Conquest.

And the Answer which they have given to that part of the Article, whereby he is charged with Asserting, *that to impute Resistance to the Revolution, is to cast Black and Odious Colours upon his late Majesty and the Revolution*, is equally evasive.

What they have offer'd to your Lordships upon this Head is, That the Doctor is not speaking of the utter Illegality of Resistance, when he introduceth his Discourse about casting Black and Odious Colours, by saying, *Our Adversaries think they have us sure and unanswerable on this Point, when they urge the Revolution of this Day in their Defence*; but of the damnable Positions with which the Doctor charges the new Preachers and new Politicians, in the Words immediately preceding: And in this place it is, that the Manager appointed to maintain this Article is charged with omitting about twenty or thirty Lines between the General Doctrine and the Passage concerning the Revolution, in which several distinct and entire Sentences are contain'd, concerning those Persons and their Principles, to which that Passage entirely relates: And your Lordships are told, that to apply the Instance of the Revolution to justify such wicked Principles, is what the Doctor calls casting Black and Odious Colours upon his late Majesty and the Revolution.

But the Commons take it to be very clear, That upon stating of the whole Paragraph, and all the Words in the Order in which they lie, and upon comparing the several Passages, it will manifestly appear, that what the Doctor said about *casting Black and Odious Colours* upon the Revolution, can be applied only to those who maintain, that the Resistance used to bring about the Revolution was lawful and just, and that the Persons he calls *our Adversaries* are such as urged the Revolution in opposition to his general Doctrine of the utter Illegality of Resistance upon any Pretence whatsoever: and not to those who urge the Revolution in Defence of those damnable Positions, which, he says, the new Preachers and new Politicians had laid down.

This the Commons apprehend to be the only Meaning that his Words in any Construction can bear; for *the Point* he is speaking of, and which he says his Adversaries thought they had him sure and unanswerable upon, must be some certain single Position which was mentioned before, some one Position or Principle, and not many; for 'tis *this Point*, not *these Principles*; and that single Point could be no other, than the *Point of Resistance*: And the Persons he calls his Adversaries, who think they have him so sure, can be no other than those who deny his general Doctrine, and not those new Preachers and new Politicians, who say the People have a Power vested in them to cancel their Allegiance at Pleasure; because those who deny this General Position of the utter Illegality of Resistance, as applied to any one particular Case, are certainly his Adversaries, and Enemies to his Fundamental Doctrine: For whoever can find an excepted Case, or shew an Instance in which Resistance is lawful, destroys his general Assertion. And he sufficiently shews, he meant those who oppos'd his general Doctrine of absolute Non-Resistance, by

our Adversaries, when he says that they urged the Revolution of that Day in their Defence; because the Resistance at the Revolution, which was founded in unavoidable Necessity, could be no Defence to a Man that was attack'd for asserting that the People might cancel their Allegiance at Pleasure, or Dethrone and Murder their Sovereign by a Judiciary Sentence. For it can never be inferr'd from the Lawfulness of Resistance at a Time when a *Total Subversion* of the Government both in Church and State was intended, that a People may take up Arms and call their Sovereign to account at Pleasure; and therefore, since the Revolution could be of no Service in giving the least Colour for asserting any such wicked Principle; the Doctor could never intend to put it into the Mouths of those new Preachers and new Politicians for a Defence; unless it be his Opinion, that the Resistance at the Revolution can bear any Parallel with the execrable Murder of the Royal Martyr, so justly detested by the whole Nation; or that there was no other Difference between the two Cases, than what the Learned Gentleman, who first spoke for him, was pleas'd to mention in the Conclusion of his Argument, by quoting an odious Expression which I forbear to repeat: But it was very proper to take notice of the Resistance at the Revolution, as an Objection to his general Doctrine, for it really is so; and 'tis impossible that Doctrine can be true in its full Extent, if the Resistance at the Revolution was lawful; for 'tis most apparent, that the Justice of a Revolution, founded in Resistance, and the Principle of Non-Resistance upon any Pretence whatsoever, can never stand together.

And therefore he could mean nothing by *the Point* his Adversaries thought they had him so sure upon, but the general Position of Non-Resistance, which was the only Point contended for in that Place; and he must mean those only who denied his Doctrine of absolute Non-Resistance, by *our Adversaries*: And having no other way of maintaining the utter Illegality of Resistance upon any Pretence whatsoever, and of answering the Case of the Revolution, which, from the Resistance that was in it, was made an Objection; he goes on and denies the Resistance, by saying, *That the King solemnly disclaim'd the least Imputation of Resistance*; and calls those who say that there was any Resistance in the Revolution, *the greatest Enemies of that and his late Majesty, and the most ungrateful for the Deliverance, who endeavour to cast such Black and Odious Colours upon both*.

This, my Lords, is plainly Asserting, That to impute Resistance to the Revolution, is to represent it as Black and Odious; and this Assertion is fairly collected from the plain Course and Tendency of his Argument, not from strain'd Inferences and Innuendo's, not from supposed or forc'd Constructions, but from his own Words, as they lie together, taken in their natural and genuine Sense, and is the only Construction that can give them any reasonable Meaning or Coherence.

And therefore the Commons apprehend, That the Charge against the Doctor, for asserting, *That to impute Resistance to the Revolution, is to cast Black and Odious Colours upon his late Majesty and the Revolution*, is fully prov'd, and stands unanswer'd.

But tho' the Charge, and the Passages produced for the Proof of it, are so very particular, and directly pointed at the Resistance used to bring about the late happy Revolution, yet the Doctor and his Council are pleas'd to say, "That he has only Asserted the Doctrine of Non-Resistance in general Terms, as it has been taught by the Apostles, the

" Homilies,

"Homilies, and the Fathers of the Church in all Ages: That in this Case, as in all other general Propositions, Cases of unavoidable Necessity, as *the Revolution undoubtedly was*, are always understood to be excepted; and that there is no other Difference between the Gentlemen of the House of Commons and the Doctor, but Whether when the general Rule of Obedience is taught, the particular Exceptions which may be made out of that Rule are always to be express'd; or, Whether when the general Rule is laid down, the particular Exceptions are not more properly to be understood or implied." And upon this ground they have been very Elaborate, and have produced many Proofs to satisfy your Lordships, that the Doctor's general Assertion of the utter Illegality of Resistance to the Supreme Power upon any Pretence whatsoever, without mentioning any Exception, is warranted by the Doctrine of the Church, and by the Law of the Land.

But, with great Submission, all this Pains might have been spared: for 'tis plain that the Doctor is not Impeach'd for preaching a general Doctrine, and enforcing the general Duty of Obedience, but for preaching against an excepted Case, after he has stated the Exception. He is not Impeached for preaching the general Doctrine of Obedience, and the utter Illegality of Resistance upon any Pretence whatsoever; but because, having first laid down the general Doctrine as true, without any Exception, he states the excepted Case, the Revolution, in express Terms, as an Objection; and then assumes the Consideration of that excepted Case, denies there was any Resistance in the Revolution; and asserts, that to impute Resistance to the Revolution would cast Black and Odious Colours upon it. This, my Lords, is not preaching the Doctrine of Non-Resistance in the general Terms used by the Homilies, and the Fathers of the Church, where Cases of Necessity may be understood to be excepted by a Tacit Implication, as the Council have allowed; but is preaching directly against the Resistance at the Revolution, which in the Course of this Debate has been all along admitted to be necessary and just, and can have no other Meaning, than to bring a Dishonour upon the Revolution, and an Odium upon those great and illustrious Persons, those Friends to the Monarchy and the Church, that assisted in bringing it about. For had the Doctor intended any thing else, he would have treated the Case of the Revolution in a different manner, and have given it the true and fair Answer; he would have said, that the Resistance at the Revolution was of Absolute Necessity, and the only Means left to revive the Constitution; and must be therefore taken as an excepted Case, and could never come within the Reach or Intention of the general Doctrine of the Church. But instead of this, he denies that there was any Resistance in the Revolution, and represents it as a Scandal upon the Revolution to say there was any Resistance in it; *Those*, says he, *are the greatest Enemies to it, who cast such Black and Odious Colours upon it.*

My Lords, if extraordinary Cases, if Cases of Necessity, which are implicitly Excepted, are not to be stated at the Time when the general Prohibition is inculcated, and it would be of dangerous Consequence in this particular Instance of the Doctrine of Non-Resistance, "by picking Holes for the Subject to creep out of his Allegiance;" I submit it to your Lordships Consideration, whether stating an Excepted Case, and then bringing it within the ge-

neral Prohibition, particularly in this Instance of the Revolution, must not have the same pernicious Consequence: "Does not this plainly shew what Spirit the Doctor is of, and what he aims at?"

But your Lordships have been told, that "What the Doctor asserts concerning the utter Illegality of Resistance to the Supreme Power, can never be applied to the Revolution; for the Legislative, the King, Lords and Commons, is the Supreme Power; and there was no Resistance to the Lords and Commons, for they join'd with his late Majesty in bringing about the Revolution; the Resistance was made only to that unfortunate Prince who was then upon the Throne." But 'tis plain from his applying the Illegality of Resisting the Supreme Power to the Case of the Revolution, that he meant the Executive Power, which was then Resisted; and he uses *Sovereign*, and *Prince*, as Synonymous Terms with the Supreme Power in other parts of the same Paragraph of the Sermon; for he speaks of calling the Sovereign to Account, and of cancelling Allegiance at Pleasure, which can be due only to the Prince; which shews, that the Prince only, and not the Legislature, can be understood by *His Supreme Power*.

I shall not trouble your Lordships, to shew that the Resistance used at the Revolution was consistent with the Doctrine of the Church, and with the Law and Constitution of *England*: This is no Part of the Controversy, and is not disputed by the Council; for they agree such Cases to be excepted out of the General Rule, and profess to use the several Passages that have been read to your Lordships, only to excuse or extenuate the Doctor's Offence, and not to arraign the Justice of the Revolution; and therefore I shall not enter into a particular Examination of them, but only observe, That if the Books, out of which these Passages were taken, were narrowly examined, 'tis possible some Expressions might be found, to shew that the Authors never intended that their General Rule should extend to Cases where the total Subversion of a Government was aim'd at. For your Lordships must needs have observed, from the Use that has been made of the Book of a Learned Prelate, called *A Vindication of the Authority, Constitution and Laws of the Church and State of Scotland*; Printed in 1673. that a perfect State of Truth is not altogether to be depended upon, from the Proofs that have been collected out of several Authors, and read to your Lordships; and that the Sincerity of the Collector is very much to be questioned: For that Book was produced to prove the Duty of Absolute Submission, and a Passage was read for that Purpose; but when the Managers looked into the Book, they found another Passage, where the Author stating the Case of Abuses tending to a total Subversion, allows, That in such a Case, the Supreme Power may be administered by another: Which shews, That this Reverend Prelate, who was so instrumental in the Revolution, did not act in Contradiction to his former Sentiments, (as was insinuated, by citing this Treatise;) but was firm and constant to himself, when he embark'd in that Glorious Enterprize.

Several Sermons that have been preached since the Revolution, have been likewise offered to your Lordships, to shew that the Doctrine of Non-Resistance has been delivered in general Terms; but these can be of no Service in his Defence, for the Reasons that have been given. Besides, the Commons don't think themselves concerned to enter in-

to the Examination of private Opinions. And for those that have been preached by the Right Reverend Fathers of the Church now living, they are the best Expositors of their own Meaning; and I should mis-spell your Lordships Time, to enter into any Explication of them. The Doctor has appealed to the Right Reverend Fathers of the Church; to these Right Reverend Fathers we leave him; not doubting but the Nation will be satisfied how much they are concerned for the Honour of the Revolution, and the Security of the present Happy Establishment under her Majesty, by the just Judgment they will give upon this Occasion.

And as to the Laws of the Kingdom, there needs little to be said, after what the Learned Gentleman who spoke last, has offered to your Lordships; especially since the Council for the Doctor have all of them own'd, That the General Expressions in the Laws don't extend to any such Case as that of the Revolution, which no Municipal Law can be supposed to include. And if Doctor *Sacheverell* had been satisfied with laying down the General Doctrines of Obedience and Non-Resistance, in the manner the Laws have done, the Commons had never given your Lordships this Trouble. 'Tis his entering into the Debate of what is agreed by his own Council to be an Excepted Case, and his arraigning the Justice of the Revolution, (which has been already stated at large to your Lordships) that has given Occasion for the Prosecution upon this Article.

Besides this, there have been other Things said in the Doctor's Behalf.

The Commons had alledged, That to shake the Justice of the Revolution, and the Validity of those Acts of Parliament, by which Her Majesty's Title to the Crown was declared, and the Succession settled in the Protestant Line, was a Matter of the greatest Consequence, at a Time when the Hereditary Right to the Crown was contested; and that the Friends of the Pretender could Advance his Interest upon no other Ground. But it has been urged for the Doctor, That he could never mean any Service to the Pretender; for he asserts the Hereditary Right to be in the Queen; and that those who deny Her Hereditary Right, are most like to bring in the Pretender. And by this Answer, they insinuate, That the Doctor has asserted an Hereditary Right in Her Majesty; and that those who defend her Parliamentary Title, deny Her Hereditary Right. The Passage they cite for his asserting an Hereditary Right in Her Majesty, is *Pag. 2.* where he calls Her Majesty, *The Good and Pious Relict of the Royal Family*: And they argue, That if Her Majesty be the Relict, and the only Prince of that Family left, she must have the Hereditary Right of Course.

This Passage your Lordships cannot but observe, requires some Straining, to give it any Appearance of answering the Purpose to which they would apply it; and after all, it can carry no such Meaning: Her Majesty is not the only Descendant of the Royal Family now in being; there are several Branches of it yet remaining; and I cannot believe, that the Gentlemen who use this Argument, intend to exclude the Illustrious House of *Hanover* from being Part of it. In the next Place, they turn it upon the Commons, as if they denied the Hereditary Right (which they shall ever avow) when they asserted the Title by Act of Parliament. I submit it to your Lordships, Whether any thing more was said, than that the Hereditary Right

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was contested? And this is notorious to all the World——is taken Notice of in our Oath of Abjuration, and was claimed Two Years ago, by the Pretender's Attempting an Invasion. And in such a Case, 'tis certainly the Duty of every Subject, to make good all the Fences which guard Her Majesty's Title to the Crown. And my Lords, We have Reason to lay some Weight upon a Parliamentary Title, since the Protestant Succession entirely depends upon it; and to defend the Power of Parliament, to limit the Succession of the Crown, since the Doctor has offered to your Lordships in Evidence a Decree of the University of *Oxford*, in the Year 1683, where is this Proposition, *viz.* "That it is lawful to preclude the next Heir from his Right and Succession to the Crown, was solemnly condemned, as False, Seditious and Impious:" Which I the rather take Notice of, because the Doctor relies so much upon the Authority of that University. But I must take Leave to say, That if the same Principle should still continue to be taught, or to be believed in that University, where so many of our Gentlemen receive their first Impressions, it must one Time or other involve us in Blood, and leave Posterity in endless Disputes about the Title to the Crown; and therefore 'tis of the greatest Consequence to Her Majesty, and the Security of Her Person and Government, the Continuance of the Succession in the Protestant Line, and the Peace and Happiness of this Kingdom, to maintain the Power of Parliament to settle the Succession of the Crown; which has been exercised in all Times, and frequently resorted to by Her Majesty's greatest and wisest Predecessors. This is not to make way for the Pretender, but to shew that he is effectually and legally excluded; and that Her Majesty has not only the Hereditary Right, but the Sanction of an Act of Parliament, which has been always thought sufficient to bind the Succession to the Crown, and is the plain way to establish her Majesty's Throne against all Attempts whatsoever.

But your Lordships are told, That these Sermons were not preached with a seditious Intention; and that the Doctor can never be supposed to have a Design to undermine the Government, by preaching up the utter Illegality of Resistance.

This, My Lords, has indeed some shew of an Excuse; but if your Lordships consider in what Manner he has applied his Doctrine of Non-Resistance, and the Use he has made of it, together with the General Design of the Sermon, which is a virulent Invective throughout; it will appear, that he could not take a more proper Course to incite the People to Sedition, and to create Jealousies and Discontents in the Kingdom. For, First, he endeavours to shew, That if there was any Resistance in the Revolution, the Foundations of our present happy Settlement were laid in an unlawful Force; because such Resistance was, as he says, utterly illegal, odious, and unjustifiable. And having laid this Ground, he charges her Majesty, and those in Authority under her, with a General Male-Administration: And what Inference can the People make from such Positions as these; but that the Government they are under is ill founded, and therefore no Obedience is due to it; and since there is a general Mismanagement in the whole Administration of the Executive Power, 'tis their Interest to get rid of it as soon as they can?

This, My Lords, is the plain Tendency of his whole Discourse; and whose Interest is best served

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by such Discourses as these, whether that of her Majesty, our most gracious Queen, or that of the Pretender, I submit to your Lordships impartial Consideration.

My Lords, The Doctor will have no Reason to complain of being hardly used, in having his Intentions censured as seditious, if he considers what that great Prelate, my Lord Archbishop of York, has said in the Sermon that has been produced in Evidence before your Lordships; in which there is this Paragraph, *viz.*

“ They are the Factious, they are the Setters up
“ or Abettors of Parties, who endeavour to destroy,
“ or unsettle, or disparage, or at least to hurt and
“ weaken the Government and the Laws, as they
“ are established; let the Principles upon which
“ they go, or the Pretences they make, be what
“ they will.

And if his seditious Intentions be apparent from the Sermon, his having taken the Oaths of Allegiance, his Signing the Association, and his taking the Abjuration, are so many Aggravations of his Guilt.

I have troubled your Lordships a great while; but I can't forbear taking notice of one Thing, which the Doctor has complain'd of as a Hardship; I mean, that he has been prosecuted in this publick Manner by an Impeachment, by which, he says, he shall have been abundantly punished, tho' he should have the Happiness to be at last acquitted. But this Complaint is answered by his own Council, who acknowledge his Case to be a Cause of very great Moment; and that the Points now under your Lordships Consideration, are proper only to be settled in Parliament. And certainly, no other Course could have been so proper: For when the Foundations of the Government in Church and State are apparently struck at, and undermined, under Pretence of Zeal for the Constitution; when her Majesty's Title to the Crown is endeavoured to be weaken'd, under the Colours of Obedience and Loyalty; when the Quiet and Repose of her Majesty's Protestant Subjects is disturb'd, under a pretended Zeal for the good of the Church; when the Safety of the Church is in the greatest Danger, from those who declare the most affectionate Concern for her Welfare and Prosperity; when the Fathers of the Church are defamed, by those who pretend the greatest Reverence for the Episcopal Order; and when her Majesty's happy Administration is publicly vilified and exposed, in the most audacious and insolent manner; where should the Commons apply for Justice, but to this supreme Judicature? Or where could they expect an adequate Remedy to these great and growing Evils, but in full Parliament?

They have therefore brought this great Offender before your Lordships; and have the highest Satisfaction, in a full Assurance of your Lordships impartial Judgment.

Mr. Lechmere. **M**Y Lords, the Gentlemen who have now spoke before me, have gone through the Substance of the Reply to this first Article: They have shewn to your Lordships the Weakness and Vanity of the Defence, which has been made to it; and have fully re-asserted this Part of our Charge, by which Doctor Sacheverell stands accused, in the Name of the Commons of Great Britain, of condemning the Necessary Means used to bring about the happy Revolution.

Your Lordships Consideration of this Branch of our Impeachment, and of what has been offered to

you in Maintenance of it, has, doubtless, created in your Minds an Impression equal to its Weight, and to the many great Consequences which depend upon it: But we persuade ourselves, that when you reflect on the Nature and Method of the Defence, 'twill more clearly discover to your Lordships and the World, how necessary a Task the Commons have taken on themselves in this Prosecution; of what high Concern it is to her Majesty and her Government, and to our common Security, that this Fundamental Question should receive this publick and solemn Discussion; That the false Zeal, which the disguised Enemies of her Majesty's Title have the Confidence to put on, by endeavouring to cover the worst Designs, under the sacred Names of God and Religion, and the strongest Professions of Loyalty and Allegiance, may be brought to the Test, and the true Foundations of the Safety of the Kingdom be understood and asserted.

The Part assigned me in opening the Charge, leads me to take Notice of some Passages which have fallen from the Council; and tho' what I shall first mention, has been already observed and fully refuted, yet I must beg your Patience to resume it a little. The Gentleman who began the Defence, said, That 'twas insisted on the first Day of the Trial, *That the Doctor had not only asserted the utter*

Illegality of Resistance on any Pretence whatsoever; but that he had likewise declared himself, That the Revolution was not such a Case as ought to be excepted out of his General Rule, and this he said, be denied; and if such an Exception could be found in the Doctor's Sermon, he should think no Punishment too great for him. Your Lordships could not but observe the Argument which immediately followed: 'Tis one thing, says he, *expressly to affirm the Revolution is such a Case as ought not to be excepted, and another thing not to make that Exception.* You were told, indeed, in the Beginning of the same Discourse, and afterwards by the Doctor himself, That his general Assertion of the utter Illegality of Resistance on any Pretence whatsoever, did not relate to the Resistance used to bring about the Revolution, it being applied to the Supreme Legislative Power, to which no Resistance was then made, the Lords and Commons joining in it. This, my Lords, is a Meaning which the Doctor had not in view when he preached the Sermon; for, by observing the Passages, you will find that the Words *Supreme Power* are no Part of the Assertion of the utter Illegality of Resistance on any Pretence whatsoever. He doth, indeed, affirm unconditional Obedience to the Supreme Power in all Things lawful, but the Illegality of Resistance is indefinitely and universally affirm'd, and not restrain'd to the Supreme Power. 'Tis likewise evident, not only from his mentioning the Case of the Revolution, which was the Case of Resistance to the King, as an Objection to his general Rule of the utter Illegality of Resistance, but likewise from the subsequent Parts of the same Paragraph, that the Non-Resistance which he preached up, was Non-Resistance to the Supreme executive Power; and, indeed, this is still more evident from the Fallacy of that, which is offered to induce your Lordships to think otherwise, it being undeniable, that the Lords and Commons did not join in that Resistance, as part of the Legislative and Supreme Power, but as part of the collective Body of the Nation. This Subterfuge, frivolous as it is, being soon departed from, the Argument proceeded upon the Supposition, that the general Assertion in the Sermon was to be understood of

of the Supreme executive Power. I return therefore to the Objection as stated before, which being delivered with uncommon Ostentation, your Lordships will allow me to enter into the Examination of it. *The Subjects Obligation to an unconditional Obedience to the Supreme Power in all things Lawful, and the utter Illegality of Resistance on any Pretence whatsoever*, is the Doctor's general Rule, which he affirms to be the Security of our Government, and the Belief of this *the very Pillar on which it stands*. Your Lordships may here observe, that the Doctor, in delivering his general Rule, has gone pretty much beyond that Apostle he would be thought to imitate: The Apostle in general Terms enjoins the Duties of Obedience and Subjection to the higher Powers, not mentioning any Exception, when he lays down those Precepts. The Doctor goes on, and his next Sentences contain a general Observation, 'That tho' his fundamental Doctrine was now become unfashionable and exploded, as a dangerous Tenet, inconsistent with the Rights, Liberties, and Property of the People; yet, God be thanked, it still continued to be the Doctrine both of Church and State: And then follow these Words, *Our Adversaries think they effectually stop our Mouths, and have us sure and unanswerable on this Point, when they urge the Revolution of this Day in their Defence*. No Body can doubt what Revolution the Doctor means, nor, that under the Term *Revolution*, by which he expresses the Objection made to the general Rule of Non-Resistance, he meant the Resistance supposed to be made at that Revolution. This he states, as the unanswerable Objection made by his Adversaries to his Point, to his Rule of Non-Resistance on any Pretence whatsoever.

If your Lordships collect the Sense of the Paragraph thus far, it will stand thus: Those Persons who explode absolute Non-Resistance to the Prince as a Tenet dangerous to Liberty; in Defence of that their Opinion, object to us, who avow this Tenet as the honourable and distinguishing Characteristick of our Church, the Resistance used to bring about the late happy Revolution, as an Exception out of our general Rule of Non-Resistance. The Doctor having thus laid down his Rule in universal Terms, and expressly taken Notice of the Case of the Revolution as an Objection raised against it by other People; your Lordships are next to consider what becomes of this Objection; in what Manner is it treated by him, and what Judgment does he pass upon it? My Lords, The Doctor does not drop the Objection without considering it further; he is not *silent in the Matter*; he doth not leave this as an Exception *implied*, and *to be supposed* by the general Rule; he proceeds and argues expressly upon it for two or three Sentences together: The Doctor's Expressions in this Respect also are not entirely agreeable to those of the Apostle. In the next Place, Doth the Doctor yield the Objection to his Adversaries? Doth he allow the Resistance used to bring about the late happy Revolution to have been a lawful Resistance, and to be an Exception out of his general Rule? No, my Lords, just the contrary: He is so far from agreeing with his Adversaries in this Point, or giving way to the Exception, that in Vindication of the Revolution, as he would be thought to speak, he pronounces those who make the Exception, and contend for the Lawfulness of that Resistance, to be Enemies to the Revolution; and that Resistance, which the Commons assert to be the necessary Means by which it was brought about, he describes to be odious Colours cast upon the Revolution. In

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his next Sentence he insinuates, That there was no Resistance in the Revolution, and to that End, misrepresents his late Majesty as having disclaimed it; and with the same Intent likewise, that the Parliament set the Crown on his Head on no other Title than of the Vacancy of the Throne; and still the more effectually to delude his Hearers into the Belief of his general Assertion, grossly and ridiculously perverts the Censure past by a future Parliament upon the Notion of Conquest, as a Condemnation of that Resistance. Having thus considered this Objection of the Revolution, and the following Parts of his Paragraph being Expressions of Triumph over his Adversaries, whose Objection he would be supposed to have confuted, towards the Close of it he uses these Words, as his Conclusion and Judgment upon it: *In short, as the English Government can never be secure on any other Principles but strictly those of the Church of England, so he will be bold to say, &c.* His general Rule of Non-Resistance on any Pretence whatsoever he had before laid down as the Doctrine and Principle of the Church; which, after having considered the Case of the Revolution as an imaginary Exception to it, he re-affirms in those Words. And what clearer Indication can your Lordships receive of the Doctor's Intention in his general Assertion? Can your Lordships, or any Body that shall consider the Tenor of that Part of his Discourse, retain any Doubt whether he has *plainly and fully declared* himself, That the Resistance used to bring about the late happy Revolution was odious and unjustifiable, and not to be excepted out of his Fundamental Rule of the Illegality of Resistance on any Pretence whatsoever? And, my Lords, Can it be said that this Interpretation of his Discourse is *strained and unnatural*? Is this Part of our Charge maintained by *conjoining distant and independent Passages*? Or is not the Connexion clear and necessary, and the Sense we contend for, the only Sense the Words can properly bear, in the most candid and genuine Interpretation of them? The Gentleman, whose Objection from the Bar I have been considering, said, *That it is one thing expressly to affirm that the Revolution is not to be excepted, and another thing not to make that Exception*. But tho' the Words of the Sermon are not an express and literal Affirmation, yet if this Construction appears to your Lordships to be necessary and certain, they will be taken by you to be an ample and undeniable Declaration of his Mind; and this poor Shift, thus emphatically insisted on at the Bar, will amount to no more than what the Doctor had before said in his Answer in plainer Words, That he had not maintained the Necessary Means to be Odious and Unjustifiable, because he had not made use of those very Words.

The next Passage which I shall observe to your Lordships, fell from the Gentleman who spoke third in Defence of this Article; his Words were these: I have been *careful and exact* in collecting them, "One learned Gentleman, says he, did observe, that there was an Original Contract; and that by that Contract, if the Executive Power invaded the rest, that Contract was broke, and the People discharged from their Allegiance; but he did not think fit to take Notice when that Contract was made. I would fain know, whether it was before *Magna Charta*, or since; if it was before, it is much no mention was made of it there, for that has been always looked upon as the Great Charter of the Rights of the People. Was it before 25 Ed. 3? Then I would know, Whether that Contract, made before the 25 Ed. 3. "could

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“ could ever discharge that Act which was made after it ? If it doth discharge the Subject of their Allegiance, I have never yet known it pleaded to any Indictment for High Treason upon that Act ; and therefore, *‘Till the Legislature shall determine what that Contract is, and what Breach of it shall discharge the Subjects of their Allegiance, I must take Leave to say, that Resistance stands still upon the Foot of the Statute of 25 Ed. 3.*”

My Lords, the Nature and Consequence of this Passage would bear a much more ample Consideration, than my Time has allowed me to give it, or than may be fit to trouble your Lordships with on this Reply ; but I conceive a short Notice of it, and of the near Relation it bears to the Matter now before you in Judgment, may yield a pretty clear Discovery and Explanation of the whole. But the Distance of Time since the opening of the Charge, and the many palpable Misconstructions which some of the Council have allow’d to themselves, of what has been offered by some of us in behalf of the Commons, makes it necessary for me, even in this Particular, to remind your Lordships of the Connexion of the Discourse, out of which this Observation was raised. Your Lordships were acquainted, in opening the Charge, with how great Caution, and with what unfeigned Regard to her Majesty and her Government, and to the Duty and Allegiance of Her Subjects the Commons made choice of the Words *Necessary Means*, to express the Resistance that was made use of to bring about the Revolution, and with the condemning of which the Doctor is charged by this Article ; not doubting, but that the Honour and Justice of that Resistance, from the Necessity of that Case, and to which alone we have strictly confined ourselves, when duly considered, would confirm and strengthen, and be understood to be, an effectual Security of the Allegiance of the Subject to the Crown of this Realm in every other Case, where there is not the same Necessity ; and that the Right of the People to Self-defence, and Preservation of their Liberties by Resistance, as their last Remedy, is the Result of a Case of such Necessity only, and by which the Original Contract between King and People is broke. This was the Principle laid down and carried thro’ all that was said with respect to Allegiance, and on which Foundation, in the Name, and on the Behalf of all the Commons of *Great Britain*, We assert and justify that Resistance by which the late happy Revolution was brought about. When the Gentleman from the Bar endeavoured thus, in a ludicrous manner, to explode the Original Contract between the King and People, he must not be supposed to be ignorant, that those very Words are part of the Vote of the Abdication, the Vote of both Houses of Parliament, at the Time of the Revolution, antecedent to that Settlement of the Crown, on which Her Majesty’s Parliamentary Title and our present Establishment is founded. I have thought it necessary to transcribe that Proceeding from your Lordships Journals, now lying on your Table, and will state it to you as I have taken it from thence.

Upon the Twenty Ninth of *January*, 1688, *A Message* was brought from the Commons by Mr. Hampden and others, who said, *The Commons taking into their Consideration the State of this Kingdom, had pass’d a Vote, to which they desired your Lordships Concurrence ; which Vote was as follows, Resolved, That King James the Second having endeavoured to subvert the Constitution of the Kingdom, by breaking the Original Contract between King and People ; and by Advice of Jesuits and other wicked Persons, having violated the Fundamental*

Laws of this Kingdom ; and having withdrawn himself out of this Kingdom, has abdicated the Government, and the Throne is become thereby Vacant. Your Lordships House Resolved it self into a Committee of the whole House, and the Vote containing in it divers Particulars, upon the 30th Day of *January*, was considered by Paragraphs ; the first of which was, *That King James the Second having endeavoured to subvert the Constitution of the Kingdom, by breaking the Original Contract between King and People : To which the Committee, and the House afterwards, agreed without any Amendment.* Now when it appears to your Lordships and the World, that *breaking the Original Contract between King and People*, were the Words made Choice of by that House of Commons, with the greatest Deliberation and Judgment, and approved of by your Lordships, in that first and fundamental Step made towards the Re-establishment of the Government, which had received so great a Shock from the evil Counsels which had been given to that unfortunate Prince, and that they are stated in that Vote as a Consequence of his endeavouring to subvert the Constitution of the Kingdom ; I need not say how much the Lawfulness of that Resistance, which had been before made by the People, and which is now the immediate Question, nay, how much the Justice of the Revolution it self would be affected by a Condemnation of that Position : And what Light doth it give to the Question now before your Lordships, when at your Bar, in Defence of a Person accus’d by the Commons, for condemning the Necessary Means which brought about the Revolution, you have heard that Original Contract, at that Time so solemnly declared to be a *Fundamental Principle*, publicly denied, ridicul’d, and endeavoured (in what Manner ’tis easy to judge) to have been exploded ?

My Lords, the Truth of that Position has its Foundation in the Nature and Essence of the Constitution of our Government, and it will stand so long as this remains ; and the Sanction it has received from your Lordships, and from that House of Commons, who had with so much Wisdom and Bravery asserted the Rights of the Kingdom in that extraordinary Juncture, and who, pursuant to that Resolution, settled the Crown upon Her Sacred Majesty, ought to render it indisputable, so long at least as that Establishment is preserved to us. But yet, could I think it seasonable to enter into it, to consider more particularly the Nature of our Government, to draw together some of the many incontestable Evidences of its Original Freedom, to consider the Nature, Antiquity and History of the Coronation-Oath, and the Oath of Allegiance, and the mutual Obligations and Consequences arising from them to the Prince and People : Was I to go over the several Branches that make up the ancient Frame of our Government, and which speak and express a Consent and Compact between the Prince and People in their Institution ; and was I to observe that inseparable Relation and equal Security which they import between the Crown and the Subject, and which are so many infallible Tokens of Original Consent stamp’d upon them ; the Truth and Certainty of that Position of an Original Contract between the King and People, might be laid down to your Lordships in demonstrative Terms. The Gentleman that rais’d this Observation, soon afterwards, in the same Discourse, suppos’d, That by the Original Contract, the Original Constitution was meant ; how strictly proper that Manner of speaking might be found to be, I will

not now determine; yet thus much may with Certainty be concluded, That the denying the Original Contract, is not only to disavow the whole Proceeding at the Time of the Revolution, but to renounce the Constitution it self, to disclaim those many and undeniable Proofs and Testimonies of it, which almost every Part of our History, our Records, and Memorials of Antiquity, will furnish: To deny the Original Contract of Government, is to contradict and condemn the Voice and Tenor of all our Laws, of every Act of the Supreme Legislative Power, the Force and Efficacy of which exists upon the Consent of the Crown, Lords, and Commons, and are therefore so many lasting and unerring Proofs of that, as the Original Foundation of that Supreme Power; 'tis not only to oppose the constant Judgment of all learned Men, who have understood and wrote impartially of our Government, but even the Sense of many of those Writings which have been produced and read to you in the Doctor's Defence, and more particularly that of the judicious Mr. Hooker: To deny and condemn the Original Contract between King and People, what other Consequences could it produce, than to unhinge the Government, and to destroy that excellent Ballance of Power, which is secured by it, and by which it has been so long preserved? It must weaken the ancient and just Prerogatives of the Crown, subvert the Foundations of your Lordships Legislative and Judicial Powers, render the Parliamentary Rights of the Commons precarious and uncertain, and terminate at length, in that absurd, yet dangerous Opinion, of the *Patriarchal Right*, which, when joined together with the Doctrines of absolute and unlimited Non-Resistance, and unconditional Obedience of the Subject to their Prince, compleats that fatal System, which has been, of late, so much contended for, towards the enslaving Mankind.

But your Lordships will consider further, what Use and Application was made of this Passage by the Council; his Conclusion was, *That till the Legislature had determined what the Contract was, and what Breach of it shall discharge the Subjects of their Allegiance, he took leave to say, that Resistance still stood upon the Foot of 25 E. 3.*

My Lords, we stand here entrusted to maintain the Charge contained in our Article, to assert the Justice of that Resistance only, which brought about the late happy Revolution; and that being the Resistance in question, and to which alone we have apply'd our selves, and in Support of which the Original Contract was mentioned; what is the plain *English* of this Inference drawn from the denial of it? Does it not amount to an open and positive Declaration from the Mouth of Dr. Sacheverell's Council, That that Resistance which was the necessary Means us'd to bring about the late happy Revolution, instead of being an Honourable and Lawful Resistance, was an Act of Rebellion and High Treason?

Having considered these Particulars, I beg your Indulgence to make a few Observations on the Nature and Method of the Defence to this Article: Your Lordships will remember, tho' it seems to have been totally forgot on the Prisoner's Part, that the Maintenance of this Article has not rested on the Doctor's general Assertion alone, but upon the following Passages, now stated to you; from whence we have undertaken to convince your Lordships, that Dr. Sacheverell has apply'd that general Rule of Non-Resistance to the particular Case of the Revolution; and this having rendered the Independent Consideration of the general Assertion wholly im-

material, when you afterwards heard the Admissions that were made by the Council, of the Legality of the Resistance used to bring about the Revolution, your Lordships might reasonably have expected, that the only Question remaining on this Article would have been, How far those subsequent Passages of the Sermon did evince the Intent of the general Assertion? But tho' the Question has been thus plainly stated and maintained, and the Method of the Doctor's Vindication thus clearly pointed out to him, yet how little has been said? How little Notice has been taken of this, which was his proper Defence? The Gentleman who began the Defence has, indeed, denied the Charge of this Article; the Force of that, and of his Argument which followed, have been considered: but if your Lordships shall not think fit to accept the single Attempt as sufficient to acquit the Prisoner, (together with a nervous Observation of the Interposition of some Lines between the general Assertion, and that Sentence wherein the Revolution is named) how much will your Lordships find, throughout that long and labour'd Harangue, that can be judged by you at all material to the true Question before you? For tho' the general Doctrine of Non-Resistance, the Doctrine of the Church of *England*, as stated in her Homilies, or elsewhere delivered, by which the general Duty of Subjects to the Higher Powers is taught, be owned to be, as unquestionably it is, a godly and wholesome Doctrine; tho' this general Doctrine has been constantly inculcated by the Reverend Fathers of the Church, dead and living, and preached by them as a Preservative against the Popish Doctrine of deposing Princes, and as the ordinary Rule of Obedience; and, tho' the same Doctrine has been preached, maintained and avowed by our most Orthodox and Able Divines from the Time of the Reformation; and, how *Innocent a Man* soever Doctor Sacheverell had been, if, *with an honest and well-meant Zeal*, he had preached the same Doctrine, in the same general Terms, in which he found it delivered by the Apostles of Christ, as taught by the Homilies, and the Reverend Fathers of our Church, and, in Imitation of those great Examples, had only press'd the General Duty of Obedience, and the Illegality of Resistance, without taking Notice of any Exception; yet, what Excuse can be derived, to the Matter now in question, from such Considerations as these, in favour of the Doctor, who has not only asserted the general Rule in Terms of the greatest Latitude, but has expressly mention'd and disallow'd the Exception of the Resistance, which brought about the Revolution? and whatever is the Language of our Laws, *Repealed or in Force*, wherein the same general Duty of Subjects is stated, and the Rule laid down to them, as Necessary and Fundamental for the Safety of the Crown and Government, and the Peace of the Kingdom, and which are meant to enforce and secure their Civil Obedience in ordinary Cases, (but which nobody will say can be construed to extend to the Case of a People threatened by their Prince with total Destruction, the utter Subversion of their Laws, and the Loss of their Religion and Liberties, to a Case of the last Necessity, *such a Case as the Revolution was*;) yet no Use can possibly be made of such Declarations in our Acts of Parliament to justify the Doctor, who by his general Assertion, has not only out-gone even those general Declarations, but has undeniably applied it in Condemnation of the Case of the Revolution, which is the Charge of this Article.

Your Lordships will allow me to observe yet a little farther: The Nature of this Article appearing

to every Body to be of that near Concern to Her Majesty and her Government, you have, indeed, heard very warm and pathetick Expressions of Loyalty, of very tender and dutiful Regard to Her Majesty's Title, and much Labour and Vehemence was used to persuade your Lordships into a Belief of this: But yet, your Lordships could not but observe, where the real Strefs and Force of the Argument was placed, and where it center'd at last; your Lordships will find, the great Effort was made to establish the general Doctrine of Non-Resistance, to inculcate this, in Terms of the largest Extent, in the same universal Terms, wherein the Doctor has delivered it, and than which I am at a Loss to find Words that can extend it further: If your Lordships should think fit to look back, with particular Exactness, upon the several Discourses which have been made from the Bar on this Article, and, for your more accurate Judgment, shall think proper to lay them together, and observe their Consistency; and if from such an Examination, you should see Cause to compare that which was first delivered, with that which was afterwards spoke by the Doctor himself, (for, my Lords, between them the Resemblance seems to be the nearest, and *the Difference between them in the Notions of Allegiance but very small,*) your Lordships may perhaps, in a great Measure, collect from thence the true Genius of this Defence. Your Lordships will observe, in how different a Manner, with what different Zeal, the main Points in Agitation have been handled by them; I mean, the Justice of the Resistance, which brought about the Revolution, and the general Doctrine of Non-Resistance. It has already been observed to you, that the Doctor himself made no Admissions concerning the Lawfulness of that Resistance, but has used Expressions of due Regard to the Protestant Succession; The Gentleman, who open'd the Defence, it being, it seems, of no Consequence to the present Occasion, came to no Declaration in this Point of the Protestant Succession; But, as to the Honour and Justice of the Revolution, his Approaches are nearer: He has acquainted your Lordships, *That there is nothing further from our Hearts, nor any Thing less Necessary for our Defence, than for us to call in Question the Justice of the Revolution.* At another Time, he delivered himself in general Terms: *Such a Case,* (that is a Case of Necessity, a Case never to be mentioned, but to be supposed and implied) *the Revolution was:* But, in other Parts of the same Discourse, the Expressions even concerning the Revolution will be found to be more reserv'd and wary, and always soften'd with some saving Particle: Thus shy and tender at the best, have the Admissions been from Two Discourses, of the Lawfulness of that Resistance which brought about the late Happy Revolution: But as for the Doctrine of Absolute, Unlimited Non-Resistance, by which, if it be not an Erroneous Doctrine, the Justice of the Resistance, which was the necessary Means that brought about the Revolution, (and in pursuance of which, the Crown was settled on Her Majesty and the Protestant Line) must for ever remain condemn'd. What Fervency and Copiousness of Expression was used to establish that? What Cautions have appear'd to guard and secure this Doctrine as inviolable? How often, and with what Zeal was it inculcated, that the general Doctrine, was that Doctrine which alone was to be preached and press'd? The Exception, *The Case of Necessity, the Case of the Revolution,* the only Case contended for,

was not fit to be mentioned: The Doctor's general Rule was that alone, which was proper to be inculcated and believed; the excepted Case never to be stated, but to be suppos'd or imply'd, and *to be left to justify it self.*

My Lords, How comes it to pass, that so little Concern has been shewn, in the Course of this Debate from the Bar, to that which was the proper Defence of the Criminal, to clear the Passages of his Sermon from the noxious Meaning they had been shewn to bear? How comes it to pass, that the Honour and Justice of the Revolution is thus tenderly acknowledged; but yet all that has been said to support it, has by this Gentleman been endeavour'd to be enervated, and at the same Time the extremest Zeal shewn to establish the general Position, tho' altogether immaterial? I'll once more venture at a *charitable Reconciliation of those seeming Inconsistencies:* Upon a very strict and minute Recollection, your Lordships will find that *the Resistance, the Necessary Means* used to bring about the Revolution, is never once acknowledged in that first Discourse, *in plain and express Terms:* The Case of Necessity in general, the Case of the Revolution, was so ambiguously spoke of, and so skilfully given up, that, by the kind Help of some happy Distinction, when *the Season is proper,* 'twill be easy to retrieve it. Tho' your Lordships may remember some plausible Expressions concerning the Justice of the Revolution, yet you will find the real Conclusions of the Discourse tend to condemn it; and such remarkable Instances chosen, such as the Case of the Two *Spencers*, which, being applied to the Case of the Revolution, represent its Principles damnable, its Consequences detestable, and the Assertors of it deserving Banishment; Your Lordships will find the Argument so well adjusted to the main Point in view, to establish the *slavish* Doctrine of *Absolute, Unlimited, Non-Resistance*, that, if the worst should happen, even that against which we are now contending, the judicious Reserves that Gentleman has used on the Point in Question, and the real Service he may be thought to have done to that *slavish* Doctrine, may, in due Time, raise a Merit in Favour of all its Consequences.

But, as an undeniable Evidence of a *sincere Affection* to the Case of Necessity, the Case of the Revolution, let me put your Lordships in mind of the Passage quoted from Mr. Pym in his Declaration against Doctor Manwaring: The Doctrine preached in those Days, and for which he was impeached by the Commons, was, the attributing an Absolute Power to the King over the Property of the Subject, tho' with some *deceitful* Limitations, as that of extreme and urgent Necessity. Mr. Pym had shewn the Vanity and Fruitlessness of that Limitation, it being left to the Prince to determine what is an urgent and pressing Necessity: And to represent the Danger of such a Case, of allowing any Exception upon any Pretence, even that of extreme Necessity, he cites the Charter of Lewis X. of France to the Dutchy of Normandy, wherein that Prince having acknowledged the Franchises of the Dutchy, and granted to them, that for ever afterwards they should be free from all Exactions from him and his Successors, these Words followed, *unless great Necessity required:* which small Exception, Mr. Pym observed, had in Time devoured all their Immunities. Mr. Pym, in that Speech, arguing against the Position advanc'd by Doctor Manwaring, condemns the least Pretence of any Exception: The Gentleman, who quoted this Passage from him, having endeavour'd to establish his general Doctrine of

of Absolute Non-Resistance, the Doctrine preached by Dr. Sacheverell, and having shewn the Danger of mentioning any Exception to it, even that of the Case of Necessity, and *such a Case*, he had before told your Lordships, *the Revolution* was, concludes from that Instance, that such Exceptions would in Time devour all Allegiance. This, my Lords, hath been the Method, these have been the Arguments used to acquit the Doctor, to shew the Innocence of his Intention, and that there was no Design either in his Sermon, or his Defence, to condemn the Resistance, *the necessary Means* which brought about the late Happy Revolution; and from these Observations you may possibly discern the Consistency of the whole Defence. I beg leave only *to turn the Case*, to suppose a Case of a real Design to condemn the late glorious Revolution, and all the happy Consequences of it: At a Time, when express Declarations of such a wicked and traitorous Intention may not be judged proper; at a Time when some plausible Expressions of the Justice of it, may be thought Useful and Necessary; and, at such a Time, let the Illegality of Resistance on any Pretence whatsoever, be laid down and enforced in its utmost Extent; let the Danger of stating or mentioning any Exception to it, be strongly inculcated; let the Justice of the Exception, even of the Case of Necessity, *such a Case as the Revolution was*, be illustrated by an Instance, wherein 'tis expressly condemned; and, May it not be said, 'Tis easy to discern what Spirit such a Person is of, of what Party he is, what he aims at, and what he intends; that he has not been speaking in Defence of the late Revolution, can't be look'd upon to have been arguing for it, and to shew the Justice of it, but was covering the Treason of his Heart and under Pretence of justifying one Revolution, was labouring to bring about another: But, what vain Imaginations must possess those Minds, which can flatter themselves into a Belief, that, even whilst they are maintaining Principles that tend most certainly to undermine the Foundation of Her Majesty's Government, and the Protestant Succession, the most solemn Protestations out of the same Mouth, and in the same Breath, should pass for an Atonement with your Lordships, or give Satisfaction to any that hear them?

My Lords, Your Lordships will consider the evident and necessary Tendency of the Doctrines, which have been preached by the Prisoner, and have been again asserted, though not openly avowed, in their full Extent and Consequence, in Defence of this Article. The Doctrine of *Absolute Non-Resistance*, the condemning the Original Contract, renouncing the ancient Legal Constitution of the Government, which is our Title to our Liberties, are Positions, which can have no better Tendency, than to shake the present Settlement of the Crown, and our present Establishment, and to make way for the Pretence of a Natural and Divine Right of Succession: Are not those the Principles taught, and avowed by Papists and Nonjurors, and whereon their Hopes are founded? And are they more Wholesome, or less Dangerous, when they fall from the Mouth, or drop from the Pen of the Prisoner, or are asserted in his Defence, tho' gilded over with specious Pretences, and under the Umbrage of a true Son of the Church? If these Doctrines of Unlimited Non-Resistance, of a sole Hereditary and Divine Right of Succession to the Crown, are the very Doctrines, on the Belief of which, the professed Enemies of Her Majesty and Her Government, inviolably engage themselves against Her Title, and against the Protestant Succession; If these are the Tenets, by which

they openly condemn the late Glorious Revolution, and all its Consequences: From which Part of this Defence can your Lordships collect the Innocence of the Prisoner? By what way of Reasoning can it be concluded, that the same Opinions, embraced by this Gentleman, do not inevitably engage him in the same Interest?

Sir Peter King. **M**Y Lords, It is my Part to Reply to the Answer that has been given by the Doctor, to the Charge of the Commons of *Great Britain*, with Relation to the Second Article. When I was entrusted by the Commons to manage this Part of the Charge, I both quoted and read the Passages of the Sermon, to make good that Charge; I did not desire that any Thing should be taken upon Trust, nor any Thing received against him, but what appeared from his plain express Words, or by clear, necessary and unavoidable Consequence. Indeed, after the whole Sermon had been read by the Clerk, I thought it too great a Trouble to your Lordships, to have the Clerk read over the particular Passages again at the Table, and therefore I read them my self, truly and fairly, as they were in his Sermon; and if I had done otherwise, the Doctor and his Council would have set me right. I agree with the Doctor and his Council, that in a Case of this Nature, and I will say further, in all Cases whatsoever relating to Crimes, the Charge must be maintained by positive plain Words, or necessary and unavoidable Inference, such as no reasonable Man can withstand the Light of. And therefore, if there was nothing in this Case but dark Hints, strain'd Innuendo's, and forc'd Constructions, I am sure, neither the Commons of *Great Britain*, nor my self, would appear before your Lordships with an Attempt to make out a Charge of this Nature; if it is not proved by plain, positive and express Words, or necessary and unavoidable Inference, I am sure your Lordships will never convict him; because it would not be just and right so to do. It is a perverting of Common Justice to condemn a Person without plain and direct Proof; therefore what we represent to your Lordships is, that by plain and clear Passages in his Sermon, he is guilty of the Charge in the Second Article, of maintaining, *That the Toleration granted by Law is unreasonable, and the Allowance of it unwarrantable; and that he is a false Brother with Relation to God, Religion, or the Church, who defends Toleration, and Liberty of Conscience.*

When the Doctor put in his Answer to this Article, he had not found out that there was a Toleration granted by Law to the Dissenters; but his Council have now found it out, and they do agree, that there is a Toleration granted by Law, and that it is that Indulgence which is contained in the Act made in the Time of the late King and Queen; but they insist at the same time, that the Doctor in his Sermon has not condemned or censured that Toleration; they say he has condemned a Toleration, but they insinuate there are two Tolerations mentioned in his Sermon, the one a Toleration granted by Law, which he allows and approves of; and the other a general unlimited Toleration, which they admit he does condemn; so that we are now agreed upon the Word *Toleration*, and they do admit that he doth in his Sermon Censure and Condemn a Toleration: but, say they, it is not the Toleration granted by Law, because he took Care in his Sermon that his general Expressions should not be misconstru'd, and put in this express Caution in the

20th Page: *I would not be here misunderstood, as if I intended to cast the least invidious Reflection upon that Indulgence the Government has condescended to give 'em, which I am sure all those that wish well to our Church, are ready to grant to Consciences truly scrupulous; let them enjoy it in the full Limits the Law has prescribed.* This, they say, is an express and full Declaration of his Meaning, that he is not against the particular Toleration granted by Law; and therefore all those other Passages in his Sermon condemning Toleration, are to be applied to a general Toleration, and not the particular Legal one.

When I made out this Charge, I mentioned this Caution of the Doctor's, but at the same Time submitted it, whether such a general Expression as that is, could screen him from other plain Passages in which he has condemned the Toleration; if in other Places he has condemned it, this Caution is but *Protestatio contra factum*; an oblique Defamation may be as criminal as a direct one: In the common Cases of Scandal, if I obliquely defame another, and describe him so, that it is impossible but every one must know him, it is no Excuse that I do not positively accuse him; so that the Question will be, whether the Doctor has not in the other Passages cited against him, plainly censured and condemned the Toleration granted by Law.

The first Passage cited out of his Sermon, to prove this Charge upon him, was in the 10th Page; I trouble your Lordships with reading it again, that I may be sure to do him no Injury; the Words are, *So that in all those Cases before-mentioned, whosoever presumes to innovate, alter, or misrepresent any Point in the Articles of the Faith of our Church, ought to be arraigned as a Traytor to our State; Heterodoxy in the Doctrines of the one, naturally producing, and almost necessarily inferring Rebellion and High Treason in the other, and consequently a Crime that concerns the Civil Magistrate as much to punish and restrain, as the Ecclesiastical.*

The former Part is relative to what went before; the latter Part is a general Assertion, that *Heterodoxy in the Doctrines of the Church infers Rebellion and High Treason in the State.*

The relative Part of this Clause has Relation to the several Doctrines mentioned before; among which, one of the Cases and Instances of false Brotherhood is, *the affirming that the Divine Apostolical Institution of Episcopacy is a Novel Doctrine, not sufficiently warranted by Scripture; whoever affirms this, is guilty of an Innovation or Alteration of the Articles of our Church.* Now the Dissenters of all Sorts universally hold this Proposition, and they are exempted from subscribing the 36th Article, which asserts Episcopacy: But, saith the Doctor, tho' they are exempted, yet whosoever asserts this Proposition, is to be punished as a Traytor to the State, as well as an Enemy to the Church.

The Learned Civilian of Council for the Doctor says, that the reading the whole Passage will show, that it was not intended for the Dissenters, but for one in Holy Orders; that if such an one should maintain this Doctrine, *he would be an Apostate from his own Order*; now this Allegation is true, as it stands in Page 8; absolutely considered in itself, it is there applied to one in Holy Orders; but as it stands in Relation to this Clause in Page 10, it is a general Assertion, that *whosoever innovates, or alters that Article of the Church, which the Dissenters do, ought to be arraigned as a Traytor to the State.*

Another Answer that hath been given hereto, is, That the Doctor there means those who are for Innovations and Alterations in Matters of Faith;

which can't respect the Dissenters or their Toleration, because the Dissenters agree with the Church in Matters of Faith, and differ only in Matters of Discipline. But if you give this Turn to it, it alters the Sense and Meaning of the Doctor; for he is not speaking here of Matters of Faith, in Contradistinction to Matters of Discipline, but he is speaking in general of the Articles of Faith of our Church; *whoever presumes in any of the Cases before-mentioned to innovate, alter, or misrepresent any Point in the Articles of the Faith of our Church, ought to be arraigned as a Traytor to the State.* Now what are the Articles of the Faith of our Church? Are they not the Thirty Nine Articles? Are not they the Articles of the Faith and Religion of the Church? Doth not the Thirty Sixth Canon expressly require the Clergy to subscribe willingly, and *ex animo*, that all and every the Articles of Religion, being in Number Thirty Nine, are agreeable to the Word of God? Now if the Thirty Nine Articles be the Articles of Faith of our Church, and the Dissenters disbelieve the Thirty Sixth Article; and if for that Innovation or Alteration they are to be arraign'd as Traytors to the State, what then is become of the Toleration, that exempts them from the Penalties, and from subscribing the said Thirty Sixth Article?

As to the general Proposition immediately following in the same Clause, *viz. Heterodoxy in the Doctrine of the one, naturally producing, and almost necessarily inferring Rebellion and High Treason in the other, and consequently a Crime that concerns the Civil Magistrate as much to punish and restrain, as the Ecclesiastical*: I don't remember that any Answer whatsoever was given to it by the Doctor or his Council. And I pray your Lordships cast your Eyes on this, and see here is an Affirmation, that any different Opinion in any of the Articles of the Church, is a Crime against the State. Now all the Dissenters are exempted by the Act of Toleration from subscribing Three Articles and an half, others from Four and an half, and others from all. And when this Act grants them all these Exemptions, shall it be affirmed that this Heterodoxy allowed by that Act is High Treason and Rebellion, and that they ought to be arraigned as Traytors? I submit to every one's Judgment, whether any Thing can be more plain against the Toleration than this.

The next Passage cited out of his Sermon, to prove the Charge of the Second Article, is in the 16th and 17th Pages: *What could not be gained by Comprehension and Toleration, must be brought about by Moderation and Occasional Conformity; that is, what they could not do by open Violence, they will not fail by secret Treachery to accomplish. If the Church can't be pull'd down, it may be blown up; and no Matter with these Men how 'tis destroyed, so that it is destroyed.*

My Lords, Here is an Affirmation, that Toleration was doing open Violence to the Church, that the False Brethren had a Design by Toleration to pull down the Church. Now the Answer given to this by one of the Council, is what one can scarce imagine he was serious in, *viz. That this doth not suggest the Toleration to be unreasonable, or the Allowance of it unwarrantable, but that it is rather a Commendation of the Toleration, because it shews that it could not do the Church any Hurt, it could not pull down the Church, and therefore they have found out a more pestilent Way, of Occasional Conformity and Moderation.* But all that can be collected from hence, is, that Toleration is a less successful Evil than Moderation: Toleration was a storming the Church by Violence, and an endeavouring

ing to pull it down; but though, by the good Providence of God, it hath not been so successful an Evil as Moderation, which is a secret Treachery to undermine the Church, and blow it up, yet it is an Evil: And to suppose the Church to be either pulled down, or blown up, which way soever it be done, it is so great an Evil, that every Member of the Church must be for preventing it, and using all his Endeavours to prevent both those Evils; and therefore to represent Toleration to be such an Evil to the Church, as to be doing open Violence to the Church, and pulling it down, is an undue Reflection on the Fathers of the Church, and on that Parliament that granted that Toleration, as if they concurred in Endeavours to pull down the Church, and destroy it.

Another Passage, in Page 14. of the Sermon, was cited by the Council of the other Side, as a Passage cited by me to make out the Charge against the Doctor; but herein they mistook me, it was not cited by me for that Purpose, but to shew that the Doctor understood the Act of Indulgence to be a Toleration; and the Passage was this, *Certainly the Toleration was never intended to indulge and cherish such Monsters and Vipers in our Bosom, that scatter their Pestilence at Noon-day, and will rend, distract, and confound the firmest and best settled Constitution in the World.*

I cited this Passage to shew, that the Doctor himself, at the Time he preached this Sermon, knew what was meant by the Toleration; and it plainly proves it, and the Doctor himself doth not now disown it. But as to the Proposition itself contained in that Part of his Sermon, I agree with him that the Toleration was not intended, and I hope will never be made use of, to support Atheism, Deism, Tritheism, or any such Monsters and Vipers, but only dissenting Protestants.

The next Passage I cited was in the 8th Page. *If upon all Occasions to comply with the Dissenters, both in publick and private Affairs, as Persons of tender Conscience and Piety, to promote their Interests in Elections, to sneak to them for Places and Preferments, to defend Toleration and Liberty of Conscience; and under the Pretence of Moderation, to excuse their Separation, and lay the Fault upon the true Sons of the Church, for carrying Matters too high; if to court the Fanaticks in private, and to bear them with Patience, if not Approbation, rail at and blaspheme the Church, and upon Occasion to justify the King's Murder; if to flatter both Dead and Living in their Vices, and to tell the World, that if they had Wit, and Money enough, they need no Repentance, and that only Fools and Beggars can be damn'd; and if these, I say, are the modish and fashionable Criteria of a true Churchman, God deliver us from such false Brethren.* So that here the Doctor makes it one of the Characters of a false Brother to defend Toleration, and Liberty of Conscience.

The Answer given to it is this, That where the Doctor blames those that defend Toleration, it is not those that defend that only and singly, and do no other thing, but they must at the same time not only defend Toleration, but excuse the Separation, not by reason of the Toleration, but by *laying the Fault on the Sons of the Church for carrying things too high*: He don't blame them that barely justify Toleration, unless they fall too on the Sons of the Church for carrying things too high. But whether or no that Place is capable of such an Interpretation, your Lordships will be the best Judges, by looking on the Place, and considering whether any two

of those Characters are to be united in any one Person to make him a false Brother. Whether these several Characters are not so many different *Criteria* of false Brotherhood; if he does defend Toleration and Liberty of Conscience; if he does excuse their Separation, and lay the Fault upon the True Sons of the Church, for carrying Matters too high, &c. They are all different Marks of false Brotherhood; so that whosoever defends Liberty of Conscience, and the Toleration, is a false Brother.

It was also answered, That in the Act of Indulgence there are a great many Restrictions; and therefore this Passage must be understood of a Toleration of such as are not qualified by the Act to receive it: And for that end the Act was read, in which are several Restrictions; and the Toleration is not unlimited, but to Persons under such and such Qualifications, conforming themselves to the Rules there laid down. But what Foundation is there for this Answer in the Passage itself? Doth not he there condemn Toleration generally? Doth not an universal indefinite Proposition include all manner of Toleration, whether general or special? If he had meant it in this restrained Sense, he should then have express'd himself, That he that defends Toleration, except such Toleration as is allowed by Law, is a false Brother; but not doing so, but expressing it generally, it is plain, that he has condemned that Toleration that is granted by Law: And it is submitted to your Lordships, that this is a plain Proof against him of this Article.

The next Passage, is that relating to the Perfidiousness of Archbishop Grindall, in deluding Queen Elizabeth to the Toleration of the *Genevian* Discipline: The Doctor, in his Answer, did conceive he had good Authority from History to make out that Assertion; but whether he had or no, he did apprehend that such Assertion was no Proof of his maintaining or suggesting, that the present legal Toleration was unreasonable, or the Allowance of it unwarrantable.

I did, in making out the Charge, agree with the Doctor, That whether he was, or was not mistaken in that Fact, was not the material Point in Question; but that he had put it on the right Question, Whether that Assertion (true or false) relating to Archbishop Grindall, was a Condemnation of the Toleration now granted by Law? To that I principally applied myself, to shew that that Fact, as stated by the Doctor, was a Censure of the Toleration; not forgetting, at the same time, to say something in Vindication of the Memory of that great Prelate.

But now, the Doctor's Council (in their Defence) have in a great measure quitted the true Point that the Doctor rightly put it upon in his Answer, and instead of endeavouring to shew that this is no Reflection on the Toleration, have rather endeavoured to shew, that this Fact of the Archbishop is true; That the Reason of his Disgrace was, for deluding the Queen to the Toleration of the *Genevian* Discipline, and for giving up the Discipline of the Church: That at that time, there was no Law to indulge any Separation from the Church; and therefore for the Head of the Church, under the Queen, to give up the Discipline of the Church, was an high Crime in him; and tho' it be a harsh Term, yet it was true to call him a Perfidious Prelate, and False Son of the Church.

For this End, they did produce and read two Letters; the one from Queen Elizabeth, to the Bishops throughout England, for suppressing the Exercise called *Propheying*, and the other of the Arch-

bishop to the Council; and out of these two, they say, there is Proof out of the Archbishop's own Mouth, That the Reason why he was under a Suspension, was for deluding her Majesty to permit a Toleration of the *Genevian* Discipline; and that he acknowledged the Justice of his Punishment for that Crime. And they farther aggravate it, That it would be an invidious Reflection on the Character of that glorious Queen, that she should cause an Archbishop to be suspended, for prosecuting *Julio the Italian* for having two Wives, or for not giving up the Palace at *Lambeth* to the Earl of *Leicester*: As if I had insinuated, or could have imagined, that the apparent visible Reason of the Disgrace of the Archbishop, were these Things! No; it can't be thought I meant so. The apparent visible Cause of *Grindall's* Disgrace was, no doubt, the encouraging of the Exercise called *Prophefying*; and Queen *Elizabeth* knew no other: But yet the real Spring, the secret History, and true Reason, was the Artifice of the Earl of *Leicester*, who had the greatest Power and Credit at that time with the Queen. The good Archbishop had, by his Prosecution of *Julio the Italian* Physician, and by his Refusal to alienate *Lambeth*, offended this great Earl, who thereupon meditates Revenge against him: And knowing the Archbishop to be a great Favourer and Promoter of the Exercises called *Prophefying*, which were far from being Conventicles, or Parts of the *Genevian* Discipline; he misrepresents these to the Queen, and by those Means incensed the Queen; and the Queen was angry with the Archbishop, only upon the account of these *Prophefying*s. But these Misrepresentations, that incensed the Queen, had not been, if the Archbishop had not first incensed *Leicester* in the forementioned two Particulars. To make this out to be the Fact, I desire your Lordships Patience, whilst I refer to one or two Histories of good Credit. *Fuller*, in the ninth Book of his *Ecclesiastical History*, p. 130. after he hath recited a long Letter of *Grindall's* to the Queen about this Matter, thus concludes: *Alas! all in vain: Leicester had so filled her Majesty's Ears with Complaints against him, there was no room to receive his Petition. Indeed Leicester cast a covetous Eye on Lambeth-House, alledging as good Arguments for his obtaining thereof, as ever were urged by Ahab for Naboth's Vineyard. Now Grindall, tho' generally condemned for Remissness in this kind, (parting with more from his See, than ever his Successors thank'd him for) stoutly opposed the alienating of this his principal Palace, and made the Leicesterian Party to malice him.*

This is as express an Account as can be, that this was one of the secret Springs of that Prosecution: And as for the other, That he carried on the Prosecution against *Julio*, that is taken notice of by the same Author, in Page 163. and by *Camden*, in his History of Queen *Elizabeth*, and other Authors: So that the true secret Reason of *Grindall's* Disgrace, was not for tolerating the *Genevian* Discipline. And indeed it would be a Paradox, that the Earl of *Leicester*, who was the great Patron and Support of the *Puritans*, should run down this Archbishop for encouraging of *Puritanism*. Can that be thought? No: It shews plainly, there was some other Reason. And it is no Reflection on Queen *Elizabeth*, that she was deceived by the Misrepresentation of a Person on whom she entirely relied. Princes are not exempt from the common Frailties of human Nature, and may be imposed on by those whom they most trust.

But, my Lords, without considering the latent Causes of his Disgrace, let us consider the visible Cause, which was known only to Queen *Elizabeth*. Do the Letters (which they have produced) prove, that the Archbishop suffer'd for deluding the Queen to the Toleration of the *Genevian* Discipline? It appears thereby, that Queen *Elizabeth* was displeased at those Exercises called *Prophefying*, which the Archbishop encouraged and favoured; but it is a great Mistake to think, that those *Prophefying*s were Conventicles, or Assemblies of *Puritans*: They were really Meetings of the Parochial Clergy of the Church of *England*, (which since have been called Conferences,) to improve one another in the Expounding of the Scriptures. The Manner of these *Prophefying*s was this: The Minister within each Arch-deaconry, or some other Precinct, met on some Week-day, in the most noted Place in that Precinct; some ancient grave Minister, appointed by the Bishop, did preside: Then every Minister successively (the youngest still beginning) did handle some Text of Scripture, shewing the Sense of the Place, the Propriety of the Words, the Diversity of Interpretation, the Virtues enjoined, and the Vices prohibited. No Layman was ever suffered to speak, nor any Clergyman, unless first licensed by the Bishop. This was that which they called *Prophefying*, and continued about two Hours; and then the Conclusion was with a Prayer for the Queen and all Estates, as is appointed by the Book of Common-Prayer, and a Psalm. Now can any one think, this was an Encouragement of the *Genevian* Discipline?

The Parochial Clergy met by consent of the Bishop, and discoursed about the Meaning of some Text of Scripture, and closed with a Prayer, as is appointed in the Common-Prayer-Book, and with a Psalm: And can this be said to be encouraging the *Genevian* Discipline? Can this be called the Holding of Conventicles; or receding from the Discipline of the Church? Nothing like it: Tho', if it were, it appears by the Letters, that he did not delude the Queen to encourage the *Genevian* Discipline. No; if this was the *Genevian* Discipline, the Queen would not be deluded by him; and because he would not obey the Queen in suppressing these *Prophefying*s, this was the apparent cause of his Disgrace.

As to the Letter, because it is said the Archbishop owns his Crime; how does he do it? *I can't deny*, says he, *but that I have been commanded, both by the Queen's Majesty Herself, and also by divers of your Honourable Lordships in her Name, to suppress all those Exercises within my Province, that are commonly called Prophefying*s. He did not deny the Queen had given him that Command, or that he did not comply with it: But, saith he, *I do protest before God, the Judge of all Hearts, that I did not of any Stubbornness or Willfulness refuse to accomplish the same, but only upon Conscience*: And goes on and shews the Reasons on which that Conscience was founded. He denied it not out of *Stubbornness or Disobedience*, but out of a *Persuasion of Conscience*, because he found it *profitable and useful to the Church*. Well, how did he behave himself under this? And whereas, says he, *I have sustained the Restraint of my Liberty, and Sequestration of my Jurisdiction, now by the space of six Months; I am so far from repining thereat, or thinking myself injuriously or hardly dealt withal therein at her Majesty's hands, that I do thankfully embrace, and frankly, with all Humility, acknowledge her princely, gracious, and rare Clemency toward me; who having*
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Authority and Power to have used greater and sharper Severity against me, and for good Policy and Example thinking it so expedient, hath notwithstanding dealt so mercifully, mildly and gently with me.

What Language more becoming a grave Prelate could be used? He patiently submits to her Majesty's Authority, neither murmuring, nor obstinate: But there being a superior Obligation of Conscience, which it was not in the power of any Man to dispense with, he thinks himself obliged, as a true Example to all Clergymen and others, to submit to the Dictates of his Conscience; but still with Patience, Calmness and Obedience.

Is there any thing in this, that looks like giving up the Interests of the Church? Not only this good Archbishop, but several others of the best Bishops of those Times, had those Exercises in their Dioceses, and concurred with him in the Encouragement of them. And can it be thought, that those Bishops, who were Exiles in Queen Mary's Time, and were afterwards the happy and glorious Instruments, under God, in settling the Liturgy and the Articles of the Church, were for giving up the Establishment of the Church, by introducing that which is now insinuated to be the *Genevian* Discipline? But those Bishops then thought, it was a likely way to make an honest, learned, and laborious Clergy. Is there any thing in this, to occasion the calling him a perfidious Prelate? A perfidious Man, is he that violates his Conscience, to obtain a temporal End; but he chose to lose the Queen's Favour, rather than part with a good Conscience.

I never found, that Archbishop *Grindall* was ever spoke hardly of by any *English* Divine of Credit, till the time of Archbishop *Laud*; and then, to extol Archbishop *Laud* for an active, zealous Prelate, it became the Fashion to run down his Predecessor, *Abbot*, as a remiss Man; to court the present Archbishop, by detracting from the Memory of the last. And, to carry on the Compliment, a Parallel was made between Archbishop *Grindall*, and his Successor *Whitgift*. I only mention this, to shew that for a long time the Memory of that good Archbishop was had in Esteem; and he was always looked upon as a principal Father of the Reformation of the Church, before this Time.

But, my Lords, it is now time to come to the main Point; and that is, Whether or no the Doctor's Representation of Archbishop *Grindall*, as a false Son of the Church, and a perfidious Prelate, for doing what he lays to his Charge; and, Whether his Commendation of Queen *Elizabeth*, for the Resolution she took to suppress the Dissenters, and for her Prudence in exercising wholesome Severities on them, whereby the Crown sat easy on her Head, be a Censure or Condemnation of the present Toleration?

As to this, the Council for the Doctor first say, That in Queen *Elizabeth's* Time, Schism was in its Infancy; the Number of Dissenters were but few, and therefore the Exercising of Severities at that time was wholesome, because it might have crushed them in their Beginning, and prevented the growing Encroachments of those Persons: But at the time when the Act of Toleration was made, the Dissenters were increased, and were Possessors of great Property, and it was reasonable to grant them a Toleration; for it might be a Disturbance to the State, to exercise those Severities upon them, which might have been safely done in the time of Queen *Eliza-*

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beth, when Schism was in its Infancy, and their Numbers few: And thence they infer, that what was spoken of the Toleration then, can't be applied to the Toleration now.

My Lords, supposing the Fact to be true, then it follows, that the Justice and Reasonableness of the present Toleration depends only on the Strength and Number of the Dissenters: When they are strong and numerous, then they are to be tolerated and permitted; but when their Numbers decrease, and it shall be alledged that they are but few, then they are to be crushed, and the wholesome Severities are to be renewed upon them again; notwithstanding the Preamble of the Bill to prevent Occasional Conformity, which says, "That Persecution for Conscience only, is directly contrary to the Profession of the Christian Religion, and particularly to the Doctrine of the Church of *England*, and that the Act of Toleration ought to be inviolably preserved." If it ought to be inviolably preserved, then, whether the Dissenters in *England* be more or less, they ought to be tolerated.

This brings to my Mind the memorable Edict that was published by the *French* King for reversing the Edict of *Nants*, in *October* 1685. the Preamble of which Edict recites, "That by reason of the great Troubles and Wars occasioned by those of the Reformed Religion, his Grandfather *Henry* the Fourth had given them Liberty by the Edict of *Nants*, retaining notwithstanding a Design of bringing all back again to the *Romish* Church; and his Father and himself had had all along the same Design; and that in his Time the best and greatest part of the Protestants were converted to the Catholick Faith, and that by reason thereof the Execution of that Edict was become of no use; and therefore, entirely to wipe out the Memory of those Troubles and Confusions which the Protestants had occasioned, he thereby revoked that Edict."

May it not be said in this case, That in Queen *Elizabeth's* Time, because the Number of Dissenters were few, therefore those Severities were good; and that when the Toleration-Act was made, there were greater Numbers, and therefore those Severities were then fit to be taken away; but now the Dissenters are but few again, therefore it may be fit to return to those Severities again.

Another Answer that hath been given is, That in Queen *Elizabeth's* Time there was no Toleration established by Law, and all the Doctor aimed at was to excite the Magistrates to put the Laws in Execution against such Offenders as are not exempted by the Toleration-Act. But I submit to your Lordships, whether the Words are capable of that Interpretation. Here is a Commendation of the Piety and Zeal of Queen *Elizabeth*, who resolved entirely to suppress the Dissenters, and she in her Prudence put those wholesome Severities in Execution. What those wholesome Severities were, your Lordships have been told; they were Hanging, Burning, Abjuration, Confiscation, Imprisonment, Loss of Estate, Liberty and Life: I say no more of them; but I believe there is not one Person here, but if these Severities were to be inflicted on him, would be far from thinking them wholesome, and desire to be excused from them. I would not be thought in any thing to reflect on the Memory of that glorious Queen, who was so eminent an Instrument of God, to deliver this Kingdom from Popery, from the Power of *Spain*, and to settle the Protestant Reli-

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gion among us ; but it must be confess'd, there were these Spots and Blemishes in her Reign, permitted by God's Providence for wise Ends and Purposes ; and this should raise our Gratitude to Almighty God, and our Thanks to her present Majesty, whose Reign hath exceeded her Predecessor's Queen *Elizabeth*, without being chequer'd with any of those Spots or Stains. And as Queen *Elizabeth* preserved this Kingdom from the Monarchy of *Spain*, so her Majesty has preserved us from the united Power of *France* and *Spain*, been the Terror of her Enemies abroad, whilst at the same time she has, with universal Clemency and Justice, cherished and protected all her Subjects at home ; and as by these Means she has engaged in the strongest Affection the Hearts of all her People, so no doubt they will always continue to retain the strictest Duty to a Queen, who hath been so universally good to all her Subjects.

The last Part of the Charge is, That the Doctor asserts it is the Duty of superior Pastors to thunder out their Ecclesiastical Anathema's against Persons entitled to the Benefit of the Toleration ; and insolently dares or defies any Power on Earth to reverse such Sentences. One of the Council said, that the thundering out those Anathema's, is no more than declaring the Judgments of God denounced in Scripture against the Wickedness of Men ; and that he desires the superior Pastors to denounce them, because the greater the Authority of the Person denouncing them is, the greater Influence they will have on the Minds of the People. But the Anathema's he excites them to, are Ecclesiastical Anathema's, which are plainly Ecclesiastical Censures and Excommunications ; it is a plain exciting the Superior Pastors to denounce Excommunications and other Ecclesiastical Censures. It is said, that this Expression is ty'd up only to those Anathema's and Sentences that are ratify'd in Heaven, and those, they say, no Power on Earth can reverse. I shall not enter into that Question, whether this is a Proposition strictly just in Divinity : All I shall say as to that, is this, That all who have wrote the highest of the Power of the Keys, allow and maintain that there is a double Power, a Power of remitting as well as retaining, of loosing as well as of binding, of opening as well as of shutting, both exercised by the Church on Earth. If the superior Pastor has for good Cause bound or shut any Person out of the Church, that Sentence is ratify'd in Heaven ; but yet notwithstanding, if that Person, so censured, reforms and amends, and the Church on Earth restore him again, the first Sentence, tho' ratified in Heaven, is vacated and done away by the Church's Power on Earth.

But this is not the Matter now before your Lordships ; the Question is, Whether he excites the Superior Pastors of the Church to thunder out their Anathema's against Persons that are entitled to the Toleration ; and I think, that he does so, is owned by his Council ; for they say, that Schism doth expose a Man to the Censures of the Church ; that the Dissenters were Schismatics before the Act of Toleration, and that that Act don't excuse the Schism ; and therefore remaining Schismatics still, they are still liable to the Censures of the Church : Now I do agree with the Doctor, that the Act of Toleration hath made no Alteration as to the Sin of Schism ; if the Dissenters were Schismatics before the Toleration, they are Schismatics still ; and taking that for granted, then here is the Force of the Doctor's Argument : The Dissenters were Schismatics before the Act of Toleration ; as they were Schisma-

ticks before, so they are Schismatics still ; it is the Duty of all superior Pastors to thunder out their Anathema's against Schismatics ; when they thunder out those Anathema's, they are ratify'd in Heaven ; whatever is ratify'd in Heaven, no Power on Earth can reverse ; therefore, tho' the Dissenters be exempted from human Penalties by the Toleration Act, and are thereby preserved in the free Exercise of their Religion and Consciences ; yet notwithstanding that, *Let the Superior Pastors do their Duty, and thunder out their Anathema's against them, and let any Power on Earth reverse those Anathema's if they can.* Now can there be a more plain, positive and direct Proof of this part of the Article, than this is ? Can any thing be a clearer Evidence to prove this last part of the Charge against him, That he Suggests and Maintains, that it is the Duty of Superior Pastors to Thunder out their Ecclesiastical Anathema's against Persons entitled to the Benefit of the Toleration Act, and that he insolently Dares or Defies any Power on Earth to Reverse such Sentences ?

My Lords, This is what I have to offer by way of Reply : There is a Gentleman to come after me, who will amply supply what I have omitted, and therefore I shall not trouble your Lordships any further.

Then the Lords adjourned to their House above.

Friday, March 10. The Tenth Day.

THE Lords coming down into *Westminster-Hall*, and being seated in the manner before-mentioned, Proclamation was made by the Serjeant at Arms as follows :

Our Sovereign Lady the Queen doth strictly charge and command all manner of Persons to keep Silence, upon Pain of Imprisonment.

Then another Proclamation was made : *Henry Sacheverell*, Doctor in Divinity, come forth, save thee and thy Bail, else thou forfeitest thy Recognizance.

The Doctor appearing at the Bar accordingly, with his Council, as before :

Lord Chancellor. Gentlemen, you that are Managers for the House of Commons may proceed in your Reply.

Mr. *Cooper.* MY Lords, when by Command of the Commons, I spoke to your Lordships a few days since, in Maintenance of the Second Article, towards the Conclusion of what I then said, I presented to your Lordships a short View of what I apprehended we might reasonably expect would be the Consequence of the Doctor's bitter Investives against the Act of Toleration, and the Persons intended to be protected by it. I likewise took notice of those Heats and Disputes, of the Feuds and Animosities, which were then apparently stirred up throughout the Kingdom.

I am sorry to have so early an occasion to say, that my Apprehensions in this Particular were so well grounded : Your Lordships have seen, that this seditious Libel, under the specious Title of a Sermon, calculated to seduce and delude the Rabble, has, even during the Continuance of the Trial, produced an actual Rebellion ; in which several Places of Religious Worship (appointed for those Persons, who are by Law tolerated and allowed, but

but have the Misfortune nevertheless to be represented by Doctor *Sacheverell* as necessary to be destroyed) have been accordingly pulled down, and burnt, in Defiance of the Supreme Power of the Kingdom; and this, my Lords, at the Instigation of one who would be thought an Advocate for Passive Obedience.

I could wish the Prisoner's indiscreet Behaviour (which seems to have abused the Liberty with which your Lordships have indulged him) may not unhappily have given some occasion to the Outrage and Violence of late committed, notwithstanding the Apology he has made in this Particular.

Sure I am, that Discord, which flames in the Kingdom, was unheard-of among us, until the Toleration was thus publicly and seditiously branded, until Doctor *Sacheverell* had presumed to represent it to the People, it's impossible to say how! without referring to his whole Libel.

His Council have observed, that the Second Article contains several Charges, and have insisted that the Passages given in Evidence by the Commons, are not sufficient to maintain the first and second; and as to the third and fourth, they seem rather to justify than deny those Branches of the Charge.

My Lords, the Commons apprehend, notwithstanding what has been said, First,

That Doctor *Sacheverell* has plainly suggested and maintained, *That the Toleration granted to Dissenters is unreasonable, and the Allowance of it unwarrantable.*

This, my Lords, we insist he has done, not in ambiguous or doubtful Words, not in uncertain Expressions, but in direct and positive Assertions.

The Council admit, That to speak against a Law in Being cannot be justified. The Act of Toleration is not only a Law in Being, but is a Law which has visibly attained the End for which it was made; that is to say, by giving Ease to scrupulous Consciences in the Exercise of Religion, it has proved an effectual Means to unite her Majesty's Protestant Subjects in Interest and Affection.

Yet, my Lords, this Law, which, by the Experience of more than twenty Years, has been found so useful and necessary, hath been traduced and arraigned by the Prisoner, both from the Pulpit, and the Press, with a malicious and seditious Purpose, to destroy the publick Peace, and Security of the Kingdom.

This Offence, it seems, is of too high a Nature to be justified by the Prisoner and his Council, and therefore it is thought more expedient to deny it. The Turn that's given is this; say they, Doctor *Sacheverell* affirms nothing touching Legal Indulgence or Toleration, but all that he has said respects only Universal Toleration.

My Lords, I thought I had obviated this Excuse, by observing that this Notion of universal Toleration has been conceived and brought forth since the Impeachment.

However I am willing to enter into the Question: Whether the Toleration mentioned in the Libel, is intended or can be understood of Universal Toleration.

Fol. 34. Your Lordships will find these Words: *Nay, now they have advanced themselves, from the Religious Liberty our Gracious Sovereign has indulged them, to claim a Civil Right, as they term it, and to juggle the Church out of her Establishment, by hoisting their Toleration into its Place.*

My Lords, Will any Man deviate so far from Sense, as to say, that the Doctor here meant universal Toleration, in the Sense the Doctor and his

Council have defined it? Is Universal Toleration a Religious Liberty, with which our Gracious Sovereign hath indulged her Subjects? Nay, my Lords, Have not every one of them argued, and that rightly, that the Doctor's Universal Toleration is not tolerated by Law? That Atheists, Deists, Tritheists, Socinians, and those who go to no religious Place of Worship, are not exempted from the former Penalties? How then is it possible the Doctor should be understood, as speaking of Universal Toleration in this Passage? Is not this directly and positively affirmed of the Toleration, with which the Dissenters are indulged by our Gracious Sovereign? Can your Lordships conceive the Dissenters are not the Persons intended, when he says, *They claim a Civil Right, as they term it, to juggle the Church out of her Establishment, by hoisting their Toleration into its Place?*

Again, Folio 25. *They thrive upon Concessions, take Permission for Power, and advance Toleration into an Establishment.*—Pray, my Lords, What Concessions have been made to Persons not within the Benefit of the Act of Toleration? What Permission is it they can be said to take for Power? What Toleration have they to advance into an Establishment?

My Lords, Folio 14, and in many other Places, your Lordships cannot but see that all the Doctor's Spleen is levelled at the legal Indulgence or Toleration. But it is mispending your Time, to prove what it is impossible not to know and be convinced of, upon reading every Passage in the Libel where Toleration is but so much as mentioned.

The next Thing they urge in the Doctor's Defence is, That if his Expressions do relate to the Legal Indulgence or Toleration, they are dubious and uncertain, that nothing can be inferred from them without Innuendo's and forced Constructions.

My Lords, Now the Question is, Whether Doctor *Sacheverell*'s Expressions relating to the Toleration, and the Persons indulged, are dubious and uncertain? Whether any Innuendo or forced Construction is necessary to demonstrate their Malignity.

Your Lordships will be pleased to remember, that the Council, from the first to the last, maintained very strenuously (as did the Doctor likewise in his Speech) that altho' the Act of Toleration exempts the Dissenters from Penalties, yet they remain Schismatics notwithstanding; for, say they, Diffension was Schism before the Statute, and a bare Exemption from a Penalty has not alter'd the Case, but the same remains Schism still; and this Position, I find, is agreeable to the Doctor's Opinion as delivered in his Sermon, with this Addition only, that all Schism and Separation is damnable Sin, without making any Allowance for Ignorance, or Prejudice of Education.

His Words are these, Folio 8. *Is this the Spirit and Doctrine of our holy Mother? To assert Separation from her Communion to be no Schism; or if it is, that Schism is no damnable Sin.*

My Lords, when I observe in this and other Passages what Spirit this Man is of, I wonder not to find, that the most Christian Virtues of Charity and Moderation are mentioned by him with Slight and Contempt. Folio 25, you will find him citing a Passage from St. Paul's Epistle to the Galatians, Chap. 2. after which he adds these Words, *If our Dissenters, says he, had lived in those Times, they would have branded him (i. e. St. Paul) for an intemperate, hot, furious Zealot, that wanted to be sweetened by the gentle Spirit of Charity and Moderation, forsooth!* My Lords, if our Dissenters had lived

lived in those Days, they would have been highly to blame, if they had branded the Apostle with those opprobrious Names; whoever peruses that Chapter, will find there is not the least occasion for it. But Doctor *Sacheverell* would willingly have St. Paul thought like himself.

My Lords, I cannot take upon me to say what the Dissenters would have said, had they lived in St. Paul's Days: But for my own part, I cannot forbear saying now, That since it appears to be the Doctor's Opinion that all Separatists are Schismatics, and that all Schismatics are damned, I cannot but think that Doctor *Sacheverell* wants to be sweetened by that ridicul'd Spirit of Charity and Moderation. I own, my Lords, I was amazed to hear this Gentleman in his Speech affirm, that he had not betrayed any want of Christian Moderation in his Sermon: I wish he has not been unmindful even of Christianity itself; when it is so apparent that in this short Sentence, and in the Passage (*Folio 24.*) which I formerly cited at large, he has sentenced to Eternal Damnation, not only the Dissenters of whatsoever Denomination, but those also who defend the Toleration.

It is to be hoped, some things which he has vowed and said for himself in his Defence, may have more of Truth in them than this has.

But, my Lords, to return: The Doctor and his Council are agreed that all Dissenters are Schismatics; consequently when he speaks of Schism and Schismatics, he must mean the Dissenters; and then be pleased, my Lords, to judge if the Doctor's Expressions touching the Toleration, and the Dissenters, can be said to be dubious; on the contrary, whether they are not plain, positive and certain.

Before I enter into this Matter, I cannot but take notice again of that remarkable Passage, (*Fol. 16 and 17.*) *What could not be gained by Toleration, must be brought about by Occasional Conformity; that is, what they could not do by open Violence, they will not fail by secret Treachery to accomplish. If the Church can't be pull'd down, it may be blown up; and no matter with these Men how it is destroyed, so it is destroyed.* My Lords, Is not here a direct Assertion that the Toleration is downright open Violence, and Occasional Conformity secret Treachery? Is not here an Assertion, that altho' the Toleration has not been able to answer the End for which it was designed, *i. e.* to pull down the Church, yet Occasional Conformity may blow it up? Pray, my Lords, what Construction can these Words admit of, *No matter with these Men how it is destroyed, so it is destroyed?* What Men are here intended? Even Dissenters and Occasional Conformists.

Is this Passage doubtful and ambiguous? Is here any occasion for a forced Construction, or an Innuendo? My Lords, 'tis most scandalously plain, and as plainly seditious.

Your Lordships have observed, that neither the Doctor, or any of his Council, (one only excepted) have taken the least notice, in his Answer, of this Passage: It was produced and given in Evidence against him, and twice at least mentioned by the Managers. I wonder the Author would not vouchsafe to explain it. Is not this Silence a Confession of his Guilt?

The Council that did mention it, was pleased to say, that it rather commended the Toleration than found fault with it; as if it was some Credit to the Toleration, which was intended to pull down and destroy the Church, that it had not done it. In what Humour, my Lords, that Answer was made, to so

high and criminal a Charge, I know not; the Commons might reasonably have expected a more serious Answer. But, my Lords, from hence we conclude that no Answer can be given to it.

Again (*Folio 10.*) the Doctor affirms, *That whoever presumes to alter or innovate any Point in the Articles of the Faith of our Church, ought to be arraigned as a Traitor to the State; Heterodoxy in the Doctrines of the one, naturally producing, and almost necessarily inferring Rebellion and High Treason in the other, and consequently a Crime that concerns as much the Civil Magistrate to punish and restrain, as the Ecclesiastical.* Then he goes on, and adds, *This Assertion at first View, may look like an high-flown Paradox.*—I own, at first View it looked to me something like it, and I am not yet convinced but it is so.

Are not the Dissenters heterodox in Opinion? consequently they are Rebels and Traitors, according to Doctor *Sacheverell*, and ought to be punished by the civil Magistrate as such: That is to say, they are to be hanged as Rebels, and damned as Dissenters.

Still, my Lords, we have the Doctor's Word for it, he has not betrayed the least Want of Christian Charity or Moderation.

Many are the Paragraphs in this Libel equally obnoxious, and which, like these, are too plain to admit of any Answer.

My Lords, I shall not lose Time as to the Second Head, or Charge, in this Article. *Folio 8.* you will find it asserted, as plain as Words can speak, that to defend Toleration is the Mark or Characteristick of a False Brother; and (*Folio 24.*) you will find his Portion assigned him, with all the rest of the False Brethren, *with Hypocrites and Unbelievers, with all Lyars, in the Lake which burns with Fire and Brimstone, with the grand Father of Falshood, the Devil and his Angels.*

My Lords, the Charge which relates to Archbishop Grindall is, *That Doctor Sacheverell asserts, Queen Elizabeth was deluded by him to the Toleration of the Genevian Discipline; and that, to shew his Resentment against the Archbishop for favouring Toleration, he calls him a false Son of the Church, and a perfidious Prelate.*

The Doctor, throughout his Sermon, is arguing with a furious and intemperate Zeal against the present Toleration; he is representing it as a Law that gives Encouragement and Protection to Schismatical Impostors, Enthusiasts, Hypocrites, to a mungrel Union of Sects, to Fanaticks, Rebels, Traitors, Atheists, Deists, Tritheists, Socinianists, to the Principles of Fanaticism, Regicide, and Anarchy, to Monsters and Vipers, that scatter their Pestilence at Noon-day, to Jews, Quakers, and Mahometans; in a word, to all false Brethren; and after a great deal more of this unprecedented Language, he breaks out, (*Folio 19.*) *These Charges are so flagrant and undeniable, that a Man must be very weak, or something worse, that thinks or pretends the Dissenters are to be gained, or won over, by any other Grants or Indulgence, than giving up our whole Constitution.*

Have they not, says he, *ever since their unhappy Plantation in this Kingdom, by the Intercession of that false Son of the Church, Bishop Grindall, always improved, and rise upon their Demands in the Permission of the Government.*

My Lords, I would fain know whether Doctor *Sacheverell*, by these Words, *A Man must be weak, or worse, that thinks the Dissenters are to be won by any other Indulgence than giving up our whole Constitution,*

tion, could mean any other than the present Dissenters, and that Indulgence which is at present afforded them.

In the very Line following he calls them *Clamorous, Insatiable, and Church-devouring Malignants*; and then proceeds in the Words I have mentioned: *Have they not (i. e. the Dissenters) ever since their unhappy Plantation in this Kingdom, by the Intercession of that false Son of the Church, Archbishop Grindall, improved and risen upon their Demands in the Permission of the Government?*

The Prisoner's Defence has explained this Passage; they were barely permitted or suffered, he says, for a time by Queen Elizabeth, but they have improved and risen upon their Demands, till in this Age they have obtained an Indulgence by Act of Parliament, and this Act of Parliament is manifestly what the Doctor has taken Offence at.

Then he goes on — *Insomuch*, says he, *that Queen Elizabeth, who was deluded by that perfidious Prelate, to the Toleration of the Genevian Discipline, found it such an headstrong, encroaching Monster, that in eight Years she found it would endanger the Monarchy, as well as the Hierarchy: And, like a Queen of true Resolution, and pious Zeal for both, pronounced them Fæctious, and suppress'd them by wholesome Severities.*

My Lords, I think we should have been wanting in that Duty we owe to the Memory of that great Prelate and Father of the Church, who was so considerable in establishing the Reformed Religion, had we not taken notice of these harsh and unjustifiable Expressions.

Doctor Sacheverell speaks of them as carrying an undue Asperity, but such as he hopes may be forgiven, since it was necessary, he pretends, that either Queen Elizabeth, or that Archbishop, must bear the Blame; and he rather thought it reasonable to charge it on the Archbishop, than to suffer it to lie at the Queen's door.

My Lords, your Lordships will observe, that all the Answer he has given to this part of the Charge, is, as if the Commons had impeached him for being too free with Archbishop Grindall, for using, as he calls it, an undue Asperity of Expression towards him.

But your Lordships will discern that this Passage is made use of in our Charge, to shew that the Dissenters are represented as headstrong and encroaching Monsters, dangerous to the Monarchy, as well as the Hierarchy; and the Example of Queen Elizabeth is produced, to shew how necessary it is by wholesome Severities to suppress them.

Are any strained Constructions or Innuendo's necessary to apply this Evidence to the first and main Head of the Charge, which is, *That Doctor Sacheverell asserts and maintains, That the Toleration is unreasonable, and the Allowance of it unwarrantable?*

My Lords, before I take my leave of this Head, I cannot forbear saying upon this Occasion, that sure I am the Toleration is not so dangerous to the Monarchy, as is this late Notion of an Hierarchy to the Supremacy of the Queen's Majesty; which however I hope shall be continued and preserved in the Crown of England, for the Peace and Safety of the Church as by Law established, to all Posterity.

My Lords, to the next and last Part, which relates to the thundring out Ecclesiastical *Anathema's*, the Defence is, That those *Anathema's* are not intended against the Persons intitled to the Toleration.

To this I answer: He is particularly speaking, in this Part of the Libel, of the Schismatics and Dis-

senters, and expressly names them in these Words, (Fol. 25.)

And yet if our Dissenters had lived in those Times, they would have branded him as an intemperate, hot and furious Zealot. — Schism and Fæction are Things of impudent and encroaching Natures, they thrive upon Concessions, take Permission for Power, and advance a Toleration immediately into an Establishment. — Are not the Dissenters here expressly named? Are we not to understand the Words Schism and Fæction, as coupled with Toleration, to be meant of the Dissenters, and of them only? Sure this is too plain to admit of any Doubt.

Then, my Lords, he proceeds: *And are therefore to be treated like growing Mischiefs, or infectious Plagues, kept at a Distance, lest their deadly Contagion spread. Let us therefore have no Fellowship with these Works of Darkness, but rather reprove them: Let our Superior Pastors do their Duty, in thundring out their Ecclesiastical Anathema's, and let any Power on Earth dare reverse a Sentence ratified in Heaven.*

My Lords, Is here one Word of Heresies, Blasphemies, and the rest of those enormous Offences, to which the Doctor would have these *Anathema's* relate? No, there is nothing to be found here but Dissenters, Schism, and Toleration.

If these *Anathema's* are to be understood (as certainly they are) to extend to Persons entitled to Toleration; then, my Lords, that Air of Insolence that concludes the Period is explained.

Let our Superior Pastors do their Duty; that is to say, let them exert themselves, and thunder out their Anathema's, and let any Power on Earth dare reverse them.

These Words, my Lords, seem too big and mighty, to mean any little or subordinate Power.

Thus have we supported, and made good the several Charges contained in the Second Article.

My Lords, As the Commons are fully sensible how necessary it is to support the Honour and Justice of the Revolution, to which we owe no less than the inestimable Blessing of her present Majesty, the Guardian Angel of this Church and State, the future Expectation of a Protestant Succession, the Religion, Laws, Rights, and Liberties of the British Nation; so are they thoroughly convinced that the Peace and Welfare, the Security and Strength of the Kingdom in great measure depend upon the inviolable Preservation of the Act of Toleration, which has been most maliciously and seditiously traduced and misrepresented by Doctor Sacheverell.

Mr. Thompson. **M**Y Lords, It is my Part to trouble your Lordships with a Reply to such Answers as have been offered to the Third Article of this Impeachment; and notwithstanding what has been said by the Council, what has been produced in Evidence; and what has been alledged by the Doctor himself to move your Lordships Compassion, I am concerned, even for his Sake, that I can observe it to your Lordships, That the Charge in this Article remains entirely unanswered.

Before I enter into the Particulars, I must observe to your Lordships, that if there were any doubtful, or any the least favourable Construction to be made of some Passages in this Sermon, the Commons would not have given your Lordships this Trouble, nor the Doctor an Opportunity of censuring their Impeachment as a hard-hearted and uncharitable Prosecution.

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My Lords, I cannot but think it very ungenerous to insult any Man in Misfortunes, or to treat one in his Condition with Scorn and Indignity; neither have I, or shall I be guilty of it; but I must take leave to say, that no other Interpretation can be made of some Passages applicable to this Head, but what is criminal, since so many learned Council, since so many able Heads who have assisted the Doctor in his Defence; nay, since he himself, who should know best his own Meaning, has not been capable of giving the least Colour or Pretence of any Construction of them in his Favour.

Whatever Pity your Lordships may be inclined to in your private Capacities, for any one who has (I cannot say through Inadvertency) brought himself into Affliction, whatever Dispositions you may have to Mercy, yet I need not say, that there is a Compassion, a tender Regard due to the Welfare of your Country, a Care incumbent on you to suppress what has the least Tendency to Sedition, and the Disturbance of the publick Peace of the Kingdom, and that these important Trusts have a Claim to your Lordships Justice, preferable to any private Concern whatsoever.

Not to detain your Lordships any longer in Generals, I shall proceed to state the Charge and Defence, that your Lordships may have a View of the Insufficiency of the latter. My Lords, the Charge is, "That the Doctor suggests and maintains, that the Church of *England* is in a Condition of great Peril and Adversity under Her Majesty's Administration:" He denies that he suggests any Danger to the Church, only from Vice, Infidelity, Blasphemy and Heresy, but not at all from or under any Part of her Majesty's Administration.

The first Passage I produced to your Lordships, to prove the Charge, was in Page the 5th; I must beg leave to trouble your Lordships with reading it again, because it may be necessary: "Tho' it were very obvious to draw a Parallel here betwixt the sad Circumstances of the Church of *Corinth* formerly, and the Church of *England* at present, wherein our holy Communion has been rent and divided by factious and schismatical Impostors; her pure Doctrine has been corrupted and defiled, her primitive Worship and Discipline prophaned and abused, her sacred Orders denied and vilified, her Priests and Professors (like *St. Paul*) calumniated, misrepresented and ridiculed, her Altars and Sacraments prostituted to Hypocrites, Deists, Socinians and Atheists; and this done, I wish I could not say without Discouragement, I am sure with Impunity, not only by our professed Enemies, but, which is worse, by our pretended Friends and false Brethren."

The learned Council pretended to shew, that most of these Calamities attending the Church, proceeded from the blasphemous and heretical Books and Pamphlets produced to your Lordships, and that the Doctor meant them to be the Cause of the Danger he suggests: Now, pray my Lords, how can that Construction be made? How can this be consistent with the Doctor's Assertion, that all this is done, not only by professed Enemies (which every body will agree takes in the Infidels, Blasphemers and Hereticks) but by pretended Friends and false Brethren? When I took the liberty to observe on this Passage, I stated it thus: "Who could prostitute Altars and Sacraments to Hypocrites, Deists, Socinians, and Atheists, but some of the Doctor's own Order? And who were to punish those Crimes? Who could they be that did not discourage them,

but suffered them to be committed with Impunity, but his Ecclesiastical Superiors? And that they were Part of her Majesty's Administration, no body could deny.

Now what Answer, my Lords, was given to this? To the first part of this Paragraph, about rendering the Communion by schismatical Impostors, and so to the other Particulars, till the last, it was shifted off to the professed Enemies, the Infidels, Blasphemers and Hereticks, Dissenting Teachers, and Popish Priests, but nothing laid to the False Brethren, who, the Doctor says, neither Punish nor Discourage. But when the learned Council came to the last Calamity of the Church, that of prostituting the Altars and Sacraments, &c. they are pleased to make Occasional Conformists their Atheists, &c. that receive the Sacraments; but as to the Charge of arraigning the Persons that do not discourage or punish those who prostitute Altars to Atheists, &c. they thought fit to slide it over, and not say one Syllable to it; they did not so much as mumble this Thistle, and the others but very tenderly. Pray, my Lords, in the Interpretation I make, where is there any foreign Intendment, any forced Construction, or strained Inference against the Doctor's express Words, and positive Assertions? Let every candid Reader, without Prejudice, impartially consider the Meaning of this Passage; Is this a Danger suggested from Books or Pamphlets? Or is it not a plain and direct Invektive against those Persons in the Church, who are charged with being the Occasion of these Dangers to the Church by their Remissness in their Duty, not only in not punishing, but not so much as discouraging those Crimes: And to whom can his lazy Defenders within relate, but to the same Persons, those that are within the Church, and to protect it?

But if it were true, that Altars and Sacraments were thus prostituted, why must the World be told in this Manner of it? Tho' it is the Duty of a Clergyman at all Seasons, and in all Places, as one of the Doctor's Council was pleased to say, to preach against Vice and Infidelity, Immorality and Prophaneness; yet sure none will say, that he is to revile his Superiors, and charge them in this Method with their want of Duty, and Care for the Church: What other End must such licentious Reproaches produce, but a Contempt of their Persons, a lessening the Dignity of their Order, and a Diminution of that Character which gives them the Capacity of doing Good in the World whilst they preserve a Veneration and Esteem, but which must cease when they meet with the contrary? The Doctor was so sensible of this, when he mentioned it as his own Case, that he thought the very Imputation of a Crime to any of his Function, tho' acquitted of it, must leave a Scar so as to blemish his Character; sure then he ought to have used the utmost Caution, before he preached or published this Sermon, and to have considered the pernicious Consequences of reviling those in Authority. If, as he was pleased to say, ill treating of him, who was an Ambassador of Christ, was despising Christ himself; sure it cannot be thought an unnatural Inference, if her Majesty is said to be reviled, by reflecting on those who act under her Commission, and are Part of her Administration.

The second Passage I troubled your Lordships with, is in Page 16; he had been talking of the Comprehension and Union of the Church and Dissenters, and giving a great many hard Names to it; which Design your Lordships know had its Rise from

a Commission under the Great Seal from his late Majesty to several Lords, Bishops, and other learned Divines, who were to consider of proper Methods to accomplish it: "But he thanks God, that Providence had blasted the long projected Scheme of these Ecclesiastical *Achitophels*;" with other scurrilous Reflections on the Design, and those concerned in it; and then he says, "That since this Model of Universal Liberty and Coalition failed, and these false Brethren could not carry the Conventicle into the Church, they are now resolved to bring the Church into the Conventicle, which will more plausibly and sily effect her Ruin; what could not be gained by Comprehension and Toleration, must be brought about by Moderation and Occasional Conformity; that is, what they could not do by open Violence, they will not fail by secret Treachery to accomplish. If the Church can't be pulled down, it may be blown up; and no matter with these Men how 'tis destroyed, so that it is destroyed."

Now pray, my Lords, where is the forced Construction to make the Doctor in this Passage speak of Persons in Church and State who endanger the Church, and not of Books and Pamphlets, Vice, Infidelity, &c?

He is on his second general Head of the Perils of False Brethren in the Church and State, and of those Persons who could not accomplish the Destruction of the Church by the Comprehension, but were doing it another Way, by Occasional Conformity and Moderation; I do not know that either of these are condemned by the Law for Vice, Infidelity, Blasphemy, Heresy or Prophaneness; be that as it will, 'tis from the Persons in Church and State the Danger is suggested to arise, and who, as he is pleased to say, make use of these only as means to blow up and destroy the Church: But then I suppose these Persons in the Church must be interpreted to be only the most inferior, and so no Reflection on the Administration: As Men of Characters and Stations in the State were construed to be Constables, Excise-Men and Custom-House Officers, so these Persons who were to bring about the Comprehension, and are now blowing up and undermining the Church in another Manner, must be Church-Wardens, Parish-Clerks and Sextons. These Sort of Constructions by the Doctor's Learned Council, are so easy and natural, that I must agree with his Observation, that they have not much Argument, Learning or Eloquence to support them.

And I cannot but observe a very extraordinary Method of answering this Passage and the next, by one of the Learned Council; he is pleased to cite Two other Passages in the Sermon, which were never mentioned by me, or any of the Managers of this Article; and with very strenuous Zeal he explains those Passages by chiming in with the Doctor, in charging Occasional Conformists, with Atheism, Deism, and the worst of Crimes; and then he concludes, that the Doctor, in those Passages he cited, has not asserted the Church to be in Danger under her Majesty's Administration; but not one Syllable to this Passage, which I cited in Page the 16th.

The third Place I troubled your Lordships with, was in the 18th Page; his Words are "Falshood always implies Treachery; and whether that is a Qualification for any one to be trusted, especially with the Guardianship of our Church or Crown, let our Governors consider." These Words speak so plainly, they need no Comment, nor

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have they offered at any Explanation of them; they must relate to Persons, and can have no Reference to Books or Pamphlets, Blasphemies or Heresies, &c. by any Construction whatever.

The Fourth Passage, my Lords, was in Page the 20th; he is talking of Dangers from National Sins, which are occasioned by Dissenters and False Brethren; and then he says, "And now are we under no Danger in these deplorable Circumstances? Must we lull our selves under this sad Repose, and in such a stupid lethargick Security embrace our Ruin? I pray God we may be out of Danger; but we may remember the King's Person was voted to be so, at the same Time that his Murtherers were conspiring his Death."

The Substance of the Charge in this Passage, is an Intention to reflect on the Members who voted the Church to be out of Danger, by the Comparison and Allusion to the Vote relating to the King. The Meaning seems evidently, that though the King was voted to be out of Danger, yet he was not out of Danger; and so, though the Church was voted out of Danger, yet the Church was then, and is still in Danger: But whether he meant it of the Members that passed that Vote, is the Question; he says he only meant it according to his Notion of that Vote of the King, that those not privy to the Design against him voted him safe, whilst others conspired his Murther; so when the Members voted the Church of *England* to be in no Danger under her Majesty's Administration, it was none of them, but others that were conspiring her Ruin.

The Doctor was pleased to say too, That that Vote was a Year and half before the King's Death, and that there were not a Tenth Part of those Members who voted the King safe, the rest being turned out, and no House of Lords: Be that as it will, they were the same Parliament that voted the King out of Danger; and they that conspired his Death, were Part of those who voted him safe, and who turned out the rest to accomplish their Designs: And though the Parallel should not run so as to reflect on both Houses of Parliament, and all the Members, yet if it glances at some of them, and was so intended, it is a Circumstance of Aggravation, and that is the only Intent of its being Part of the Article; and I can't but think the Doctor was apprehensive of some Reflection of that Kind, for he says immediately in the very next Words, "That he hopes what he has so freely spoken will not give Offence": If he had not a View to that Vote of the Danger of the Church, there was no Occasion for that Apology.

The fifth and last Place I troubled your Lordships with, was in the last Page, where there were some Pathetical Expressions which the Doctor chose out of the Scripture, and managed them with others of his own, so as to represent the Church to be in the utmost Peril; he mentions nothing of Vice, Blasphemy or Infidelity: "But that she lies Bleeding of the Wounds she has received in the House of her Friends": He cited the *Lamentations* for it, but there being no such Text there, I took the Liberty of saying it was a Lamentation of his own making.

I should not trouble your Lordships any more as to this Particular, but that I am in some measure obliged to vindicate my self from what one of the Learned Council hinted upon this Occasion; he was pleased to say in the Defence to the first Article, he

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was as much at a loss to find out a Passage in the Sermon, as one of the Managers was to find the Text in the *Lamentations*. Though, my Lords, this is but a Trifle to the Thing in Question before your Lordships, yet since that Learned Gentleman was pleased to triumph, as if he had me sure and unanswerable on this Point, I beg your Lordships Indulgence that it may appear which of us is in the right.

The Doctor cited that Text to be in the 2d of *Lam.* 4th. I looked through the *Lamentations*, therefore knew I might venture to say what I did; I have looked over it again, and am sure there is no such Text there. It gave me Occasion to read and reflect on the other Texts cited by the Doctor in the Prophecy of *Zachariah*, the 13th Chapter, where there are some Words that I suppose are meant, though I could not but observe the Doctor to be very unhappy in the Choice of his Scripture, this as well as others being directly contrary to his Purpose. The Words cited are in the 6th Verse, the two preceding Verses explain them; the Subject Matter was false Prophecy. In the 4th Verse 'tis said, *It shall come to pass in that Day, that the Prophet shall be ashamed, every one of his Vision, when he has prophesied.* In the 5th Verse the Prophet is to deny that he is a Prophet, and say he is a *Husbandman*, and no Prophet. And in the 6th Verse he is asked where he received his Wounds? He answers, *in the House of his Friends*: So that he retains the Character of a false Prophet all along; and what he says in each Verse is equally true, and consequently that the Wounds he received were not in the House of his Friends. Whatever may be thought of the Doctor in this Matter, I think I may conclude, that his Learned Council had his Scripture by Hearsay, or else he would not have triumphed when he had so little Reason. There was a Dispute, my Lords, not many Years since, between Two Learned Divines of our Church, about the Rights of our Convocation; one insulted the other for his Ignorance in the *Common-Prayer Book*; but upon Examination it appeared, that he who triumphed most, was most ignorant of what he charged on the other: Whether this Case is not somewhat applicable, I submit to your Lordships.

Having done, my Lords, with the several Passages made use of to maintain this Article, I think I may say the Charge contained in it, (That the Doctor asserts the Church to be in Danger, not only generally, or so as to be meant from Vice, Infidelity, Schism or Heresies, Blasphemy or Prophaneness, but from under her Majesty's Administration) is not only affirmed, but strongly proved. He is not charged here with speaking contrary to his Words, or with Negative Crimes, nor is his Silence, as he was pleased to say, made Criminal.

I must now beg leave to observe a little on the Evidence produced on the Doctor's Behalf, and in his Defence to this Article. Your Lordships had a Collection of many scandalous Books and Pamphlets, drawn from Obscurity, to be republished to the World, for the more effectual suppressing Blasphemy and Prophaneness: And since the Doctor's Council forbore to mention the Particulars, I shall not enter into them; only in general I think I may say, that they have been proved to be no way material to what is in issue before your Lordships: But it may not be improper to take Notice, that most of these Books appeared to

have stolen into the World, and the Authors still concealed; some of them Printed in *Holland* seventeen Years ago, and others Published since the Doctor's Sermon: And for the *Observers*, and *Rights of the Christian Church*, 'tis well known the Author of one, and Publisher of the other have been prosecuted; so that these cannot be said to be tolerated with Impunity, nor meant as the Provocation for the Doctor's Censure.

I am sorry there are any of these prophane and impious Pamphlets: There are some others too that have been published within this seventeen Years, which might have been taken notice of, but I don't find them in the Doctor's Catalogue. There was a blasphemous Sermon preached and published by Doctor *Binks*; Mr. *Dodwell's Charge of Schism*, and unbishoping most of the present Bishops; the same Gentleman's *Baptismal Union of the Spirit*, or his *No Immortality of the Soul*; and one Mr. *Lesley's Project of uniting ours and the Gallic Church*. Whether these Books were thought by the Doctor to tend to the right Establishing our Church and true Religion, I need not say, but I do think they were worthy his Notice, and may vie with most in his Collection; and if he had been so incensed against erroneous Doctrines, it had been a worthy Task sure, and well becoming his honest well-meaning Zeal, to have endeavoured a Confutation of them; then his Asperity in rebuking, his harsh and vehement Expressions, would not have been ill employed: But, instead of this, to turn his Violence against his Superiors, for not Punishing what, it may be, they never heard of; and to lay the Danger from these Doctrines at their Doors, is not to be justified by any pretended Provocation of this Kind whatsoever.

There was another Piece of Evidence produced to your Lordships, some Proclamations against Immorality and Prophaneness: If there is any Thing to be inferred from them in the Doctor's Favour, I must own I can't conceive it. Because the Queen commands the Magistrates to put the Laws in Execution, therefore every private Divine may arraign his Superiors for a supposed Neglect of their Duty, as often as he thinks fit; I say, I don't understand this Inference, but I can easily apprehend the Consequence to all Governments that will suffer such Presumptions.

The Doctor himself was pleased to say, That one of the Dangers of the Church mentioned by him was forgot by the Managers, that was from Papists and their emissaries: I will do him the Justice to remember, that he has bestowed six Lines on this Danger, but twenty-six large Pages on the Danger from those in Church and State. Then it was said, that the Doctor prays for the Queen, has taken the Oaths to the Queen, and therefore he could have no Intention to reflect on her Majesty, or any Part of her Administration either in Church or State. And the Doctor in his own Speech was pleased to acknowledge her Majesty to be a Nursing-Mother to the Church: But I could not observe one Syllable to the Reverend Fathers of the Church, of his Opinion of their Care of it: I could hear him admonish that Venerable Bench of the Guilt of departing from the Church, and abandoning the Principles of the Church, if they should punish him, a true Son of the Church, for Preaching the same Doctrine with theirs; as if there was no manner of Difference whatever.

It seems, my Lords, very strange, that after a Charge of this Nature of Reflection upon his Ecclesiastical

ecclesiastical Superiors, that, after having studied so much Submission, he should not prevail with himself for so much as a Compliment on this Occasion. Such Behaviour seems to need no Explanation. I should be very unwilling to recollect any of the Doctor's charitable Opinions of his own Brethren, who, as he is pleased to say, can sacrifice their solemn Declarations and Oaths to Complaisance and Preferments. I would be so charitable as to believe well, and think favourably of all Men; but when the contrary does so manifestly appear, it would be Injustice to the rest of Mankind not to judge accordingly. It would be a Remissness and Negligence of Duty, justly blameable, if we were to shut our Eyes, and resolve not to see what so evidently threatens the Peace and Quiet of the Kingdom. If Men must be allowed to vent their Displeasure at such Proceedings of their Governors which do not suit their particular Humours, what must become of the Credit and Reputation of any Government, which is so necessary to preserve it?

Your Lordships have heard a great many Objections against *Innuendo's*, that they are dangerous Things, and never encouraged; and that your Lordships have been pleased to shew your Dislike of them. I shall not scruple to own, that to lay a Meaning to a Man when his Words will not bear it, to make any invidious Construction when it will admit of a favourable one, I can neither approve or desire. But because the extreme or ill Use of any Thing is not to be allowed, that therefore you must never apply it at all, is such Logick and Law as I have not been used to.

My Lords, In the Case of *Libellis famosis*, cited by the Doctor's Council, your Lordships will find, that if only plain positive Assertions are Libels, there will be no Fence against the Envy and Malice of wicked Spirits: And if the Law has guarded every private Man's Reputation, so as not to be blasted by oblique Turns and scandalous Insinuations, it would be very hard if those in Authority should be exposed to the Virulence of every discontented Humourist. Malice will never want a Pretence, or Means to convey Scandal and Reproach by sly Parallels and Allusions, which may do equal Mischief with positive Assertions: But I must observe to your Lordships, That there are not only oblique Insinuations, but positive Assertions.

Not only those Passages which I have produced, which are express, but the whole Scope and Tenor of his Sermon, relates to the Peril of the Church from Persons in Church or State, and not those evasive Shifts of Vice and Infidelity, Books and Pamphlets. If the Doctor had only rebuked Immorality, Blasphemy, Prophaneness and Irreligion, he might still have attended his Flock *, and they not have been brought to attend him; nor would he have been thought to arraign the Resolution of the Parliament. But for him to take upon him to censure and expose his Superiors, and to insinuate into the Minds of the People the Danger of the Church from those Persons who have the Protection of it, is no likely Method to suppress Immorality and Prophaneness, and is directly contrary to the Words and Intent of the Resolution of your Lordships and the Commons.

To what End the Doctor has thought fit thus to

disperse his Sermons, may be easily imagined; and your Lordships cannot be unacquainted with the History of a Neighbour Nation, what temporal Ends were to be accomplished by a loud Outcry of Danger to the Church, the Church, Religion and the Church. Whether that will not bear a Parallel with the groundless Clamours which have occasioned many of our present unhappy Divisions, I submit to your Lordships.

It remains, my Lords, that I answer one of the Learned Council, what the Nature of this Offence is: I shall only tell him in the Words of your Lordships and the Commons Resolution, made publick by her Majesty's Proclamation, "That whoever creates unreasonable Distrusts, and groundless Jealousies in the Minds of the People; whoever distracts the Kingdom by false and seditious Rumours of the Danger of the Church, to cover Designs they dare not own; whoever goes about to insinuate that the Church is not in a safe and flourishing Condition under her Majesty's happy Administration, is an Enemy to the Queen, the Church, and the Kingdom." Which, in other Words, is, Against the Law, against the Temple, and against *Cæsar* has he offended.

Nay, my Lords, Has not this bold Offender gone yet farther? Has he not told your Lordships at your own Bar, That notwithstanding the Toleration, the Dissenters are Schismatics, and liable to Spiritual Censure; that by continuing the Indulgence to them, you countenance Schism; and that while Schism is continued, the Church must be in Danger? So that resolve what you please, and make what Laws you will in their Favour, he must still thunder out his vehement *Anathemas* against them, as dangerous to the Church.

This, my Lords, is a Specimen of that Independency of the Church that of late has been so much struggled for; and which, if not confuted in time by Authority, may soon devour the Supremacy and the State. And since the Doctor has and does still thus presume to defy and arraign the Resolution of your Lordships and the Commons, he is properly before this Tribunal; and I may apply to him the Saying to a Goat browsing on a Vine, and which was applied to one of another Function upon such an Occasion, who had defied the Power of Parliaments:

*Rode Caper vitem, tamen hinc cum stabis ad Aras,
In tua quod fundi Cornua possit, erit.*

My Lords, The Commons are so fully assured of your Lordships Wisdom and Justice, that they cannot question but your Determination in this Proceeding will be to their Satisfaction; therefore I shall trouble you no farther, but submit to your Lordships Judgment.

Serj. Parker. MY Lords, Having already, by Command of the Commons, endeavoured to make good the *Fourth Article* of this Charge; it is now my Duty to support, what I offered before, both against the particular Objections, and the general Rules, proposed or insinuated by the Council, or the Prisoner.

The first Thing I attempted to prove by particular Passages, was the second Clause of this Article:

"That Doctor Sacheverell suggests, That there are Men of Characters and Stations in Church and State, who are False Brethren, and do in themselves weaken, undermine and betray, and do encourage and put it in the Power of others, who are

* His Parishioners part of the Mob that attended him to and from his Trial.

"professed Enemies, to overturn and destroy the Constitution and Establishment."

This I thought would be plainly made out, if I could shew these Two Things:

1. That the Doctor has asserted, in express Terms, of all False Brethren in general, that they do in themselves weaken, undermine and betray, and do encourage and put it in the Power of others, who are professed Enemies, to overturn and destroy the Constitution and Establishment. And,

2. That he charges Persons of Characters and Stations with False Brotherhood.

Apprehending the Consequence clear, that if these Two Things were asserted by the Doctor, the Charge was just.

I used likewise some farther Proofs, which I shall not need repeat.

Besides some little Cavils as to the Two Propositions, which I shall take Notice of by the way; great Complaint is made, often repeated, and much exaggerated, that I have brought together these Two Propositions, that are twelve, or nine, or at least seven Pages asunder:

My Lords, I took Notice of this Trifling Objection before; and what I said to it, neither the Doctor nor his Council have attempted to Answer.

But they all seeming to lay the greatest Strefs upon this Part, and the Council every one repeating it, I beg leave to state once more how that Matter stands.

The Doctor in this Sermon proposes, (1.) To describe False Brotherhood; (2.) To shew the Mischief; and (3.) the Malignity of it.

And this single Consideration would make one expect, that these Heads should relate to one another, at whatever Distance he takes them up.

Under the Second Head, * Page 15, he asserts, of all False Brethren in general, that "they do in themselves weaken, undermine and betray, and do encourage, and put it in the Power of others, who are professed Enemies, to overturn and destroy the Constitution and Establishment."

This is my first Proposition in Terms, and nothing is objected to it.

Only a little Attempt is made to divert the Question, by mentioning some particular sorts of False Brethren, and saying he there speaks of False Brethren in some of those Senses of the Word.

I agree it: He that speaks of all, speaks of such as are included in those Senses of the Word which he mentions; but likewise speaks of all others too; speaks of such as he has mentioned any where else, as well as there, such as are Men of Characters and Stations, as well as such as are not.

Under the Third Head,

In shewing the Malignity of this Sin (not in it self, that he had shewn before, but) with regard to the World: He instances first, in the Mischiefs arising from Men of Characters and Stations, in the Words I formerly cited. This, I thought, made out my Second Proposition to be the Doctor's, "That Men of Characters and Stations are False Brethren."

This is faintly deny'd; and 'tis said, he does not here suggest Men of Characters and Stations to be False Brethren; but what is here spoke relates to

their private Behaviour, and not to the Administration.

Besides, that this is directly against the plain Import of the Words; to let your Lordships see the Candor of this Defence, let us suppose it true; and that it is the Doctor's Opinion that the Persons he here speaks of, be they great or mean, are not False Brethren.

Then the Doctor, to be consistent with this Defence, must affirm, that he here lets forth the Malignity of False Brotherhood, by shewing the Malignity of another Sin which is not FALSE BROTHERHOOD, in Persons of Characters and Stations, who are not FALSE BRETHREN.

This is the wretched Shift he is driven to, taking it the best for him.

That these Characters and Stations relate both to Church and State, all his Discourse in the Places cited, and every where else, shews; nor has he or his Council made it an Objection that they do not; so that it would be very much mispending your Lordships Time, to go to prove, what is not deny'd, that by Men of Characters and Stations, he intends Men of Characters and Stations in Church and State.

The Two Propositions being thus cleared, let us see if that which is laid hold of to declaim so earnestly upon, have any more Weight in it, that is, the joining together these Two distant Propositions.

The Objection, rightly stated, is this:

He has in one Place affirmed of all False Brethren in general, "That they do in themselves weaken, undermine and betray, and put it in the Power of others, who are professed Enemies, to overturn and destroy the Constitution and Establishment."

And seven Pages off, has represented Men of Characters and Stations as False Brethren.

And we (very unreasonably!) have charged him with suggesting, "That there are Men of Characters and Stations in Church and State, who are False Brethren, and do in themselves weaken, undermine and betray, and do encourage and put it in the Power of others who are professed Enemies, to overturn and destroy the Constitution and Establishment."

This is the true Strength of the Objection, and the very stating it exposes it.

The general Mischief he mentions, as common to all False Brethren, Page 15, I presume will be admitted to belong to those described, Page 7; Why then not as well to those Page 22?

Must not what is said of all False Brethren, extend both to those whose Crime he describes, and to those whose Malignity for that Crime he exposes?

And which is most to be regarded, the Distance of the Place, or the Connexion of the Scheme, and the Nature of the Propositions?

The Doctor himself seems rather to press the Objection thus, That this is Inference, and joining independent Propositions; which, though spoke by him in general, the Unanimity of his Council in falling upon this Part of what I said, shew, it was spoke principally with a View to these two Passages. Are then Passages that speak of all False Brethren, and that speak of some particular False Brethren, independent?

My Lords, These are so far from being independent, and so ill have they chosen out what to find fault with, (that if your Lordships will pardon the Pedantry, considering I have a Man of Logick and Disputation

* Note, The Pages of the Sermon are referred to as in the Second Edition, which was that which was proved and read in Evidence.

Disputation to deal with) the two Propositions are the two Propositions of a Syllogism, concluding in the first Figure.

And the Inference he complains of is the Conclusion necessarily arising from them, according to the Rules of Logick.

The whole Syllogism runs thus:

All False Brethren do in themselves weaken, undermine, and betray, and do encourage and put it in the Power of others who are profess'd Enemies, to overturn and destroy the Constitution and Establishment.

Persons of Characters and Stations are False Brethren.

Therefore Persons of Characters and Stations, do, &c.

The two first Propositions are what I have shewn the Doctor plainly to lay down; the other only a necessary Consequence.

Would any one expect that the Doctor should be so forgetful of the Rules of Logick, as when he had laid down the Premises, to deny the Conclusion? Or to deny the Conclusion to be HIS DOCTRINE, who laid down those Premises?

Can it be thought, that he laid them down without an Intention that his Hearers should make the Conclusion? Or could he think it possible they should not make it?

Or shall the suppressing a Conclusion so plainly arising, which is taken Notice of in some that write of Logick as an Elegance in Discourse, pass for an Excuse?

Let the Doctor describe False Brethren in general as Betrayers and Destroyers of the Church, and the proper Objects of the Rage and Fury of the People, and then expose as False Brethren those in the Administration, Persons of Characters and Stations, from the chief to the least, the People will quickly make the Application.

If any one should inflame the Mob to such a Degree of Rage and mistaken Zeal, as to forget the Spirit of the Gospel, and to believe it their Duty to serve God by breaking the publick Peace, and to support his Church, by pulling down all Meeting-Houses, and rifling the Houses of all Dissenters; he needs afterwards only tell them, THIS IS A MEETING-HOUSE; HERE LIVETH A DISSENTER, they are not so dull as to fail of making the Conclusion; THEREFORE THIS HOUSE IS TO BE PULL'D DOWN; THEREFORE THIS MAN IS TO BE PLUNDERED; and of putting it immediately in Execution where they dare.

Suppose such a Man should, in Defence of himself, say, "I did not bid them pull down this House, nor rifle that; my telling them All Meeting-Houses were to be pulled down, All Dissenters to be marked and plundered, was Four Months before I told them THIS WAS A MEETING-HOUSE, OR THAT MAN A DISSENTER; and to carry back a Man's Words, spoke only by way of Information, to what was said Four Months before by way of Doctrine, is the greatest Hardship in the World:"

Would this pass for an Excuse? Or would it not add to the Indignation against so impertinent a Trifler on so sad an Occasion.

My Lords, The burning a Meeting-House, the burning all the Meeting-Houses, the laying this Metropolis once more in Ashes by the Enemies

of our Constitution, is nothing to the inflaming the Nation, and rendring the QUEEN and Her ADMINISTRATION odious to the People.

Shall it then be an Excuse for the Doctor here, when he has laid down the Premises, to say, that he has not in Words expressed the Conclusion?

Shall the meanest of the People, clearly and rightly collect, This is Doctor Sacheverell's Doctrine; and shall not we in accusing, and your Lordships in judging, be allowed to collect it, when we are endeavouring to preserve the Queen and Constitution, and all that is dear to us?

Surely, my Lords, we shall. Nor is the strict Consequence that your Lordships find in this Clause, always necessary in Cases of this Nature: But I was willing to shew it here, that your Lordships may see with what Justice this was made the great Topick whereupon to declaim against Hardships; and to couple such Inferences with Innuendo's, as if both were the same.

As for taking one Part of one Sentence, and another Part of another, whoever makes a Conclusion in Logick ever does it; and only then does amiss in it, when in doing it he departs from the proper Rule, and where the Consequence is not just; which I have shewn is not the Case here, and no Body has attempted to make out that it is.

'Tis as little to the Purpose what is said, that he has not restrained this to Persons of the HIGHEST CHARACTERS AND STATIONS; which I shewed so fully before, that it has been thought more adviseable to pretend I admitted what I believe I plainly disproved, than to offer any Answer to my Reasons.

I'll only add, that 'tis not pretended, that there is one Word in the Sermon that looks like the least Hint, that only Inferior Officers were meant; and 'tis plainly shewn, that others were intended: And then the Doctor's Excuse amounts, at best, but to this: He has indeed spoke in reproachful Terms of Magistrates in general, he has pointed to those that have, and those that bestow the Honours of the Church, and Places and Preferments in the State; he has pointed to the Chief; his Reasoning, when he shews the Malignity of the Sin from Examples of Persons of Characters and Stations is the stronger, the Greater these Persons are, as the Examples of the Greatest are the most Contagious; but yet he relies upon it, that since the general Mention of Persons of Characters and Stations takes in the Meanest as well as the greatest, 'tis not to be doubted but the all-discerning People, especially when sufficiently fired and enraged, will restrain the Words to the most innocent Meaning, and apply them only to inferior Officers, Constables, and those in the nearest Degrees to them.

This is the Sum of this notable Excuse.

Let this therefore, where, by bending their united Force against it, they seemed to have the greatest Hopes of making some Impression, serve for the Specimen chosen by themselves, of the Hardships of Inferences and Innuendo's in this Charge.

"The Third Clause, "That he chargeth her Majesty, and those in Authority under her, with a general Male-Administration; The first, That he suggests that her Majesty's Administration, both in Ecclesiastical and Civil Affairs, tends to the Destruction of the Constitution"; are so manifest, that after what has been said, and is unanswered, it would

would be but losing Time to attempt to make them more plain.

And their Defence, and the Books and Pamphlets read on this Head, are not to the purpose.

For sure, the shewing that there have been some *Paltry Scriblers*, few in Number, many long since dead, some mad, some that have undergone the infamous Punishment of the *Pillory*, most of them prosecuted or unknown, does not prove that there are *Seminaries* for the open Profession of those Blasphemies and Impieties; much less, that they are suffered by the Government, or that their Follies can be called an open Violence upon the Church, or their Faults made the general Character of the Nation, and charged upon the Queen and her Administration.

When a scandalous Book is published, or contagious Sin committed, any Subject who has a real Zeal to prevent the Mischief spreading, may apply to the proper Magistrate to suppress it; and if inferior Magistrates neglect their Duty, may carry the Complaint, against them and it, to their Superiors.

But is it to be endured, in any established Government, that a Man pass over all the Magistrates, and make an Appeal to the People, not only against the Offenders, but against the Magistrates too?

This is properly *Faction*, this is invading the Royal Authority; 'tis, in the Doctor's own Words, "*A rebellious Appeal to the People as the Dernier Resort of Justice and Dominion*"; 'tis erecting a Popular Tribunal, where not only *SCRIBLERS*, but the *QUEEN* and her *AUTHORITY* are to be try'd.

The Doctor indeed pretends that his Zeal was only against those Offenders, and such as keep not within the Bounds of the Toleration Act; that his Warmth of Speech, was only to stir up the Magistrates to put the Laws strictly in execution; and he solemnly protests he intended no Reflection on the Queen, or her Ministry; that by the Dangers of the Church, he meant only those Judgments, which the just Anger of a provoked God might be reasonably expected to inflict on so wicked a People.

I can't pretend to repeat his very Words, but I apprehend this to be his Sense, and beg Pardon if I mistake his Meaning.

My Lords, I am amazed at the Doctor's Solemn Protestations. I will avoid hard Words as much as I can; but if when he calls God to Witness in so solemn a Manner, he should then speak without Foundation of Truth, plainly against his Sermon, and be even then using the little Arts of Evasion, and diverting the Question, instead of that Sincerity which ought to accompany so solemn an Oath, I leave it to your Lordships to give a Name to such Behaviour.

Is it possible to say he intended not to reflect on the Administration?

Give me Leave to read to your Lordships Two Pages in his Sermon, to which I before referred; and be pleased to observe, as I go along, how much they are applicable to unknown Authors, or the Dead, to *Askill*, the *Observer*, the *Review*, or other Writers, that he has made so filthily a Collection out of; or to *Atheists*, or *Dissenters* exceeding the Limits prescribed by the Toleration; or to Occasional Conformists, Dissenters too in the main, but when the Occasion of a Place calls them to Church; and your Lordships will have one Instance of his Sincerity in his Solemn Protestations.

"2. Secondly, In regard to the World, What a vast Scandal, and Offence must it give to all Per-

sons of Piety and Integrity, to see Men of Character, and Stations, thus shift and prevaricate with their Principles, and starting from their Religion upon any Occasion of Difficulty, or Trial, and like the Disciples, flying from, and forsaking our Saviour, when his Life lay at Stake? To see Mens Opinions sit as loose about 'em as their Garments, to be put on, or off, for Convenience? What can unwary Persons conclude from such Tergiversation, and Hypocrisy, but that all Religion is State-Craft, and Imposture? That All Godliness is Gain; and that the Doctrines of the Church lie not so much in her Articles, as her Honours, and Revenues? Without doubt, this Modern Latitude, and infamous Double Dealing, as it can proceed from nothing but the rankest Atheism, so it must propagate it wheresoever it goes; and 'tis not to be questioned, but that the Wonderful Increase, and Impudent Appearance of all Sects and Heresies in this Kingdom at present, beyond what was ever known in former Ages, is chiefly to be attributed to it. But this Crime is as pernicious to Human Society, as Religion; for it destroys all common Honesty, Faith, and Credit in the World, and in the Place of it, sets up an Universal Trade of Couzenage, Sharping, Dissimulation, and downright Knavery. For, what Dependence can there be upon a Man of no Principles? What Trust in Equivocations, Evasions, and Lyes? Nor indeed could any one be supposed so sottish, as to place the least Confidence in these Men, did they not bait their Hook, and cover their Treachery with the sacred and plausible Pretences of Friendship, whereby they are capable of doing much more Mischief, than a bare-faced and profess'd Enemy. In what moving and lively Colours does the Holy Psalmist paint out the crafty Insidiousness of such wily Volpones? Wickedness, says he, is therein, Deceit and Guile go not out of their Streets. For it is not an open Enemy that has done me this Dishonour, for then I could have born it: Neither was it mine Adversary, that did magnify himself against me, for then peradventure I would have bid my self from him. But, it was even Thou! my Companion, my Guide, and mine own Familiar Friend. We took sweet Counsel together, and walked in the House of God as Friends. There is no Faithfulness in their Mouths, their inward Parts are very Wickedness; their Throats are open Sepulchres, and their Words are smoother than Oil, yet be they very Swords. Like Joab, they pretend to speak Peaceably, and smite Us mortally under the Fifth Rib.

"3. Thirdly, With regard to a Man's self, it is hard to distinguish whether our False Brethren prove themselves Guilty of more excessive Knavery, or Folly. For whatever these cunning, temporizing Politicians may think, they will find, after all their Shuffling, and Compliance, that the plain Road of Truth, Honesty, and Integrity, is both the most Prudent, as well as the Safest Way they can follow, and that the Wisdom of this World is as much Foolishness with Men, as 'tis with God. For certainly there is no Sin that so much Disappoints its own Ends as This does. Perhaps the Man may obtain the present Advantage he has in Prospekt, by relinquishing his Old Friends, and Principles; but is ever such a Mercenary Convert received heartily into the Bosom of his former Enemies? Or are They ever found so Credulous, and Good-natured, as to Forgive, and believe such an Apostate Cordial and Sincere, and

“ and fit to be trusted in any Matter of Weight, or Importance, who has betrayed his own Party for the little sordid Lucre of a Place, or Preferment: And is again ready to be Retrograde, whenever the Wind shall Change, and Veer about? Such a False Brother may serve the present Turn of his Adversaries, who may seem, whilst they want the Tool, to flatter and caress him; but let such a Turn-Coat rest assured, he shall meet with Hypocrisy, for Hypocrisy; and since He is got upon the Stage, shall Act his Part, and be biffed off when he has done. Such a wise Game do our Projectors Play, they Barter, and betray their Friends, only to sell themselves Slaves into the Hands of their Enemies, who shall treat them with more Insolence, Disdain and Tyranny, than honest Men do with Scorn, and Contempt, if they don't go the whole Lengths of their Party, stick at nothing, though never so impious, and absurd, and run from one Extream to a quite Contrary. Thus little, thus base, thus odious, thus contemptible, thus servile, nay thus execrable is the Traytor, and Double-Dealer in the Sight, not only of all honest Men, but the most professed Knaves, and Hypocrites! Who cannot but have a Tacit Regard, and Veneration, for a Man of Steadiness, and Probity, that upon all Occasions is true to himself, and his Cause; is above the Threats, as well as Flatteries of this World, still trusting in his God, and his own Integrity, and Justice, despising his Interest, or Success, and is under all Circumstances like that God, and Religion he believes and serves, without Variableness, or Shadow of Change, but is the same, To-day, To-morrow, and for ever. Farther, these False Brethren cannot be more odious to God and Man, than they are to themselves, who are always a Self-Contradiction, full of Confusion and Perplexity, perpetually haunting themselves, the worst of Demons, maintaining an irreconcilable War betwixt the outward and inward Man, Conformists in Profession, Half-Conformists in Practice, and Non-Conformists in Judgment. Such a Mixture of Inconsistency and Nonsense, that any one that has the least Spark of Conscience, or Reason, must renounce, and detest. But this dismal Effect has such a State of Habitual Hypocrisy, that it quite damps and extinguishes both, quenches the Holy Spirit of God, and crucifies his Son afresh; and as it finds a Man void of Shame, generally (without a miraculous Conversion) leaves him incapable of Repentance, and both damns him here, and hereafter; and as he chose it in this World, appoints him in the next, his Portion with Hypocrites, and Unbelievers, with all Lyars, that have their Part in the Lake which burns with Fire and Brimstone, with the Grand Father of Falshood, the Devil and his Angels. And so here we leave our False Brethren, in the Company they always keep Correspondence with.”

To go on. Is that true, that he only calls upon the Magistrates for Justice upon these Offenders?

If his Intent really were to exhort the Magistrates (before whom he preached) to put the Laws in Execution, one would expect to find it vehemently pressed under the Fourth Head, where he undertakes to shew what should be the Result of all; but I have searched carefully, and can find nothing there, nor any where else, of any such Exhortation.

There is indeed a Calling upon the Pastors of the Church, who were not present, to thunder out Anathemas against Schism; which could not be to per-

suade those Pastors that did not hear him, but to condemn their Remissness to the People that did. But all the rest is to the People, to adhere to the Fundamental Principles; to watch against, MARK AND AVOID, those that desert them; to give Place, BY SUBJECTION, no not an Hour; to despise sneaking Shuffling COMPLIANCES, and put on their BRAVEST Resolutions, which the PRESENT Case required: There is a denouncing Woe to the fearful Heart and faint Hands; a shewing the Perils and low Estate of the Church, that her Sons deserted her, that she lay bleeding of her Wounds; that her Adversaries were CHIEF, and her Enemies AT THAT TIME prospered.

Is this the Language of one, that is only laying before Magistrates the Abuses of a few inferior Persons, within their Power, subject to their Authority, and whom they could easily crush, and desiring those Magistrates to correct them?

In short, Is it calling upon the Magistrates, or upon the People, for Justice?

Again:

He solemnly declares his Meaning in the Sermon to have been, That the Dangers of the Church are only such as arise from the Sins of the Nation, but not in the least from her Majesty and her Administration.

Let any one cast his Eye upon the Sermon, or upon the Dedication of that preached at Derby, and try how the several Expressions suit this Scheme; and he will see, the Doctor had nothing of it in View then, but that 'tis contrived since, for him to pretend now.

What Dangers of the Church and Constitution he means in the Sermon, is too plain to be shifted off by a Protestation: He tells you expressly what they are, and from whom; from Men, whom he describes as being in the Administration, who undermine and betray the Church, and enable others to destroy it; they are such as he apprehends, not from the Hands of God, but from the Treachery and Violence of Men.

Accordingly, the whole tends to stir up Anger, Indignation and Fury against those Men; not to move Humiliation and Prayers to God, to avert those impending Judgments.

But possibly he may expect to be understood, not of an immediate Vengeance of God, or his delivering us into the Hands of a Foreign Enemy, but his permitting wicked Men at home to overthrow the Church.

If we take it to be so, this solemn Protestation is a mere Evasion, and a shifting the Question.

'Tis true, the Overthrow of the Church and Constitution is the heaviest Judgment can befall us, and if it does happen, must be accounted the Act of Divine Justice punishing us for our Sins. All National Punishments are certainly the more immediate Acts of the Justice of Providence; and the Instruments made use of to bring them about, are very often wicked Men.

The Prophane Writers, the Atheists, the Abusers of the Toleration, the Vilifiers of Holy Orders, of the Church, and of Christianity, and other wicked Men, may have given great Provocations to Almighty God; and if I should say so great, as may give just Cause to fear a Judgment upon us, that may endanger the Church and Constitution; yet still the Question is, What Hands are about to execute this Judgment upon us? We charge him as representing the Church in Danger under her Majesty's Administration; as suggesting that her Majesty's Administration, in Church and State, tends to the Destruction of the Constitution; and

and consequently, that the *Hands* of those in the *Administration* are about to execute such Judgment: And he solemnly protests, he apprehends no Danger but from God.

My Lords, This is trifling; for every such Danger is from God, and is his Judgment, whoever they be, whether her Majesty, and her Ministry, or any others, that immediately bring it upon us.

This therefore, instead of answering, is evading, and diverting your Lordships View from the Persons he charges to be working the Ruin of the Church, to God the Supreme Director and Over-ruler of all the Actions and Designs of Men. As if the Reflection on the Queen and her Administration were the less, for saying, that they are the Instruments in the Hand of God to scourge the Nation for its Sins, and to execute his Vengeance in overthrowing the Church and Constitution.

So that I am afraid, this Part of his Solemn Protestation is either false, or evasive, or both.

And let so much suffice to be added on these Clauses.

To what I offered to your Lordships on the Clause of keeping up Distinction of Factions and Parties;

I desire to add the Weight of One Authority, out of the Excellent Sermon preached by the most Reverend Prelate, my Lord Archbishop of York, and produced by the Doctor.

The Words are these:

“ They are Factious, they are Setters up and Abettors of Parties, who endeavour to destroy, or unsettle, or disparage, or in the least hurt or weaken the Government, and the Laws as they are established; let the Principles on which they go, or the Pretences they make, be what they will.”

Whether the Doctor hath not endeavoured in the highest Degree to disparage the Government, and consequently to weaken it, your Lordships will judge.

As to the other Clauses, they have offered very little, and I will not repeat what I said before.

Only I would take notice, that under the Head of stirring up to Arms, something was urged by the Council, in relation to what I said upon some Texts of Scripture, but so entirely mistaking my Meaning, that I think my self unconcerned therein.

As for perverting Scripture;

The Council would seem to pretend something or other to be the Mistake of the Printer, without saying where the Mistake is, or how they would have it read.

I'll tell your Lordships what the Mistake is; it is Printing the Second Chapter of Lamentations instead of the First, and Misplacing the References to Lamentations and Zechariah; which I scorned to take Advantage of, and, in what I said, rectify'd.

But this served for a Shew of an Excuse.

They said something more on this Head, but not to what was my Objection; but promised the Doctor should clear all.

My Lords, I think I might reasonably here put an End to the Trouble I am giving your Lordships; but that I apprehend some Things which fell from the Doctor, and which have not fallen in my way already, may be proper to be taken notice of, so far as concerns what is within my Province.

I own, his Speech was extremely well composed, fitted not so much to inform (his Case would not bear that) as to move, (wherein his Hopes were more justly placed;) not so much to state the Question, and clear it, as to divert it: All the plausible Topicks

were laboured, and all the Arguments that press'd hardest upon him, and most required an Answer, pass'd over in Silence; the Whole framed to give the Passions Mastery over Reason, and to induce a Persuasion, that so good, so excellent a Man as he painted himself, that has so many Virtues, so great Sincerity, so true a Zeal for Religion, could not be Guilty of this Charge, though plainly proved upon him: The Protestations were strong and hearty, and such as will read well amongst the People; clear of all those qualifying Clauses, that might perhaps have made it suit better with the Truth of his Case, but would have had the Inconvenience of giving to the Readers Suspicion of Guilt. An agreeable Concern for Religion and Virtue ran thro' all; which will always strike an Audience, and seems intended to make some Amends for the Rage and Fury, and Zeal for Party in the Sermon.

I only wish, for the Doctor's Sake, the Composer had preserved a little more Regard, as well to what was fit to be said here, (where the Truth of the whole Matter is known) as to what was fit to be said abroad, and given it a little more Resemblance of the Doctor and his Sermon; That he had not calculated so many Parts of it for an Appeal to the People, and to obtain their Acquittal upon his own Word. And I must needs say for my self, (tho' my liking, or disliking it, is of very little Moment) had it had fewer and less Solemn Appeals to God Almighty, or more Truth, or I known less of the Matter, I should have liked it much better.

He begins with making his Order, the Church and Christianity to be concerned in the Cause; intending it, I presume, to be understood abroad as a Charge upon his Accusers, that in his Person they arraign all these.

But I shall not pretend to follow him throughout the whole Speech, only point out some Fallacies in it.

My Lords, Great Regard is to be had to the Word, much more to the Solemn Declaration, much more to the Oath of a Clergyman, when he is free and unbiass'd.

But when he stands in Judgment, when the Rod is over him, when there is only one way open for Escape from the just Punishment due to his Crimes, by protesting his Innocence; neither his Word, nor his Declaration, nor his Oath is to be regarded.

That Method will acquit all that are accused; and the less Conscience any such Wretch has, the surer and easier will be his Escape.

And therefore your Lordships will judge, by what the Doctor has taught the People, what he has published, and not by what he pretends to be his Intentions in doing it.

He makes Complaint of the Generality of the Charge, that it was such that he knew not where it would point.

My Lords, Suppose we had followed the more common Way, and set forth all the Passages we have read, or the whole Sermon and Dedication verbatim, (as we might have done) without pointing out what we objected to, or why; had that left him less in the dark? It was therefore more for his Advantage, that we should tell him the particular Points we would insist upon, than if we had left our selves at Liberty at the Trial, to make as many Points as we then pleased.

He lays it down for a Rule, That the bigger the Charge is, the more clear ought the Proof to be.

My Lords, The Proof here is indisputable; the Sermons and Books are not denied to be his. And these

these are all that *strictly* make the Evidence in the Case; the rest is but *Argument*, and shewing them to be Libellous in the Particulars in the Charge.

But take Proof in a larger Sense, so as that it may extend to the Reasoning upon the Evidence, and to the making good the Charge, as in this Case is perhaps not improper:

I have no Reason, in respect of this Charge against him, to contest his Rule, because the Proof of it is clear in that Sense too.

But yet, for the sake of Justice, I shall take the Liberty to say, that, as apply'd to this Case, it is a Fallacy.

This sort of Proof arises from the Sense and Doctrine of his Books.

And I presume, the Doctor cannot hope, that because this is charged to be so high a Crime, as Defaming and Undermining the Government, any more favourable Meaning is to be put upon his Words, than if it were the less Crime of defaming a Private Person; or that your Lordships should not understand in this Case, (that which every body else that hears it, understands) and which your Lordships would have understood, if it had not endangered the Government.

I own, I cannot comprehend why your Lordships should be more shy of Defending the Government, than a private Reputation; or most afraid of censuring that which is infinitely the most dangerous Consequence, if it escape uncensured.

On the contrary, in the Case of those Things which tend to the Overthrow of the Constitution, where the Rules and Methods of Inferior Courts cannot apply a proper Remedy, your Lordships (upon the Impeachment of the Commons) may. Let the Contrivance lie never so deep, be never so artfully wrought, when it strikes at our All, it would be absurd to say, the Commons may not bring it to the Bar of Justice, and your Lordships prevent its dreadful Effects, and give it the Punishment it deserves.

My Lords, Without that Power, your Constitution were weak and precarious.

THE Doctor observes in what manner the Charge against him is supported, not by express Sentences of his, but by Inferences, and joining independent Sentences, (as to that part I have considered it already;) and he seems to expect, that if he were Guilty of Suggesting and Maintaining the Things charged upon him, the Passages might as easily be pointed to in his Sermon, as the Doctrine in those he produced; and that bare reading, without a Comment, would convict him.

No, my Lords—Even Doctor Sacheverell is not yet arrived at that Pitch, as to arraign the Government so directly and openly, as to preach a general Doctrine.

This Fallacy seems very gross.

For is it reasonable to think, that a Man that intends to unhinge the Government, to expose an Administration, to fire the People, to raise Sedition, should speak directly and plainly? No—he is to cover his Design even from those he is to draw in; he is to pretend Zeal for Religion, insinuate himself by degrees, not shock his Hearers at first with a Declaration against a Queen they are fond of; he must pretend Zeal for her Majesty, to preserve their good Opinion of himself, while he is doing that which by degrees will alienate their Affections from Her. This he must do, though there were none to punish, and to prevent the dashing his own Hopes

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of Success. But when he knows that the Power of the Administration he is to revile and rail at, is over him, and at hand; that is a farther Reason for Caution: Therefore in such Discourses, dark Phrases are to be studied, confused Descriptions will be frequent, with a perpetual Perplexity of Expression, between saying what his Rancour will not let him withhold, and withholding what his Fear will not let him speak out. Schemes of Speech are to be contrived, that have two Meanings; the one more obvious and plain, to have its full Effect upon the People; and the other (that will occur to no body else) a Reserve to be offered to a Court of Justice. This is naturally to be expected in Seditious Discourses. But if your Lordships will pass this by, which has spoke infinitely more plain and audaciously than any other (I believe) that ever so publicly dared Authority, your Lordships may expect to see a new Discourse from the Doctor, where Sedition, that had but a very thin Disguise in this, shall there have none at all.

And this may serve for an Answer to what is urged from his zealous Expressions for the Queen; for if the whole Discourse have quite another Tendency, it is plain that those are only Parts of the Blind and Disguise.

He complains, That he is accused for what he has omitted, as if done with Design; and his Silence is made criminal.

My Lords, I was the Person that took Notice of his Omissions, but I did not make them a part of his Charge.

Indeed, when he in his Answer protested (as now he does more solemnly) his Loyalty, I took that Profession into Consideration, as a part of his Defence, which I ought to take notice of.

I had learned, that the best way to try the Truth or Falsity of Pretenders to Virtue or Religion, was by their Fruits.

Accordingly I considered his Management of his Text in this Sermon, how agreeable it was to such Profession, and to see what Fruits of Loyalty I could find there.

And your Lordships will now apply those Observations to his solemn Appeal to God before your Lordships, that his Intentions in that Sermon were to exert his BEST ENDEAVOUR for the Security of her Majesty.

I shewed your Lordships, that he omitted the only true Notion of False Brotherhood in State, which took in the Non-Jurors and Disaffected, tho' his Text led to it; that he had omitted to make the proper Use of the Doctrine of Passive Obedience, which was to press Obedience and Submission TO HER MAJESTY, tho' the Day and the Doctrine seemed both to require it.

That he had set up another Notion of False Brotherhood, which I shewed to be, upon his own Principles, wrong.

By these I try'd his Pretences, and shewed, that if they were sincere, this Behaviour was unaccountable; but if he were at Heart for the Pretender, I made it manifest that all his Proceedure was just; nay, that even his Notions of False Brotherhood was right to him that was of that Mind, and that his Application of the first of Lamentations was exact and fine upon that Supposition, which is never to be justified or excused on any other.

This I then press'd no farther, than to shew that his Sermon had in it no Fruits of that Loyalty which he pretended.

But I may make a further Use of it now, as a plain *Contradiction* to his *Solemn Declaration*.

For has he *pretended* to give any *Answer* to this?

Was I wrong in my *Notion* of *False Brotherhood*, or was he right in *his*? Has he made that *Use of Passive Obedience*, as to press *Submission* to the *Queen* from it? Has he not let the *Non-Jurors escape*, tho' his *Text* led him to speak against them, and advanced a wrong *Notion* of *False Brotherhood* merely to fall foul upon those that justify the *Resistance in the Revolution*, and cut off thereby every *Colour of Title* to the *Pretender*? Or does he offer to *reconcile* that *Proceeding* with his *Pretence*? No — And then, tho' bare *Omission* were not a *Fault*, yet I may now ask; Is that *Omission* consistent with his *Protestation* of an *Intention* to exert his *best Endeavour* for *Security* of the *Queen*? Did he exert, or intend to exert his *best Endeavours*, that omitted things so very obvious? Nay, where does he shew that he has exerted any such *Endeavour* at all?

On the *contrary*, he has fallen into the *Methods* used by those that are against her Majesty, to *undermine* and *weaken* her *Title*, and to *disparage* her *Government*, and to render it *odious* to the *People*.

He complains that where he presses *Obedience* to the *Queen*, we say he means the *Pretender*.

My Lords, It was one of the *Omissions* that I urged against him in the manner I have just mention'd, that he *nowhere* presses *Obedience* to the *Queen*.

Does he think it had not become him to shew where he did press it, if he could?

Or what Name does he think is to be given to his taking it for granted, that he had done that, which it was expressly charged he had not done, and which he cannot shew he has?

He seems to complain of some *Expressions* that have been used against him by the *Managers*, as not becoming *this Place*, or *his Order*.

My Lords, I hope we shall always demean our selves with *just Respect* towards your *Lordships*.

And as to him, he is to consider, that there is a wide Difference between what a *private Man* says of others, much more of his *Governors*, in *Conversation*, or in *popular Assemblies*, and what is spoke of an *accused Person* at his *Trial*. In the former Case, it is not fit to speak ill of them, that which is true; in the other, the *Crime* is to be represented as it is, and the *Person* is to have no *Respect* paid him that shall any way tend to prevent shewing the full *Enormity* of the *Crime* in all its true *Colours*. And if any thing has been said, which otherwise his *Orders* would have secured him from, let him remember that his *Crime* deprives him at *this Time* of that *Protection*; where 'tis one *Aggravation*, that he has abused his *holy Function*; which it was the *Business* of the *Managers*, both to say and to make out.

He complains that there is no *Allowance* made to a *Minister* rebuking *Vice* and *Irreligion* with *Zeal*, when he happens thereby to be carried into an *Expression* not well guarded.

My Lords, His *Zeal* is levelled more at *Persons* than *Crimes*, he mentions not *false Doctrines* to confute them, nor the *Faults* of those that bear him, that they may amend them; but rails at *Persons* absent to expose them; and raise the *Passions* of his *Auditory* against them; His *Zeal* leads to bunt out *Faults*, for an *Occasion* of *Complaint*; to magnify whatever is amiss, and charge all home upon the *Government*; departing from the Office of an *Am-*

bassador of the *Prince of Peace*, and preaching *Sedition* and *Rebellion*.

And in such Case, his *Orders* are so far from being an *Excuse*, that they are an *Aggravation*; when he who ought to preach *Peace*, *Long-Suffering*, *Gentleness* and *Submission*, foments *Divisions*, creates *Jealousies*; heightens *Animosities*, and disturbs the *Government*.

But where there is a *Sermon* truly tending to promote *Religion* and *Virtue*, God forbid that any incautious *Expressions* in it, tho' justly exceptionable, should be laid hold on as an *Occasion* to punish the *Preacher*; it has not been done, nor, I think, ought to be.

Yet when a *Minister* presumes to go out of his *Way*, and to meddle with the *Government*, he ought to be more than ordinarily wary in his *Expressions*, since his *Character* gives his *Reflections* greater *Weight* and *Force* with the *People*, and his *Errors* will therefore do the greatest *Mischief*.

And this *Man* that professes to preach *Politicks*, and laughs at those that tell him 'tis his *Duty* to preach *Peace*, and is inflaming the *People* against their *Sovereign*, must not think himself entitled to that *Favour*.

I own I am very well pleased to hear the *Doctor's* Declaration in Favour of the *Succession in the House of Hanover*, and his earnest Prayer for perpetuating it. Because, whenever our *Sins* shall be the *Occasion* of our losing the *best of Queens*, the *Security* of our *Religion* and *Liberties* for our *Posterity* depends upon it.

But I a little wonder, that he appeals to God that in this *Sermon* he had sincere *Intentions* to exert his *best Endeavours* for the *Security* of the *Queen*, and the *Protestant Succession*. I hope he is hearty for both, but sure, his *best Endeavours* for them are not exerted in this *Sermon*.

As for the *Queen*, I have spoke already.

As for the *Succession*, I own myself entirely at a Loss, in what part of the *Sermon* it is, that he has exerted any *Endeavour* at all for the *Security* of the *Protestant Succession*: I do not find any thing that I apprehend can concern it, except that Place where he ridicules the *Notion* of any *Right* to the *Crown*, but an *Hereditary Right*.

THE COUNCIL having in great measure declined that Head about *Wresting* and *perverting* divers *Texts* and *Passages* of *Holy Scripture*, and seeming to promise that the *Doctor* should give *Satisfaction* therein; I was in great Expectation of his *Performance* there; but am miserably disappointed, and cannot but be in some Confusion for the *Doctor*; tho' he seems to have entire Satisfaction in himself.

His Conduct upon this Clause, from first to last, amazes me.

His Answer put in before your *Lordships* to the Charge of the *Commons*, is throughout evasive and reflecting; but in this part of it there is a *Master-piece* of *Equivocation* and *Malice*, to avoid either confessing or denying the Charge, and to cast an *Odium* on the *Commons* as *Persecutors* of the *Clergy*.

The Words are these:

"Hard is the Lot of the *Ministers* of the *God*, if when they cite the *Word of God* in their general Exhortations to *Piety* and *Virtue*; or in Reproof of *Mens Transgressions*, or where they are lamenting the *Difficulties* and *Conflicts* with which the *Church of Christ* whilst militant here on Earth, must always struggle; the several Texts

"and

"and Passages by them cited, shall be said to have been by them meant of *particular Persons* and Things, and shall be considered in the most criminal Sense, and be made by such Construction, one Ground of an Impeachment for High Crimes and Misdemeanors."

These are the Words of his Answer; and give me leave to ask, Do they deny, or do they confess the Charge?

Neither——But are an *Appeal* to the *Passions* of the *People*, amongst whom it has been so *industriously* and *irregularly* dispersed.

Yet I dare say every *unwary* Reader took the Doctor to have *deny'd* this Charge, and felt some Indignation against the Commons for *making* it.

My Lords, he has now come upon his *Trial*, he has been charged *home* upon this *Head*.

And permit me to say, there cannot be a *heavier Charge* upon a *Minister of the Gospel*, nor more *afflicting* to any one that has not abandoned all Pretence to *Common Honesty*.

Give me leave to mention some of those *solemn Words*, wherein a Priest receives his Orders. "Receive the *Holy Ghost*, for the Office and Work of a Priest in the Church of God; and be thou a faithful Dispenser of the Word of God, and of his Sacraments, in the Name of the Father, of the Son, and of the Holy Ghost."

This Crime therefore, when committed by a Priest, is *betraying* that *sacred Trust* reposed in him with his holy Orders; 'tis *forging* the Authority of God, 'tis assuming a *Superiority* over the *inspired Writers*, if not over *Him* that inspired them.

The Doctor therefore, that is *sensible* (as he says) of the *Load of Guilt and Infamy* the Charge of the Commons lays upon him, and whereof this is surely the heaviest Part; What does he say to this?

He says, if he be guilty he is to answer it at another Tribunal, where he is to be judged by those Scriptures.

My Lords, so he is to answer at that great Tribunal for every Branch of this present Charge.

But is this all? Is he negligent of his Reputation in no other Instance but this, that is the *tenderest* and most *afflicting*?

Or will he thus give himself up for a *Falsifier* of the Word of God, and yet have the Confidence to hope for any Reputation, or any Capacity of doing good in preaching it?

Is it thus the Dignity of the Sacred Order is to be supported?

Is this the Cause of the Church, and of Christianity? And are they wound up in the Fate of an *Impostor* and *false Prophet*?

Pardon the Warmth of Expression; his not saying a Word to the Charge, owns all this.

My Lords, It is true (as the Doctor has said) the Sacred Order, the Church and Christianity are concerned in this Cause; but 'tis, that they may be clear'd from the *Reproach* brought upon them by this unhappy Man.

But if he be *self-condemned*, if he dare not open his Mouth on this Subject, how dare he declare his Hopes, that those of your Lordships, whose Studies more particularly lead that way, should acquit him?

My Lords, He has made an *Appearance* before your Lordships in a manner very extraordinary, not only as in a Defence of a Prosecution, but as in a most solemn Act of Devotion, before the most August Judicature on Earth, appealing to a yet greater in Heaven.

But with what Sincerity! what Candor! or what Sense of that which he has done!

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I am amazed, that a Person in *holy Orders*, in his distinguishing *Habit*, before this *awful Assembly*, should dare to take the *tremendous Name* of God into his Lips, and appeal to him for the Sincerity and Integrity of his Heart, at that very Time when he stands charged with *this black Crime*, and is neither able to repel it, nor has the Sincerity and Honesty to repent, to take Shame upon himself in the most publick manner, and to ask Pardon of God and the World for it.

But while he can thus, with such Assurance as your Lordships have seen, and now see, face out such a Crime, and be *equivocating* and *playing double* with your Lordships, with God Almighty, and his own Conscience; what Regard is to be had to his most solemn Protestations? His manifest *Insincerity* in this plain Point, leaves him no Credit in any thing; and his having taken the *Abjuration Oath*, gives me not the least Difficulty, after what I have observed of his more solemn Oath before your Lordships.

My Lords, The just Veneration we owe to the *Divine Majesty*, (for the Doctor's Behaviour has made that now part of the Case) the Honour of Christianity, the Church and its Holy Orders, the Security of the present Establishment and the Protestant Succession, the Safety of her Majesty's Person, the Quiet of her Government, the Duty we owe to her as our Sovereign, the Gratitude for her most gracious Administration, the Honour of our Prelates, the Obligations we are under to prevent Seditions and Tumults, to undeceive the People, to quiet the Minds of the Protestant Dissenters, and convince them that the Toleration allowed them by Law is not to be taken away from them, to secure at present, and transmit to our Posterity (as far as in us lies) our Religion and Liberties, and vindicate the Revolution (which is the Foundation on which they stand) and the Glory of our late Royal Deliverer, to whom, under God, we owed it; and to banish Sedition from the Pulpit, which is, and ever ought to be sacred to Divine Purposes, REQUIRE the Commons to demand your Lordships Judgment on this Offender.

But, my Lords, he observes so far rightly, that his Punishment is not all we aim at.

No, my Lords,——What we expect from your Lordships Justice, is, the supporting our Establishment, the preventing all Attempts to sap its Foundation, and answering those other great Purposes I have mentioned; and I hope the Clergy will be instructed, not to preach the Doctrine of Submission in such manner as to prepare the way to Rebellion, but to follow the Advice and Example of my Lord Archbishop of York, rather than tread in the Steps of Doctor Sacheverell.

And we doubt not, but that those to whom our Proceedings have been so industriously misrepresented, will see and own the Favour shewn to this Man, in the manner of the Charge; and our Care for the Honour of the Church and Clergy, in singling out for an Example for these impious Attempts against his Country, him that now plainly appears the Shame of his own Order.

Lord Nottingham. My Lords, I desire your Opinion, whether I may propose a Question to the Judges here.

Thereupon the Lords, being moved to adjourn, adjourned to the House of Lords; and being returned, and seated as before, Proclamation was made for Silence.

Note, During this Adjournment, the Lords on Debate agreed, That the Question should be proposed in Westminster-Hall.

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Lord

Lord Nottingham. My Lords, The Question I humbly propose to your Lordships, that my Noble Lord on the Woolfack may propose to the Reverend Judges, is, Whether by the Law of *England*, and constant Practice in all Prosecutions, by *Indictment or Information* for Crimes and Misdemeanors by Writing or Speaking, the particular Words, supposed to be Criminal, must not be expressly specified in such *Indictment or Information*?

Then the Lords were moved to adjourn, and accordingly adjourned to the House of Lords; and being returned, and seated as before, Proclamation was made for Silence.

Lord Chancellor. I take it, the Question that your Lordships are of Opinion to ask the Judges for them to give an Answer to, is, Whether by the Law of *England*, and constant Practice in all Prosecutions, by *Indictment or Information* for Crimes and Misdemeanors by Writing or Speaking, the particular Words, supposed to be Criminal, must not be expressly specified in such *Indictment or Information*?

Mr. Baron Lovell. My Lords, I have always taken it to be so, and by constant Experience we have practis'd it so, that all Words and Writings, which are supposed to be Criminal, ought to be expressly mentioned in the Information or Indictment.

Mr. Justice Dormer. My Lords, I am of Opinion, That by the Laws of *England*, and constant Practice in all Prosecutions, by *Indictment or Information* for Crimes and Misdemeanors in Writing or Speaking, the particular Words supposed to be Criminal, ought to be specify'd in such Indictment or Information, in the Courts of *Westminster-Hall*.

Mr. Baron Bury. My Lords, I am of the same Opinion with my Brothers.

Mr. Justice Tracy. My Lords, I am of the same Opinion.

Mr. Justice Gould. My Lords, I am of the same Opinion. It is our Practice in the *King's Bench*; and we specify the Words in the Indictment, or it is Cause of Demurrer.

Mr. Justice Blencowe. My Lords, I am of the same Opinion with my Brothers.

Mr. Justice Powys. My Lords, I am of the same Opinion.

Mr. Justice Powell. My Lords, The Law of *England* is certainly so.

Lord Chief Baron. My Lords, I am of the same Opinion.

Lord Chief Justice Trevor. My Lords, I am of the same Opinion, That by the Laws of *England* the Words ought to be specify'd in the Indictment or Information.

Then the Lords adjourned to the House of Lords, as before.

Note, *The Lords did not come again into Westminster-Hall 'till Monday the 20th of this Month of March; but in order to the Delivery of their Opinions, did on some of the intermediate Days come to these following Resolutions, viz.*

Saturday, March 11.

Resolved by the Lords Spiritual and Temporal in Parliament Assembled, That this House will proceed to the Determination of the Impeachment of

Doctor *Henry Sacheverell*, according to the Law of the Land, and *the Law and Usage of Parliament*.

Tuesday, March 14.

It is Resolved by the Lords Spiritual and Temporal in Parliament Assembled, That by *the Law and Usage of Parliament*, in Prosecutions by *Impeachments* for High Crimes and Misdemeanors, by Writing or Speaking, the particular Words supposed to be Criminal are *not necessary* to be expressly specify'd in such *Impeachments*.

It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That on *Thursday* next, at Eleven a Clock, this House shall proceed upon the Impeachment of *Henry Sacheverell*, Doctor in Divinity, Article by Article.

Thursday, March 16.

It is Resolved by the Lords Spiritual and Temporal in Parliament Assembled, That the Commons have made good their first Article of Impeachment against *Henry Sacheverell*, Doctor in Divinity.

Friday, March 17.

The like Questions were severally put concerning the Second, Third, and Fourth Articles, and severally Resolved in the Affirmative.

It is Resolved by the Lords Spiritual and Temporal in Parliament Assembled, That the Commons have made good the Second, Third and Fourth Articles of their Impeachment against *Henry Sacheverell*, Doctor in Divinity.

Saturday, March 18.

It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the Question to be put to each Lord in *Westminster-Hall* shall be,

Is *Henry Sacheverell*, Doctor in Divinity, Guilty of High Crimes and Misdemeanors, charged on him by the Impeachment of the House of Commons? And the Answer thereunto shall be, Guilty, or Not Guilty, *only*.

Monday, March 20.

The Lords coming down from *Westminster-Hall*, and being seated in the manner before-mentioned, Proclamation was made by the Serjeant at Arms as follows:

Our Sovereign Lady the Queen doth strictly Charge and Command all manner of Persons to keep Silence, upon Pain of Imprisonment.

Then another Proclamation was made: *Henry Sacheverell*, Doctor in Divinity, come forth, save thee and thy Bail, else thou forfeitest thy Recognizance.

The Doctor appearing at the Bar accordingly, with his Council, as before:

Lord Chancellor. Your Lordships having fully heard and considered of the Evidence and Arguments in this Case, have agreed upon a Question, which is severally to be put to your Lordships in the usual Order. The Question is this, That Doctor *Henry Sacheverell* is Guilty of High Crimes and Misdemeanors, charged on him by the Impeachment of the House of Commons.

Lord Chancellor. Lord *Pelham*, What is your Lordship's Opinion; Is Doctor *Henry Sacheverell* Guilty?

Guilty of High Crimes and Misdemeanors, charged on him by the Impeachment of the House of Commons?

Lord Pelham, Guilty.

The same Question was severally put to the rest, whose Names and Votes are as follow.

Lord Hervey, Guilty.
 Lord Conway, Not Guilty.
 Lord Guernsey, Not Guilty.
 Lord Halifax, Guilty.
 Lord Haversham, Not Guilty.
 Lord Herbert, Guilty.
 Lord Weston, Not Guilty.
 Lord Leimster, Not Guilty.
 Lord Guilford, Not Guilty.
 Lord Stawell, Not Guilty.
 Lord Dartmouth, Not Guilty.
 Lord Ossulston, Guilty.
 Lord Osborne, Not Guilty.
 Lord Craven, Not Guilty.
 Lord Cornwallis, Guilty.
 Lord Berkeley of Stratton, Not Guilty.
 Lord Lexington, Not Guilty.
 Lord Rockingham, Guilty.
 Lord Colepeper, Guilty.
 Lord Byron, Guilty.
 Lord Leigh, Not Guilty.
 Lord Mobun, Guilty.
 Lord Howard of Esrick, Not Guilty.
 Lord Hunsdon, Guilty.
 Lord Chandos, Not Guilty.
 Lord North and Gray, Not Guilty.
 Lord Paget, Guilty.
 Lord Willoughby of Broke, Not Guilty.
 Lord Fitzwalter, Guilty.
 Lord Ferrers, Not Guilty.
 Lord De la War, Guilty.
 Bishop of St. Asaph, Guilty.
 Bishop of Norwich, Guilty.
 Bishop of Chester, Not Guilty.
 Bishop of Lincoln, Guilty.
 Bishop of Bath and Wells, Not Guilty.
 Bishop of Oxford, Guilty.
 Bishop of Peterborough, Guilty.
 Bishop of Ely, Guilty.
 Bishop of Sarum, Guilty.
 Bishop of Rochester, Not Guilty.
 Bishop of Durham, Not Guilty.
 Bishop of London, Not Guilty.
 Lord Viscount Weymouth, Not Guilty.
 Lord Viscount Say and Sele, Not Guilty.
 Earl of Ilay, Guilty.
 Earl of Glasgow, Guilty.
 Earl of Roseberry, Guilty.
 Earl of Seafeld, Guilty.
 Earl of Orkney, Guilty.
 Earl of Northesk, Not Guilty.
 Earl of Leven, Guilty.
 Earl of Wymes, Not Guilty.
 Earl of Loudoun, Guilty.
 Earl of Mar, Not Guilty.
 Earl of Crawford, Guilty.
 Earl of Cholmley, Guilty.
 Earl Powlet, Not Guilty.
 Earl of Wharton, Guilty.
 Earl of Greenwich, Guilty.
 Earl of Grantham, Guilty.
 Earl of Jersey, Not Guilty.
 Earl of Orford, Guilty.
 Earl of Bradford, Guilty.
 Earl of Warrington, Guilty.

Earl of Scarborough, Not Guilty.
 Earl of Portland, Guilty.
 Earl of Plymouth, Not Guilty.
 Earl of Holdernefs, Guilty.
 Earl of Abington, Not Guilty.
 Earl of Rochester, Not Guilty.
 Earl of Nottingham, Not Guilty.
 Earl of Berkeley, Guilty.
 Earl of Yarmouth, Not Guilty.
 Earl of Radnor, Guilty.
 Earl of Sussex, Not Guilty.
 Earl of Carlisle, Guilty.
 Earl of Anglesey, Not Guilty.
 Earl of Scarfdale, Not Guilty.
 Earl of Sunderland, Guilty.
 Earl of Thanet, Not Guilty.
 Earl of Winchelsea, Guilty.
 Earl of Stamford, Guilty.
 Earl Rivers, Guilty.
 Earl of Berkshire, Not Guilty.
 Earl of Manchester, Guilty.
 Earl of Westmorland, Guilty.
 Earl of Denbigh, Not Guilty.
 Earl of Northampton, Not Guilty.
 Earl of Leicester, Guilty.
 Earl of Bridgewater, Guilty.
 Earl of Dorset and Middlesex, Guilty.
 Earl of Lincoln, Guilty.
 Earl of Pembroke, Not Guilty.
 Earl of Derby, Guilty.
 Marquis of Dorchester, Guilty.
 Lord Chamberlain of the Household, Guilty.
 Duke of Dover, Guilty.
 Duke of Roxborough, Guilty.
 Duke of Montrose, Guilty.
 Duke Hamilton, Not Guilty.
 Duke of Buckinghamshire, Not Guilty.
 Duke of Bedford, Guilty.
 Duke of Leeds, Not Guilty.
 Duke of Shrewsbury, Not Guilty.
 Duke Schomberg, Guilty.
 Duke of Bolton, Guilty.
 Duke of St. Albans, Guilty.
 Duke of Northumberland, Not Guilty.
 Duke of Beaufort, Not Guilty.
 Duke of Ormond, Not Guilty.
 Duke of Grafton, Guilty.
 Duke of Richmond, Guilty.
 Duke of Cleveland and Southampton, Guilty.
 Lord Steward, Guilty.
 Lord Privy Seal, Guilty.
 Lord President, Guilty.
 Lord Treasurer, Guilty.
 Archbishop of York, Not Guilty.
 Lord Chancellor, Guilty.

Then some Time being spent by the Lord Chancellor in numbring the Opinions of the Lords:

Lord Chancellor. My Lords, I have cast them up with as much Exactness as I can; and I find that there are of your Lordships present in all One Hundred Twenty one; of these Sixty Nine of your Lordships have found Dr. Henry Sacheverell Guilty of the High Crimes and Misdemeanors charged on him by the Impeachment of the House of Commons, and Fifty Two have found him Not Guilty.

Then Dr. Henry Sacheverell was brought to the Bar, and kneel'd till he was bid to stand up by the Lord Chancellor.

Lord Chancellor. Dr. Henry Sacheverell, The Lords having fully considered of your Case, have found

found you Guilty of High Crimes and Misdemeanors, charged on you by the Impeachment of the House of Commons.

Dr. *Sacheverell*. My Lords, One of your Lordships Officers acquainted me, that it was your Lordships Order, That neither I nor my Counsel might have the Privilege of standing at the Bar while your Lordships were giving your Opinions whether I was Guilty of the Crimes laid to my Charge; by which Means I was prevented from offering several Matters to your Lordships Consideration in Arrest of Judgment, which I now beg leave to offer to your Lordships Consideration, and I desire my Counsel might be heard to them.

The first is, That no entire Clause, Sentence or Expression, contained in either of my Sermons or Dedications, is particularly set forth in my Impeachment, which I have already heard the Judges declare to be necessary in all Cases of Indictments or Informations.

I desire to add another Exception, That the Impeachment is by the Knights, Citizens and Burgeesses, Commissioners of Shires and Burghs, in the Name of themselves, and of all the Commons of *Great Britain*; but the Articles are only by the Knights, Citizens and Burgeesses, in the Name of Themselves, and of all the Commons of *Great Britain*; which is neither agreeable to the Impeachment, nor to the Title of the House of Commons since the happy Union.

Then the Lords adjourned to the House of Lords,

Where they took into Consideration the Matter moved by Dr. *Sacheverell* in Arrest of Judgment; and thereupon ordered,

That this House will, to-morrow, at eleven of the Clock, take into Consideration what Censure to pass upon the said Dr. *Henry Sacheverell*.

Tuesday, March 21.

The Lords, upon Debate in the House of Lords, agreed upon the Judgment to be passed in this Case upon Dr. *Henry Sacheverell*, in the Form hereafter mentioned.

Wednesday, March 22. in the House of Lords.

A Message was sent to the House of Commons, to acquaint them, That the Lords are ready to give Judgment in the Case of *Henry Sacheverell*, Doctor in Divinity, if they with their Speaker will come and demand the same.

Thursday, March 23. in the House of Lords.

A Message was brought from the House of Commons, to acquaint the House of Lords, That the House of Commons, with their Speaker, do intend immediately to come to the House of Lords, to demand Judgment against Dr. *Henry Sacheverell*; and therefore desire that the Painted-Chamber, and Passage to the House (of Lords) may be cleared.

The Messengers were called in and told, the Lords would give Order as desired.

Which was done accordingly.

Then the House of Lords adjourned during Pleasure to Robe.

And being resumed,

The Commons, with their Speaker, being present at the Bar of the House of Lords,

The Deputy Gentleman-Usher of the Black-Rod brought the Prisoner to the Bar, who after low Obeisances made, kneel'd, until the Lord Chancellor bid him stand up.

Then the Speaker said as followeth, *viz.*

My Lords, The Knights, Citizens and Burgeesses in Parliament Assembled, in the Name of themselves, and of all the Commons of *Great Britain*, did at this Bar Impeach Dr. *Henry Sacheverell* of High Crimes and Misdemeanors, and did exhibit Articles of Impeachment against him, and have made good the same:

I do therefore, in the Name of the Knights, Citizens and Burgeesses in Parliament Assembled, and of all the Commons of *Great Britain*, demand Judgment of your Lordships against Dr. *Henry Sacheverell*, for the said High Crimes and Misdemeanors.

Then the Lord Chancellor said,

Mr. Speaker, The Lords are now ready to proceed to Judgment in the Case by you mentioned.

Dr. *Sacheverell*, the Lords having found you Guilty of High Crimes and Misdemeanors, charged on you by the Impeachment of the House of Commons; and you being thereupon admitted to the Bar, and acquainted therewith, moved two Things in Arrest of Judgment.

First, That no entire Clause of either of the Books or Sermons referred to in the Impeachment, is specify'd, or particularly set forth, in any of the Articles of Impeachment.

Secondly, That in the Title of the Articles exhibited by the Commons, the Style of the Commons run thus,

"The Knights, Citizens and Burgeesses in Parliament Assembled, in the Name of themselves, and of all the Commons of *Great Britain*, &c." Omitting the Words, Commissioners of Shires and Burghs.

I am to acquaint you, That the Lords took these Points into Consideration.

I. And as to the First, they found,

That on Occasion of the Question before put to the Judges in *Westminster-Hall* in this Case, and their Answer thereto, their Lordships had before fully debated and considered of that Matter, and had come to the following Resolution:

That this House will proceed to the Determination of the Impeachment of Dr. *Henry Sacheverell*, according to the Law of the Land, and the *Law and Usage of Parliament*.

And after, to this Resolution;

That by the *Law and Usage of Parliament*, in Prosecutions by Impeachments for High Crimes and Misdemeanors, by Writing or Speaking, the particular Words supposed to be criminal are not necessary to be expressly specified in such Impeachments.

So that, in their Lordships Opinion, the Law and Usage of the High Court of Parliament being a Part of the Law of the Land, and that Usage not requiring the Words should be expressly specified in Impeachments, the Answer of the Judges, which related only to the Course used in Indictments and Informations, does not in the least affect your Case.

II. As to the Second,

Their Lordships finding, that in the Act made in the Sixth Year of Her now Majesty, For rendering

dering the Union of the two Kingdoms more entire and compleat, the Terms *Commissioners of Shires and Knights of the Shires, Commissioners of Boroughs and Burgeses*, are used as synonymous Terms, signifying the same Thing; they were clearly of Opinion there can be no Weight in that Exception, and accordingly over-ruled the same; without entring into the further Consideration, how far a Mistake in the Title of the Articles, would viciate or avoid an Impeachment, if such a Mistake had happened.

So that the Lords find themselves obliged by Law to proceed to Judgment against you, which I am ordered to pronounce.

And in which you cannot but observe an extreme Tendernefs towards your Character, as a Minister of the Church of England.

Therefore this High Court doth adjudge as followeth,

That you Henry Sacheverell, Doctor in Divinity, shall be, and you are hereby enjoined not to preach during the Term of three Years next ensuing.

That your two printed Sermons, referred to by the Impeachment of the House of Commons, shall be burnt before the Royal Exchange in London, between the Hours of one and two of the Clock, on the twenty-seventh day of this instant March, by the Hands of the common Hangman, in the Presence of the Lord Mayor of the City of London, and the Sheriffs of London and Middlesex.

Then the Speaker with the Commons returned to their House; and Dr. Sacheverell being withdrawn,

The House was adjourned during Pleasure to unrobe.

The House was resumed.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That Dr. Henry Sacheverell's two printed Sermons, one preached at Derby Assizes, and the other at St. Paul's, London, referred to by the Impeachment of the House of Commons, shall be burnt before the Royal-Exchange in London, between the Hours of one and two of the Clock, on the seven and twentieth day of this instant March, by the Hands of the common Hangman, in the Presence of the Lord Mayor

of the City of London, and the Sheriffs of London and Middlesex.

To the Lord Mayor of the City of London, and the Sheriffs of London and Middlesex.

The House taking into Consideration a Judgment and Decree of the University of Oxford, passed in their Convocation the one and twentieth of July, one thousand six hundred eighty-three, given in Evidence by Dr. Henry Sacheverell at his Trial, upon the Impeachment of the House of Commons, and thereupon lately reprinted; It is Resolved by the Lords Spiritual and Temporal in Parliament assembled, That the said Judgment and Decree contains in it several Positions contrary to the Constitution of this Kingdom, and destructive to the Protestant Succession as by Law established.

It is thereupon Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the said Judgment and Decree, lately printed and published in a Book or Pamphlet, entitled, *An entire Confutation of Mr. Hoadly's Book of the Original of Government, taken from the London Gazette, published by Authority; London, Reprinted in the Year 1710.* shall be burnt by the Hands of the common Hangman, in the Presence of the Sheriffs of London and Middlesex; at the same Time and Place, when and where the Sermons of Dr. Henry Sacheverell are ordered to be burnt.

To the Sheriffs of London and Middlesex.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Lord High Chancellor of Great Britain do give Order for the printing and publishing the Trial of Henry Sacheverell, Doctor in Divinity; and that no other Person do presume to print the same. And further, That the last mentioned Resolution and Order agreed on this Day, be printed at the End of the said Trial.

The Lord Haversham's SPEECH in the House of Lords, on the first Article of the Impeachment of Dr. Henry Sacheverell.

My LORDS,

WHEN I consider where this Impeachment first began, I cannot but think the Design of it was very good; but whatever it was, in its first Intendment, it is very evident, it has already produced very mischievous Effects; it has created great Disturbances in private Families, and Tumults among the People; and raised a Ferment in the Nation, that will not be laid by your Lordships Judgment, let that be what it will. It has been a two-edged Mischief; giving the Church on the one side, and the Dissenter on the other, too just Apprehension, that they are both in danger. Nor can this be won-

dered at, when your Lordships have been told, by some of the Managers, of a pretended Divine Right of the Church; and when it has been more than hinted by the Managers of the House of Commons, That the Clergy ought to be directed by the Civil Power, what Doctrine they should teach: Nay, when they have authoritatively taken upon them to interpret Scripture, and charged it as a Crime upon a Minister, that he had wrested several Places of it to his own wicked Intentions.

My Lords, After so noble a Defence made for the Doctor by his Counsel, and to great and moving

moving an Apology by himself, I should not trouble your Lordships upon this Occasion, were it not more in Justification of myself, for the Judgment I shall give, than for the sake of the Doctor, whose Cause, I think, now stands in very little need of it.

I was, *my Lords*, a Sufferer in the late Reigns, as well as others; I was in the Convention-Parliament, and in the Vote of Abdication; and am, at this day, of the same Principle I was then; and yet, notwithstanding this, I am not ashamed to say to your Lordships, that I think myself obliged, in Justice, to acquit the Doctor from the Charge brought against him in this Article. And tho' this may seem strange to some of your Lordships, yet, I hope, it will not appear so very strange as to see Bishops vote against their own Doctrines, and Dissenters in the midst of a Mob, that are pulling down Meeting-Houses; especially, after the Reasons I shall offer to your Lordships for the Support of my Opinion.

I shall not trouble your Lordships about the Original of Government, or the divers Forms of it; your Lordships heard that learnedly discoursed on by one of the Managers of the House of Commons below: But there is one thing, *My Lords*, that if my Memory serves me right, that Gentleman omitted, and it is a Matter too that I take to be of the greatest Consequence to any Government whatsoever: I mean, the Divine Appointment, or Institution of Government itself; from which Appointment it is, that Men are obliged to Obedience to the Magistrate, not only for Wrath, or Fear of him, but for Conscience-sake, for Dread of a future Punishment, which is the greatest Security the Magistrate has. And I the rather mention this, because of Notions that some People have of late advanced of their own, (and have found their Advantage too in so doing) of a discretionary Obedience only; that is, in my Opinion, whilst the Government is for them, they will be for it; and think themselves bound to obey no longer. It is not necessary, to the Proof of this Divine Authority, to fix the just Time and Place, when, and where, and how the Knowledge of it was first communicated to Mankind: It is enough, that we have it as expressly, as plainly, and as clearly declared, as can be put into Words, that it is so.

There is another thing, *My Lords*, that in general, I would mention to your Lordships, before I come to the Article itself, which may otherwise be the Occasion of some Mistake in this Debate; we are not now judging according to our own Notions of Politicks, or determining how far Resistance or Non-Resistance is lawful. It would be a strange Rule of Judgment, to find any Man guilty for the sake of one's own private Opinion, and for the establishing a Doctrine which he likes, and his Neighbour does not. But the only Question before your Lordships is, whether, and how far, the House of Commons have made good their Charge against the Doctor. And, I take liberty to say plainly to your Lordships, that, in my Opinion, they have been very far from making good their Charge against him in this Article.

My Lords, to prevent the least Mistake, I shall read the Words of the Article to your Lordships, as they stand in the Impeachment.

"He, the said *Henry Sacheverell*, in his said Sermon preach'd at *St. Paul's*, doth suggest and maintain, That the necessary Means used to bring about the said happy Revolution, were odious and unjustifiable: That his late Majesty, in his Declaration, disclaim'd the least Imputation of Resistance, and that to impute Resistance to the said Revolution, is to cast black and odious Colours upon his late Majesty and the said Revolution."

The Doctor in this Article is charged with having maintained, *That the necessary Means used to bring about the late happy Revolution, were odious and unjustifiable*. To support this, the Commons say, That having asserted the general Proposition of the Unlawfulness of Resisting the Supreme Power, and not having excepted the particular Case of Resistance that was made use of as a Means to bring about the late happy Revolution; he does thereby reflect both upon the Means, and upon the said Revolution. In Answer to this, there have been two Things insisted upon to your Lordships, in behalf of the Doctor, by his Counsel: First, That in Cases of such a Nature as this, the Exception is always imply'd in the general Rule; and there was a very unanswerable Instance brought in Proof of this, at least to most of your Lordships; it was the Oath of Allegiance to King *James*. All those that took that Oath, took it in general Words, and yet such an extraordinary Case as the Revolution was excepted, tho' not express'd by those that took that Oath. The next was, the Doctor, say they, would have been justly more blam'd, had he mention'd all the Cases of Exception, which extraordinary Cases ought to answer for themselves, whenever they fall out.

And tho', *My Lords*, these two be a full Answer, yet there are two things more, I think, with Submission, may be added to it, which have not as yet been taken notice of.

The first is, *My Lords*, That the Proof against the Doctor is drawn by Consequences of the Commons own making, which he himself disowns; and I appeal to that Reverend and Learned Bench, who are great Masters of Controversy, whether it is not an establish'd Rule amongst all learned Men that have the least Spark of Ingenuity, That no Man ought to be charged with Consequences, let them appear to his Adversary never so clearly and undeniably to follow from his Assertion, when he himself denies those Consequences. This is so known a Maxim, in all Disputes between Protestants and Papists, and between Protestants themselves, that it cannot be denied. Now, the Doctor himself denying, as he does, that he had the least Thought of including the Revolution under his general Assertion, or that he apply'd his Doctrine of Non-Resistance to that Case, cannot, without the highest Injustice, be charged with Consequences which he himself utterly denies.

In the next place, it is impossible, in my Opinion, to prove that Resistance was made use of as a Means to bring about the late happy Revolution; and, consequently, is not within the Doctor's general Maxim.

Means, *My Lords*, is a relative Term, and refers to some End; and the End and Design of the

the Prince of *Orange* in his coming hither, and of those that join'd him when he was here, being to have the Nation and Rightful Succession secur'd by a Free Parliament, it follows, that whatever Force was at that Time made use of, could not be made use of as a Means to bring about an End which was never intended.

Far be it from me, *My Lords*, to lessen the great Undertaking to deliver us from Popery and Arbitrary Power; and tho' the Glory of that Enterprize is wholly attributed to King *William*, 'tis certain, her present Majesty had her Share in it, however that is forgotten: For, give me leave to say, that had not her Majesty countenanc'd the Undertaking of the Prince of *Orange* with her Assistance, in my Opinion, the Success had been very dubious.

Now, is it possible, *My Lords*, to imagine, that it was ever the Design of her Majesty, or those that join'd the Prince of *Orange*, to take the Crown off of King *James's*, and put it upon King *William's* Head?

No, *My Lords*, the avowed great Design was quite otherwise, as appears by the Declaration it self, which was read below: It was to restore and secure our Laws from the Invasions that had been made upon them by Arbitrary Power: It was to secure that Right which all the World knows the Princess had to the Succession of the Crown, and to have every thing settled by a free Parliament, and not to make a Revolution by de-throning King *James*. This the Prince himself owns, when he says in his Declaration, *he had no other Design in coming hither, but a Free Parliament.*

My Lords, I take it to be of most dangerous Consequence, to judge any Man by Suggestions and Innuendos: Let what will be said to justify it, it shall never be the Rule of my Judgment.

Groundless Suggestions, *My Lords*, have, within my Memory, been the Pretence of Power, to cover illegal Oppression with the Shew of Reason, to the Publick. I will give your Lordships but one Instance of it: It was the Case of a Reverend Prelate, now in the House; I mean the Archbishop of *York*; his Grace was then Dr. *Sbarpe* only. It was in the Year Eighty Six; there was an Order, directed by way of Letter to the Protestant Bishops, to discharge all the inferior Clergy from preaching upon controverted Points in Divinity. They thought it served the Designs of Popery, then, to direct Ministers how they should preach; which was, in effect, to forbid them to defend their Religion. This Precedent was taken from an Order in Queen *Mary's* Time, says the printed Account; when at the same time, it was attack'd by the *Romish* Priests with all the Vigour they were capable of, whilst the Popish Sermons and Discourses were printed by Authority. Notwithstanding this Order, the Doctor took occasion, in some of his Sermons, to vindicate the Church of *England*, in opposition to the Frauds and Corruptions of Popery. But this, by the Court Emissaries, was interpreted much the same way as the Doctor's Sermon is now, to be endeavouring to beget in the Minds of his Hearers, an ill Opinion of the King and his Government, by insinuating Fears and Jealousies, to dispose them to Discontent, and to lead them into Schism, Disobedience and Rebellion.

My Lords, When the Homilies and Articles, when so many Archbishops and Bishops, and the University, and most of the Foreign Divines

too, especially the *Lutherans*, have asserted the same Doctrine of Non-Resistance to the Supreme Power, as Dr. *Sacheverell* has; I think it the hardest Case in the World, that this unfortunate Gentleman should thus be singled out and made a Criminal, and a kind of Martyr, enduring the Trial of cruel Mockings, yea, moreover, of Bonds and Imprisonment, for asserting the same Doctrine. 'Tis true, *Beza* and *Pareus*, and some others of the *Calvinists*, are of another Opinion; but 'tis known, that *Pareus's* Commentary on the 13th of the *Romans* was burnt at *Oxford*, by the Order of King *James I.* for asserting that Doctrine.

But there is one thing, *My Lords*, so astonishing in this Prosecution, that I cannot but take notice of it: Those who were at Man's Estate, at the Revolution, know how industrious, on the one side, all that were Friends to King *James* were, to put his leaving the Nation then upon the Foot of Force and Resistance, as thinking this the strongest and best Argument to justify his withdrawing himself from his People. They rack'd their Brains to find out Arguments to convince Men, that his Life was manifestly in Danger, by staying here; and that it was for the sake of that, and his Liberty, that he was forc'd to withdraw; and that his Withdrawing was just, being an Act of Necessity, and not of Choice.

On the other side, those that were Friends to the Revolution, made it their Business to persuade the World, that all this was but a Colour and Pretence, and that the Fact was quite otherwise; that the Sense and Conviction King *James* had of what he had done, prevail'd upon him rather to throw off the Government, than concur with a Free-Parliament.

That this was the only Foot they then put it upon; and that it was not then put upon the Foot of forfeiting the Government by Male-Administration; if any Man denies, I appeal to the Papers that were then writ, and are now in Print, on this Subject.

This being so, it is very strange to see so great an Alteration in Mens Notions of Things; and that now, after our Constitution has maintain'd it self upon this Foot, against all Designs and Attempts that have been made upon it, for above twenty Years, those very Men, and that Party, who endeavour'd to place the Revolution then, upon King *James's* voluntary Desertion, which they call'd *Abdication*, should now without any Reason given, be for changing that Foundation, and do all they can, to put it upon King *James's* Foot of Force and Resistance. What, *My Lords*, are we endeavouring, after twenty Years, to make King *James's* Title better now than any of his Friends could make it then, and not only finding out Arguments they never thought of, but impeaching any that dare so much as question the Truth and Force of them? This, *My Lords*, seems very strange.

My Lords, I cannot but take Notice to your Lordships, of what was said by that noble Lord, who spoke last, because, to me it appears to be a Matter of the last Consequence, to the Honour of her present Majesty. He told your Lordships, that the best Title her Majesty had to the Crown, was her Parliamentary Title. I must take liberty to affirm the quite contrary; and that, in my opinion, the best Title her Majesty has, is her Hereditary Title; tho' I deny not, but that

the Act of Parliament is a Strengthening and Confirmation of that Title: But I deny a Parliamentary-Title to be the only, or the best Title that the Queen has to the Crown she wears. And in saying this, I do not fear the malicious Reflections of having a squinting Regard to the Title of any Person on the other side the Water; for in affirming (as I now do to your Lordships) that her Majesty is my Rightful and Lawful Queen, by Right of Inheritance; and as she is Daughter to King *James* the Second, I do in so many Words affirm also, that there is no other Person, the Rightful and Lawful

Heir to King *James*, but herself. And if the present Impeachment of Dr. *Sacheverell* shall have this Effect (as I hope it will) to convince the Nation of the undoubted Truth of her Majesty's Right of Inheritance to the Crown, (a Matter now so industriously opposed) the Security this will bring to her Majesty's Person and Crown, and to the Succession in the Protestant Line, and Illustrious House of *Hanover* afterwards, shall prevail with me easily to pardon any warm and unguarded Expressions, that the Doctor may here and there have dropt, and made use of in any of his Discourses.

*The Bishop of Salisbury's * Speech in the House of Lords, on the first Article of the Impeachment of Dr. Henry Sacheverell.*

THE Counsel for the Prisoner did so plainly and fully yield all that any Loyal Subject has ever pretended to, that in Cases of extreme Necessity, Self-defence and Resistance were lawful, and that this was the Case at the Revolution; that it may not be necessary to say any thing further on this Head, if it had not been that the Evidence they brought seemed to carry this Matter much farther, and that the Prisoner himself allow'd of no Exception in Cases of Necessity. And since it is grown to be a vulgar Opinion, That by the Doctrine of the Church of *England*, all Resistance in any Case whatsoever, without Exception, is condemn'd; I think it is incumbent on me, who have examin'd this Matter long and carefully, to give you such a clear account of this Point, as may as fully satisfy you as it did myself.

I served in the Revolution, and promoted it all I could. I served as Chaplain to the late King: I had no Command, and carried no Arms, but I was so far engaged in it, that if I could see that I had gone out of the way in that (and the many Up-and-Downs we have have gone thro' since, has given much occasion to reflect on that Transaction) I should hold myself unworthy to appear longer, either in this Habit, or in this Great Assembly; but should think myself bound to pass away the rest of my Life in Retirement or Sorrow. There is nothing more certain in Religion, than that we ought to repent of every Sin we have committed; and that we cannot truly repent, unless we repair or restore, as far as it is in our power.

I go now to give you the Account of the Doctrine of our Church in this Particular. In the Times of Popery it was a Tenet, built upon Bishops setting the Crown on the Heads of Princes, and anointing them, that they held their Crowns of the Church, and at the Pope's Mercy; who had for about five hundred Years got into the Claim of deposing them, and giving their Dominions to others, in case they were Hereticks, or the Favourers of them. But the Reformation being in its first beginning protected by the Princes of *Germany*, by the Kings of the *North*, and then by the Kings of *England*; they came every where in opposition to the Papal Notions, to say that Kings had their Power from God: Not that they meant, that they had any distinct Authority besides the Law of the Land derived to them from God; but that by the Laws of God, the Authority of the Law of the Land was secured to them. For when a different Authority from that of the

Law came to be pretended to, and to be grounded on these general Expressions, that received here a Parliamentary Censure, and it was then declared, that the Laws of Religion in the Scripture did only establish the several Constitutions and Governments that were in the different Parts of the World.

The Occasion that the Apostles had to write what we find in their Epistles, with relation to Government, was this: The Jews had a Notion among them from a Passage in *Deuteronomy*, that they were only to set a King over them, *One from among their Brethren, and not a Stranger*. From whence it is, That to this day they do not think they are bound in Conscience to obey any Magistrate, who is not one of their Nation. Now the first Converts to Christianity being Jews, the Apostles took care that they should not bring this dangerous Notion with them into the Christian Religion: But they did not meddle to determine where this Authority was lodged, that was to be gathered out of the several Constitutions: They did not determine how much was due to the Emperor, and how much to the Senate; and tho' not long after those Epistles were writ, the Senate condemn'd *Nero* to die *more majorum*, to be whip'd to death, none of the Christians interposed in that Matter. He prevented that infamous Death by his own Hands: And the Primitive Christians reckon'd it one of the Articles of the Glory of their Religion, that their first Persecutor came to such an End.

Not long after that, *Trajan* was famed for that memorable Expression, when he deliver'd the Sword to the Governors of the Provinces, as the Emblem of their Authority, he used these Words, *Pro me, si merear, in me*: For me, but if I deserve it, against me. That did not weaken his Authority; his Government, with that of his Successors for above eighty Years, being the greatest and happiest time the *Romans* had under their Emperors. This Word was put on King *James* the First's Coin in *Scotland*. It is true, that was during his Minority; but when he afterwards changed his Motto, the Coin was not call'd in, but continued current till the Union.

The Primitive Christians had no Laws in their Favour, but many against them: so their patient suffering so many Persecutions according to the Laws of the Empire, under which they lived, was conform to the Doctrine laid down by the Apostles. When they came afterwards to have the

* Dr. Gilbert Burnet.

the Protection of Laws, they claim'd the Benefit of them, not without great Violence, when they thought an Infraction was made on those Laws; which broke out into great Tumults, in many of the chief Cities of the Empire, not excepting the Imperial City itself.

But to proceed with the History of our Church: When the Articles of Religion were settled, the Books of the *Apocrypha* were indeed declared not to be a part of the Canon of the Scripture, but yet to be useful for the *Example of Life*, and the *Instruction of Manners*. A great part of these are the Books of the *Maccabees*, which contain the History of the Jews shaking off the Yoke of the Kings of *Syria*, when they were broke in upon by a total Overthrow of their whole Law, and an unrelenting Persecution. *Mattathias* a private Priest began the Resistance which was carried on by his Children, till they shook off the *Syrian* Yoke, and formed themselves into a free Government, under the Family of the *Maccabees*. It were easy to shew that the Jews had been for above 400 Years subject, first to the *Babylonian*, then to the *Persian*, and at last to the *Grecian* Empire: So that by a long Prescription they were Subjects to the Kings of *Syria*. It were easy also to shew, that this Resistance was foretold by *Daniel*, in Terms of high Commendation, and is also mentioned in the Epistle to the *Hebrews*, as the Work and Effect of their Faith. If then all Resistance to illegal and barbarous Persecution is unlawful, these Books contain nothing but a History of a Rebellion, and all the Devotion that runs thro' them, is but a Cant, and instead of reading them as *Example of Life*, and *Instruction of Manners*, we ought to tear them out of our Bibles with Detestation. I shall afterwards shew what use was made of these Books, not only by private Writers of our Church, but by what the whole Body in Convocation was about to determine.

The next Step to be made, is, to consider the Homilies: The Second Book of Homilies, which has the Homilies in it against *Wilful Rebellion*, is generally believed to have been composed by Bishop *Jewell*, who was by much the best Writer in that time. It is certain, he understood the meaning of them well: Now I will read you two Passages out of his Defence of his Apology for the Church of *England*; from whence we may clearly gather what his Notion of Rebellion was, and that he thought a Defence against unjust and illegal Violence was not Rebellion. In one place he has these Words:

The Nobles of Scotland neither drew the Sword, nor attempted War against the Prince: They sought only the Continuance of God's undoubted Truths, and the Defence of their own Lives against your barbarous and cruel Invasions: They remember'd besides all other Warnings, your late Dealings at Vassy, where great Numbers of their Brethren were murder'd, being together at their Prayers in the Church, holding up their innocent Hands to Heaven, and calling upon God. In another place he writes, Neither do any of all these (Luther, Melancthon) teach the People to rebel against their Prince, but only to defend themselves by all lawful Means against Oppressions; as did David against Saul, so do the Nobles in France at this day, they seek not to kill, but to save their own Lives.

These Passages shew that he looked on Rebellion to be a violent Rising against a Prince executing the Laws; which was the Case of the three Rebel-

lions in *England* that they had in view: That in King *Henry* the VIIIth's, in King *Edward*'s, and in Queen *Elizabeth*'s Time, where the Papists took Arms against their Prince, who was executing Laws made in Matters of Religion; and that with a great Gentleness. Of the eleven Passages quoted by the Prisoner out of the Homilies, five plainly relate only to the coercing the Person of the Prince; in which *David* is set in Opposition to those Rebels: Now, tho' he indeed defended himself, yet he had a just and sacred Tendernefs to the Person of *Saul*, when he had him in his Power, which is certainly sacred by our Constitution. Five of them relate to wicked Princes. It was never pretended by any who pleaded for Necessary Defence, that the bad Life of a Prince can be a just Cause of Resistance: Yet that was then pretended; for King *Henry VIII.* had given too much occasion to reckon him a wicked Prince. So there is only one of all the Passages quoted from those Homilies, that relates simply to Rebellion in general: And it has appear'd what Bishop *Jewell*'s Sense of the Matter was. There is also a Prayer at the end of every Division of the Homily against *Wilful Rebellion*, (and, by the by, *Wilful* was not put in the Title for nothing) for those oppress'd by Tyranny in other Parts, that they might be relieved, and that those who were in fear of their Cruelty might be comforted.

Let us next look thro' Queen *Elizabeth*'s long and glorious Reign, and see what was the constant Maxim of that Time.

The Year after the Queen came to the Crown the War in *Scotland* broke out between the Queen Regent that govern'd by Commission, from her Daughter then Queen of *France*, and the Lords in *Scotland*. She, to obtain the Matrimonial Crown to be sent to *Francis II.* gave Assurances for the Exercise of the Reformed Religion; but the Point being gain'd, she broke all her Promises, and resolved to force them to return to the Exercise of the Popish Religion. Upon which the Lords of *Scotland* formed themselves into a Body, and were called the Lords of the Congregation. Forces were sent from *France* to assist the Queen Regent; upon that Queen *Elizabeth* enter'd into an Agreement with the *Scottish* Lords, and sent an Army to their Assistance, which continued in *Scotland* till all Matters were settled by the Pacification of *Leith*: And in a *Manifesto*, that I have in my Hands, set forth twenty-five Years after that, I find her reflecting on that Interposition in the Affairs of that Nation, with great Satisfaction.

The Year after this War was ended, upon *Francis* the II'd's Death, *Charles* the IXth, who was a Child, succeeded in *France*. Edicts were granted in favour of the Protestants: These were soon after broken by the Triumvirat, and upon that followed a Series of Wars often pacified, but always breaking out again, by reason of the Violence and Cruelty of the Government. All these Wars, till *Henry* the IVth was settled on the Throne, were in a Course of twenty-eight Years, that which some would call *Rebellion*, being carried on against two succeeding Kings. Yet the Queen was in all that time still assisting them with Men and Money.

In the Year 1568, the Provinces in the *Netherlands* threw off the *Spanish* Yoke, that was become intolerably severe and cruel. The Queen for some Years assisted them more covertly, but when the Prince of *Orange* was kill'd, and they were in

danger to be over-run, she took them more openly into her Protection; and by the *Manifesto* which I have in my Hands, she published the Grounds upon which she proceeded. She laid down this for a Foundation, That there had been an Antient League not only between the Crown of England, and the Princes of the *Netherlands*, but between the Subjects of both Countries, under their Seals interchangeably, for all Friendly Offices. If this was a good Reason for the Queen's giving Aid to the oppressed People of the *Netherlands*, then if the Case had been reversed, that the People of England had been illegally and cruelly oppressed, it furnished the Princes of those Provinces with as good a Reason for assisting them. In this Assistance given the States, the Queen persisted till the End of her Reign; nor was this only done by the Court, but both Parliaments and Convocations granted her several Aids to maintain these Wars: And in the Preambles of those Subsidy Acts, the Queen's Proceedings in those Particulars were highly approv'd and magnify'd. *Bilson*, Bishop of *Winchester*, and several other Writers in that time, justified what she did; and not one that I ever heard of, censured or condemned it.

Upon King *James's* coming to the Crown, the first great Negotiation was for a Peace between *Spain* and the *United Provinces*; which lasted several Years. The States insisted on a Preliminary, That they should be acknowledged Free, Sovereign and Independent States; the *Spaniards* would not yield to this, nor would the States recede from it. Some here in England began to say, They were form'd in Rebellion, and ought not to carry their Pretensions too far: Upon that, King *James* suffer'd a Convocation to meet; and a Book of Canons, with relation to the supreme Authority, was prepar'd; in which, tho' the Authority of the Prince, even when he becomes a Tyrant, is carried very far; yet the Case of the *Maccabees* is stated; and, it was determined, That when a new Government, tho' begun in a Revolt, is come to a thorough Settlement, it may be owned as Lawful. King *James*, who was jealous enough of the Regal Authority, yet did not like their carrying these Matters so far: He ordered the whole Matter to be let fall so entirely, that there is not a Word of it in the Books of Convocation: But Archbishop *Sancroft* found this Collection of Canons at *Durham*, under Dr. *Overhall's* Hand, which he copied out, and Licens'd the Book a few Days before he fell under his Suspension. I soon saw that it had a Relation to the Affairs in *Holland*: For the *Dutch* delighted to compare their first Beginnings to that of the *Jews* in *Antiochus's* time: They compar'd King *Philip* to *Antiochus Epiphanes*, and the Prince of *Orange* to *Judas Maccabeus*. But I saw much clearer into the Matter by an Original Letter of King *James*, which a worthy Gentleman sent me. I knew his Hand well, the Letter is in Print; but I will read some particulars out of it. It is directed to Dr. *Abbot*, afterwards Archbishop of *Canterbury*. It begun with censuring some Positions concerning a King in Possession, the same with our Modern Term of a King *de facto*: He goes on in these Words, *My Reason of calling you together, was to give your Judgments, how far a Christian and a Protestant King, may concur to assist his Neighbours to shake off their Obedience to their own Sovereign, upon the Account of Oppression, Tyranny, or what else you like to name it. In the late Queen's Time, this Kingdom was very free*

in assisting the Hollanders both with Arms and Advice; and none of your Coat ever told me, that any scrupled about it in her Reign. Upon my coming to England, you may know it came from some of yourselves to raise Scruples about this Matter; yet I never took any notice of these Scruples, till the Affairs of Spain and Holland forced me to it. I call'd my Clergy together, to satisfy not so much me, as the World about us, of the Justness of my owning the Hollanders at this time. This I needed not to have done, and you have forced me to say, I wish I had not. He reflects on those who had a great Aversion to the Notion of God's being the Author of Sin, which plainly points at Dr. *Overhall*, who was the first Man of Note among us, that oppos'd the *Calvinists* Doctrine of Predestination; yet he says, *They had gone to the Threshold of it, by saying, That even Tyranny was God's Authority, and should be revered as such.* He concludes, *These were edg'd Tools, and that therefore they were to let them rest.* Here is a full Account of King *James's* Thoughts of this Matter, which was then the chief Subject of Discourse all Europe over. He had Twelve Years before this shewed, on an eminent Occasion, that he owned the States, when he invited them in the Year 1593, to Christen his Eldest Son, Prince *Henry*. They were sensible of the great Honour done them by it; and tho' they were then but Low, they sent an Embassy, with a noble Present of Gold Plate, to assist on that Occasion. This Negotiation stuck for several Years, the *Spaniards* refusing to own them in express Words: The Temper found was, they were treated with (*tanquam*) as with Free States; and the Matter went no further at that time, than a Truce for some Years, which was concluded in the Year 1609. This lets us see, That the Words in King *James's* Speech that Year to his Parliament, were not chance Words that fell carelessly from him, *A King leaves to be a King, and degenerates into a Tyrant, as soon as he leaves off to govern by Law: In which case the King's Conscience may speak to him, as the poor Woman to Philip of Macedon, Either govern by Law, or cease to be a King.*

There is another eminent Instance towards the End of that Reign, that shews what the Sense of our best Divines was in this Matter: When the Archbishop of *York's* Son and Mr. *Wadsworth* had changed their Religion in *Spain*, *Wadsworth* writ over a bold Defence of that; and among other Things, charged the Reformation with Rebellion. This was answer'd by one of the best Books of that Time, writ by Dr. *Bedell*, dedicated to the Prince of *Wales*, who afterwards promoted him to a Bishoprick. His Words on this Head are full: I will read some of them. *Do you think Subjects are bound to give their Throats to be cut by their Fellow-subjects, or to their Prince, at their mere Wills, against their own Laws and Edicts? You would know quo jure the Protestant Wars in France and Holland, are justified. First, The Law of Nature, which not only alloweth, but inclineth and forceth every living Thing to defend itself from Violence. Secondly, That of Nations, which permiteth those who are in the Protection of others, to whom they owe no more than an honourable Acknowledgment, in case they go about to make themselves absolute Sovereigns, and to usurp their Liberty, to resist and stand for the same. And if a lawful Prince, who is not yet Lord of his Subjects Lives and Goods, shall attempt to despoil them of the same, under colour of reducing them to his own Religion, after all*
humble

humble Remonstrances, they may stand upon their own guard, and being assailed, resist Force with Force, as did the Maccabees under Antiochus. In which case notwithstanding, the Person of the Prince himself ought always to be sacred and inviolable, as was Saul to David. No Commentary is wanted here.

My Lords, You see how this Matter stood during King James's Reign. In the first Year of King Charles's Reign, *Grotius's Book de Jure Belli & Pacis*, was published at Paris, dedicated to the King of France, while France was under the Administration of the wisest and most jealous Minister of the last Age, Cardinal Richelieu. In that Book, in which he asserts the Rights of Princes with great Zeal, yet he enumerates many Cases, in which it is Lawful to resist, particularly that of a total Subversion: And that Book is now all Europe over in the highest Reputation of any Book that the Modern Ages have produced. In the beginning of King Charles's Reign, a War broke out in France, against the Protestants; upon which he sent over Ambassadors, by whose Mediation a Peace was concluded; but that being ill kept, the War broke out again; and the King thought himself bound by his Mediation to protect the Protestants. So in the Second Session of the Parliament, 1621, in the Demand of a Supply that the Lord Keeper Coventry made in the King's Name, these Words are to be found: *France is sway'd by the Popish Faction, and tho' by his Majesty's Mediation, there were Articles of Agreement between that King and his Subjects, that Treaty hath been broke, and those of the Reformed Religion will be ruined without present Help.* Upon this the Commons petitioned the King for a Fast, and desired the Concurrence of the Lords, who join'd with them in it. The King granted it, and an Office was compos'd suitable to the Occasion; in which, among other Devotions, the Nation was directed to pray for all those, *who here or elsewhere were fighting God's Battles and Defending his Altars.* Thus the whole Body of the Legislature did concur for a Fast for that, which if this Doctrine is true, was no better than Rebellion; and yet the whole Nation, Clergy and Laity, were required to pray for Success in it.

But to complete this View of the Doctrine of our Church, it is to be consider'd, That when a Year before this, while the Loan or Benevolence were carried on, some officious Divines made use of those Expressions of Kings having their Power from God, as importing an Authority of a Nature superior to the Laws of the Land. One of these, Dr. *Manwaring*, was Impeached, and had a severe Sentence passed on him for it. So I have now made it out, beyond, I hope, the Possibility of Contradiction, that for Seventy Years together, from 1558, to 1628, the Lawfulness of Self-defence in the Case of illegal and violent Cruelty, was the publick and constant Doctrine of this Church.

These were the best and happiest Times of our Church, as is often repeated by the Earl of *Clarendon*: From these we ought to take the Standard of our Doctrine.

I go next to shew what was the common Doctrine for the next Sixty Years, from 1628, to 1688. I must yield up the first twelve Years: For upon the unhappy Misunderstanding between the King and that Parliament, there was a long Discontinuance of Parliaments, then the

lately condemned Doctrine was again in Vogue; and nothing was so much heard of, as the Law of Government that was from God, antecedent to all Human Laws: Out of this sprung illegal Imprisonments, illegal Monopolies, severe Proceedings in the Star-Chamber, but above all, the Ship-Money. These things put the Nation in an Universal Disjointing and Feebleness. And when an unavoidable Necessity forced that King to call a Parliament, the fatal Effects of those Counsels broke out terribly. I know many fancy, that the War is to be charged on the Principles of Self-defence: They are much mistaken. I had occasion to see a great way into the Secret of that time, when I examin'd the Papers relating to the two Dukes of *Hamilton*. I knew a great deal more since from two Persons of unquestionable Integrity, who knew the Secrets of that time, the Lord *Hollis*, and Sir *Harbottle Grimston*; but all receiv'd a full Confirmation, when I found it agreed perfectly with the noble Account given by the Earl of *Clarendon*.

No body dreamt of a War, nor had they any Principles leading to it. But there was an unhappy Train of Accidents that hindred Matters from being brought to a Settlement, even while the King was granting all they could desire. Stories were carried by Persons about both the King and Queen, of Words let fall, that made them conclude, there were still ill Designs on foot, against the Laws that were then passed. But that which brought all to a Crisis, was the Discovery of a Negotiation, to engage the Army to declare against the Parliament. Whosoever compares the Depositions in *Rushworth*, with the Account given of that Matter by the Earl of *Clarendon*, will see there is a great deal more in the one, than the other is willing to believe; tho' he acknowledges they had both *Goring's* Evidence, and *Piercy's* Letter with them. I will not take it upon me to determine, whether they believ'd too much, or the Earl of *Clarendon* too little. It is certain, they believ'd all that was in the Depositions, and a great deal more: For *Goring* being continued in the Government of *Portsmouth*, and his Father being advanced from being a Baron to be an Earl, and *Piercy's* being made a Lord, and Master of the Horse to the Prince of *Wales*, made them conclude they had suppressed a great deal, instead of saying more than was true. This stuck deep in their Hearts, and at last fatally broke out in the Demand of the Militia, that brought on the War, which I do own was plainly a *Rebellion*; because a Force was offer'd to the King, not to defend themselves from an unjust Invasion, or illegal Grievances, but to extort a new Law from him.

Thus the true Occasion of the War, was a Jealousy, that a Conduct of 15 Years had given too much ground for; and that was still unhappily kept up, by a fatal Train of Errors, in every step that was made. The great Concussion that the War gave the Nation, and the barbarous Effusion of so much Blood, especially of the Royal Blood of that Blessed KING, had at last a happy, tho' a late Conclusion in the *Restoration*: And it's no wonder, if such a Series of Tragical Events, begot a general Horror at the Occasion of them. But then it was, that had it not been for the Firmness of the Earl of *Clarendon* to his *English* Principles, the Liberties of the Nation had been deliver'd up.

It is to his Memory that we owe our being a free People ; for he with his two great Friends, the Duke of *Ormond* and the Earl of *Southampton*, check'd the Forwardness of some who were desirous to load the Crown with Prerogative and Revenue. He stopt all this, which being afterwards odiously represented, brought on him that great and lasting, but honourable Disgrace. The Earl of *Southampton*, whose Death went a little before his Fall, and perhaps hasten'd it the sooner, said to many about him, that he was a true Protestant, and an honest *Englishman* ; and that the Nation would feel the Effects of his being removed, whensoever it might happen.

That Lord, in the great Settlement after the Restoration, would carry things no farther than to repeal what had been extorted by the Tumults ; and in the matter of the Militia-Act, and the Oaths relating to it, all was more cautiously worded than is commonly understood. To the Word *Commission'd by the King*, some indeed moved, that the Word *Lawfully* might be added, to make all plain. This was press'd in the House of Commons by *Vaughan*, afterward Lord Chief Justice of the Common-Pleas. The Attorney General, afterwards Lord Chancellor *Nottingham*, answer'd, That was not necessary, for the Word *Commission* imported it ; since, if it was not lawfully issued out, to lawful Persons, and for a lawful Reason, it was no *Commission* ; and the whole House assented to this : yet in the House of Lords, the same word *Lawfully* was press'd to be added by the Earl of *Southampton*, who was answer'd by the Earl of *Anglesey*, to the same purpose with what had been said in the House of Commons. He indeed insisted to have the Word added, because it would clear all Difficulties with many, who not having heard of the Sense given in both Houses, might fancy, that any sort of *Commission* being granted, it would not be Lawful to resist it. He did not prevail : for it was said, That this Explanation being the Sense of both Houses, it would be soon spread and known over the Nation. In this Sense, it is certain, that it is not lawful to take Arms against any so commission'd by the King ; for that were to take Arms against the King's Commission in the Execution of the Law, which is certainly a resisting the Ordinance of God, *which whosoever do, they shall receive to themselves Damnation*.

It was no wonder, if after such a War the Doctrine of *Non-Resistance* was preach'd and press'd with more than ordinary Warmth, and without any Exceptions ; yet some still kept these in view : so did both Dr. *Falkner* and myself ; and I know many others had them always in their Thoughts, tho' they did not think it necessary to mention them.

I found the ill Effects that the carrying this Matter so far, had on the Mind of that unfortunate Prince, King *James* ; for in the Year 1673, when he was pleas'd to admit me to much free Conversation with him, among many other things, I told him, it was impossible for him to reign in quiet in this Nation, being of that Religion : he answer'd me quick, Does not the Church of *England* maintain the Doctrine of *Non-Resistance* and *Passive Obedience* ? I begg'd of him not to depend on that ; for there was a Distinction in that matter, that would be found out when Men thought they needed it. I now come to tell your Lordships, how right I judged. —

It is true, they pass'd a very pompous Decree at *Oxford* in 1683, but you shall hear how long they stood to it. In Summer, 1686, the Prince of *Orange* was pleas'd to receive me into his Service with a particular Confidence. Soon after the Ecclesiastical Commission was set up, and upon some Proceedings before that Board, he was desir'd from *England* to break with King *James* upon that Head. I oppos'd this, and said, I was convinced, that Commission was against Law, and would have ill Effects, but it did not strike at the Whole. This was more warmly press'd upon the Proceedings against *Magdalen College*. I still stood to my ground ; and told both Prince and Princess, That if a Breach should follow on these Matters, I could not serve. When indeed the Declaration was publish'd a second time, with a Resolution to have it carried thro' ; and that many Laws were dispensed with at pleasure ; and Persons who were under legal Disabilities, were made Judges, Sheriffs and Magistrates ; all whose Actings were so many Nullities : Then I thought there was a total Subversion of our Constitution ; which from being a Legal one, was made precarious, subject to mere Will and Pleasure. So I was ready to serve in the Revolution.

Some Days after we came to *Exeter*, Sir *Edward Seymour* came thither, and he presently sent for me : When I came to him, he asked me Why were we a Rope of Sand, and had not an Association ? I said, Because we had not yet a Man of his Weight to begin the Motion : He said, if we had not one by To-morrow, he would leave us before Night. I presently saw a Noble Duke, now in my Eye, and acquainted him with this : He went to the Prince, who approving of it, an Association was prepar'd, and laid on the Table next Morning ; and was after that signed by all who came to wait on the Prince. Three Days after we left *Exeter*, a Head of a College came to the Prince, to invite him to come to *Oxford*, assuring him, that the University would declare for him. He went as near it as *Abingdon*, but then the sudden Turn of Affairs at *London* obliging him to haste up, the Association was sent thither, and was signed by the Heads of the Colleges, and many others there ; some doing it in a particular Warmth of Expression, and saying, That their Hearts as well as their Hands went with it. Upon what Disappointments or other Views, I cannot tell, this Contradiction to their famed Decree, five Years after it was made, seem'd to take another Turn back to it again ; and the Notion of a King *de facto*, which is but a softer Word for an Usurper, came in Vogue.

The Parliament, to prevent the ill Effects of that, studied to secure the Government, *First*, by an Association, and then by an Abjuration. I, who was always against every thing that might break in upon Conscience, was for making these only voluntary ; but they were Enacted, and they were generally taken. A Noble Lord on the Earls Bench, procur'd me the Sight of a Letter, that went about to persuade the taking the Abjuration, that he had from a Place where he believed it had its Effect ; where I found this Distinction, That the Abjuring any Right whatsoever that the Pretender might claim, was only meant of a Legal Right, and that it had no relation to *Birth-Right*, or to *Divine Right*. This
agreed

agreed with a Report that went then current, That a Person, in a great Post, sent a Message to an Honourable Gentleman, who would not take the Abjuration, that if he had an half Hour's Discourse with him, he doubted not to be able to convince him, that he might take the Abjuration, without departing from any of his Principles. Towards the end of the last Reign, a bold Attempt was made on the King's Supremacy, by an Incendiary, who is supposed to have no small Share in this Matter now before your Lordships: But the Attack on the Supremacy being liable to a *Premunire*, it was turn'd with much Malice, and managed with great Prevarication, against the Bishops, who adhered firmly to their Duty to the King. How great a Disjoining that has brought on this Church, is too visible all the Nation over; and it tends to carry on the wicked Design of distracting the Church, and undermining the Government.

By the time the Queen was on the Throne, or soon after, the *Rehearsal* began to be spread over the Nation, two of them a Week, which continued for several Years together, to be publish'd without Check or Controul. It was all thro' one Argument against the Queen's Right to the Crown: That, tho' it was diversified with Incidents and Digressions, was kept always in view. The Clergy were in many Places drawn into Subscriptions for this Paper. This look'd like a Design long contrived at, to have the Queen's Title undermin'd: Besides this, we had a Swarm of Pamphlets every Year to the same Purpose, and, as was believed, writ by the same Hand. One sold at the Door of the House, with the Title of *King William's Exorbitant Grants*, did plainly call him an Usurper: and starting an Objection against the Queen's possessing the Throne, gave it this Answer, That she did well to keep it till she could deliver it up to the righteous Heir. At that time there was a quick Prosecution of a Paper, publish'd, with the Title of *The Shortest Way with the Dissenters*; and upon that, I brought that Pamphlet to a great Minister, and offer'd to shew him this Passage in it, to see if there should be a Prosecution of this order'd. He turned from me; so whether he heard me or not, I cannot tell: I am sure, if he says he did not, I will believe him. No Prosecution follow'd, and the Rehearsal went on. The Clergy in many Places, met at a Coffee-House on *Saturdays*, to read the Rehearsals of the Week, which had very ill Effects in most Places. I know it may be said, That the Queen's Learned Counsel ought to have look'd after these things: But we all know, that they stay till they receive Orders from the Ministry. The Course of that Treasonable Paper has been now for some time stopt, so we see there is some Change in the Ministry.

But to compleat the Insolence of the Enemies of the Queen and of the Protestant Succession, they had the Impudence to give it out, That the Queen secretly favour'd them. And as this, we all know, has been long whisper'd about among us, so it was more boldly given out in *Scotland*; which obliged one of the Queen's Ministers in that Parliament, in a Speech that was printed, to contradict this treasonable and dishonourable Suggestion, That as some Divines would have it, that there was in God a secret as well as a revealed Will, and that these might be contrary to one another; so they would fasten an Imputation on the

Queen, that while she revealed her Will one way, she had a secret Will another way; which he solemnly affirmed to be false, and highly injurious to the Queen.

While the Pamphlets and these Reports were thus set about, Mr. *Hoadly* thought that it became him to assert the Queen's Title, by justifying the Revolution, out of which it rises. But what an Outcry was raised on this, that one durst disturb the Progress of a wicked Opinion, that was visibly designed to overturn the Government: And yet he asserted nothing, but what the Counsel for the Prisoner did all fully and plainly own, That in the Cases of extreme Necessity, an Exception to the Doctrine was to be admitted, and that that was the Case at the Revolution.

But as these Notions have been long let run among us, so they have appeared in a most violent and unguarded manner, ever since the Attempt of the Pretender; and more of late, since the Preliminaries upon the Overtures for a Peace, seem to extinguish their Hopes. What Sermons on this Head are preached in this City, at Assizes, at *Bath*, and at many Cathedrals? Furious Men fit themselves with some hot Sermons, which they carry about from Place to Place, to poison the Nation. This has not only the visible Effect designed by it, of shaking many in their Allegiance to the Queen, and in their adhering to the Protestant Succession; but it has a cursed Effect on many others, on whom this their Design does not succeed.

I am very sensible there is a great deal of Impiety and Infidelity now spread thro' the Nation: This gives every good Mind all possible Horror; but I must tell your Lordships, on what a great part of it is founded: for since my Conversation with *Wilmot*, Earl of *Rocheſter*, I have had many Occasions to discourse with Persons tainted with those wicked Principles; and I do affirm it, that the greatest Prejudice these Persons have at Religion, at the Clergy, and at the Publick Worship of God, is this, that they say, They see Clergymen take Oaths, and use all Prayers, both ordinary and extraordinary, for the Government, and yet in their Actings and Discourses, and of late in their Sermons, they shew visibly that they look another way: from whence they conclude, They are a mercenary sort of People without Conscience.

I hope there are not many that are so corrupted and so scandalous: I am sure I know a great many that are far otherwise, who preach, speak and act as they swear and pray; but those who act in another way, are noisy and impudent, and so bring an Imputation on the whole Body. And unless an effectual Stop is put to this Distemper, it is not possible to foresee all the ill Consequences that may follow upon it.

I have, I am afraid, wearied your Lordships; but I thought it was necessary, once for all, to enlarge copiously on this Argument. And now to come close to the Article, and the Sermon, for I meddle not at all with the Person of the Man, whatever general Expressions might very well have been used, in setting forth *Passive Obedience* and *Non-Resistance* before the *Revolution*; because odious Cases ought not to be supposed, and therefore are not to be named, yet since *Resistance* was used in the *Revolution*, and that the late King invited all the Subjects to join with him, which was in them certainly *Resistance*; and since the Lawful-

ness

ness of the *Revolution* is so much controverted, the condemning all *Resistance* in such crude and general Terms, is certainly a condemning the *Revolution*. And this is further aggravated from those Limitations on our Obedience, in an Act past soon after the *Revolution*, by which, in Case our Princes turn *Papists*, or marry *Papists*, the Subjects are

in express Words discharg'd from their Allegiance to them. Certainly this puts an End to the Notion of *Non-Resistance* in any Case, or on any Pretext whatsoever. For these Reasons, I think the first Article of this Impeachment, is both well grounded, and fully made out.

*The Bishop of Oxford's * Speech in the House of Lords, on the first Article of the Impeachment of Dr. Henry Sacheverell.*

My LORDS,

SOME of this Bench are necessarily call'd up, by Words which fell from the noble Lord who spake third in this Debate, who was pleas'd to mention among other strange Things, *Bishops voting contrary to their Doctrines*. The Opinions of several of the Reverend Prelates have been read before your Lordships in *Westminster-Hall*: They were first quoted by the Counsel for the Defendant, and by their Order read in such a partial and unfair manner, that if I may be allow'd to use any other Author after the same way, to take a naked Proposition out of his Book, and not consider the Coherence or Dependence of the Words, how it may be explain'd or limited in other Places, to read just so far as may serve my Purpose, and stop when any thing follows that may set the Matter in a just Light, I dare undertake to make any Author speak on which-ever side of the Question I please.

But the Managers for the Honourable House of Commons did Justice to those Reverend Prelates, by obliging the Clerk to read other Passages in their Books, which clearly explain'd their Opinions; and so the only Purpose that was eventually serv'd by producing those Quotations, was that which, I fear, was not intended; the vindicating those Reverend Prelates from the uncharitable Imputation of having asserted a Doctrine in their Writings, which they had contradicted by their Practices, in relation to the *Revolution*, and the Government founded upon it.

I hope to be able to reconcile the Vote which I shall give, with the Opinion which I have always been of, and which having not been produced below, I stand up to give it your Lordships here; being far from censuring, far from entertaining the least disrespectful Thought of any that shall differ in Opinion from me.

I own the Subject now in debate, is a matter of great Consequence, and of great Nicety and Tenderness; and that he, who should presume to entertain your Lordships upon it, ought to be better qualify'd, and better prepar'd than I am in other Respects; but I will give place to none in those that follow, *viz.* in delivering my self with that Respect and Deference which is due to this House, that humble Diffidence which becomes a just Consciousness of my own Weakness, and that Plainness and Sincerity which becomes that Character, which however unworthy of it, I have the Honour to bear; and then I am sure I may depend upon your Lordships known Candor, Honour and Justice, that if any thing should fall from me less correct, or less guarded than it ought to be, it shall receive the most favourable Construction that it is capable of.

Before I deliver my Opinion, I beg leave briefly

* Dr. William Talbot.

to state the Question; and in order to that, to lay down two Premises.

1. That Government in general, was in its original Institution, designed for the Good of the whole Body. Men were not form'd into Societies, only to be Subjects of the arbitrary Wills, the slavish Instruments in the gratifying the ambitious or other corrupt Designs, of any one or more Men; but for the Safety and Prosperity of the whole Community.

2. That in the Holy Scriptures (as far as I can find) there is no Specification of any one particular Form of Government to which all Nations and Bodies of Men, in all Times and Places ought to be subject; nor are there any such exact Accounts of the Extent of the Power of the Governor, or Obedience and Submission of the Governed, as can reach to all Cases that may possibly happen.

There are many general Precepts requiring the Obedience and Submission of Subjects to their Governors: *Let every Soul be subject to the Higher Powers: You must needs be subject not only for Wrath, but also for Conscience-sake: He that resists, resists the Ordinance of God: And submit your selves to every human Constitution for the Lord's sake, &c.*

But yet these Scriptures do not tell us how far we must obey and be subject, nor do they necessarily imply that there can never be any Cases wherein we may not obey and not be subject, but resist; because there are other Places in Scripture, where other Duties are requir'd in Terms as large and general as these, nay in universal Terms, which yet must admit of Exceptions.

Some of the most zealous Contenders for the absolute Power of the Prince, and unconditional Submission of the Subject, found themselves very much upon the fifth Commandment, *Honour thy Father and Mother*, which they expound as comprehending political as well as natural Parents; and I do not gain-say it: But then pray, my Lords, let us see in what Terms the Duty of Children to their natural Parents is requir'd in Scripture: *Children*, says the Apostle, *obey your Parents in all Things*. This Expression is surely universal enough; and from hence, according to some Mens Reasoning, it must follow, if Children must obey their Parents in all things, then they may resist in none.

But will any body say, that notwithstanding the Universality of this Precept, there may not be some Exceptions and Limitations understood, both as to the active and passive Part of the Child's Obedience? As to the active, no one will deny, but the Command must be restrain'd to *Licita & Honesta*; they are not to obey in all things absolutely, but in all things that are lawful and honest.

And

And as to the passive Part of the Child's Obedience, the Submission or Non-Resistance requir'd, permit me to put a Case: Suppose a Parent in a Phrenzy, in a Fit of Drunkenness or Passion, draws his Sword, and attempts to kill his innocent Son, and the Son has no way to escape from him: Is he oblig'd by this Duty of not resisting, to stand still and let his Father sheath his Sword in his Bowels? May he not, tho' he must still have a care of his Father's Life, defend his own? May he not put by the Pass, grapple with his Father, and disarm him if he can? My Lords, surely he may; that prime Law of Nature, of Self-Preservation, will justify him in it: And then why may not the same Law of Self-Preservation justify the Political Child, the Body of the People, in defending their political Life, *i. e.* their Constitution, against plain and avow'd Attempts of the political Parent utterly to destroy it? And it is upon this Point only that I shall state the Question.

I do allow, that in all Governments whatsoever there is an absolute Power lodg'd somewhere. With us, as I humbly conceive, that Power is lodg'd in the Legislature; for which I have the Authority of a great Politician and Statesman, Sir Thomas Smith, who was Secretary of State to two Princes, King Edward VI. and Queen Elizabeth; who in his Book, *De Republica Angl.* a Book seen and allow'd, as is said in the Title-Page, in that Chapter where he treats of our Parliaments, and the Authority thereof, lays down this Assertion, '*The most high and absolute Power of the Realm of England consisteth in the Parliament.*' And giving particular Instances of that Power, among others, mentions this, '*That the Parliament gives Forms of Succession to the Crown.*'

The executive Power with us is lodg'd with the Prince; and I do readily allow, that the Prince so vested with the Executive Power, and all others lawfully commission'd by him, acting according to their Commission, and within those Laws with the Execution whereof he and they are respectively trusted, are irresistible: The Person of the Prince is always inviolable; no personal Faults in him; no Injuries to particular Persons, where they can have no Redress by Law, as in several Cases they may have; no general Misdemeanors, whereby the Publick may be greatly hurt, can justify any forcible Resistance of his Subjects; nor any thing else than a total Subversion of the Constitution.

But if in a legal Monarchy, where such Laws have been enacted by common Consent of Prince and People, as are to be the Measures of his Government, as well as of their Obedience, that limit his Power, as well as secure their Rights and Properties, the Prince shall change this Form of Government into an absolute Tyranny, set aside those Laws, and set up an arbitrary Will in the room of them: When the Case is plain, and when all Applications and Attempts of other Kinds prove unsuccessful; if then the Nobles and Commons join together in defence of their Ancient Constitution, Government and Laws, I cannot call them Rebels. Allow me, my Lords, to lay before you a few things in maintenance of what I have advanced. And,

1. I would humbly offer some Facts, which I allow do not directly prove what I have said to be true, but they do prove it to have been

the Opinion of our Princes, Parliaments, Clergy and People, in the Reigns of those three great Princes, Queen Elizabeth, King James and King Charles I. I mean the Assurances which those Princes gave to the Subjects of other Countries that were resisting their respective Princes; and to enable them to do so, they had Subsidies given them in Parliament and Convocation—, and there were Prayers composed and used for the Success of their Arms.

Surely, my Lords, if those Princes, Parliaments, Clergy and People, had been of opinion, that the Resistance of Subjects against their Princes was in no case lawful, but always damnable Rebellion; they would never by aiding and assisting such Rebels have involv'd themselves in the Guilt, and expos'd themselves to the dangerous Consequences of such a Sin. I mention not the particular Stories, because they are better known to your Lordships than to me, and because I doubt not but in the Course of this Debate, some Lord or other will give a larger Account of them. But I cannot forbear observing one thing relating to that Assistance, which that pious Prince, and now glorious Saint in Heaven King Charles I. gave to the *Rochellers*, who were surely the Subjects of the King of France: He order'd a Fast by Proclamation, and appointed a Form of Prayer to be drawn up for the imploring of God's Blessing. It is highly probable, that Bishop Laud had the great Hand in composing those Prayers, he being then Bishop of London, and in great Favour, and the Archbishop of Canterbury, Abbot, at that time in Disgrace. But whoever compos'd them, I beg leave to read part of one of the Collects in that Office: '*O Lord God of Hosts, that givest Victory in the Day of Battel, and Deliverance in the time of Trouble, We beseech thee to strengthen the Hands, and encourage the Hearts of thy Servants, in fighting thy Battles, and defending thy Altars that are among us, and in all the Reformed Churches.*' It seems the Reformed Churches were thought to have God's Altars among them then, however they have been villify'd since. But that which I would observe from this Passage is this, That neither that excellent King who commanded those Prayers to be compos'd, nor the Bishops who compos'd them, nor the Clergy and People who used and join'd in them, could in so solemn a manner have recommended those Forces to the divine Protection and Favour, and as such as were fighting God's Battles, if they had thought they were fighting against God in his Vice-gerent; and as defending his Altars, if they believed they were resisting his Ordinance.

2. I could produce several Authorities in support of what I have laid down, but I shall mention but one: It is in a Book written professedly on this Subject, and the Passage I shall quote comes home in point to the matter in hand. The Book was written in Queen Elizabeth's Time: every one that is acquainted with the History of her Reign, knows what Attempts were made by the Pope and his Party against her Government and Life, by excommunicating, deposing her, absolving her Subjects from their Allegiance, by raising Tumults and Insurrections, by Dagger, Poison, and what not: And 'tis certain, that they were these wicked Practices of the Pope and his Followers, and the Doctrines by which they justify'd them, that the Compilers of the Homilies, which were then made, and other Authors,

who then wrote about the Power of the Prince and the Duty of the Subject, had principally in their View. The Book I mean, is intitled, *The true Difference between Christian Subjection and Unchristian Rebellion*. It is written by way of Dialogue between a Christian, whom the Author calls *Theophilus*, and a Jesuit whom he calls *Philander*. I beg leave to read a Quotation out of it. *Theophilus* the Christian says, *I busy not myself in other Men's Commonwealths as you (the Jesuits) do, neither will I rashly pronounce all that resist to be Rebels: Cases may fall out even in Christian Kingdoms, where the People may plead their Right against their Prince, and not be charged with Rebellion.* *Philander* the Jesuit asks, *As when for Example?* *Theophilus* the Christian replies thus: *If a Prince should go about to subject his Kingdom to a foreign Realm, or change the Form of the Commonwealth from Impery to Tyranny, or neglect the Laws establish'd by common Consent of Prince and People, to execute his own Pleasure: In these and other Cases, which might be named, if the Nobles and Commons join together to defend their antient and accusom'd Liberty, Regiment, and Laws, they may not well be accounted Rebels.* This Book is said, in the Title-page, to have been perused and allow'd by publick Authority; was written by a great Man, Dr. *Bilson*, then Warden of *Winchester* College; printed at *Oxford* by the University Printer, and dedicated to *Queen Elizabeth*; and the Author was afterwards made Bishop of *Winchester*. I could offer many other Authorities, not from false Sons, or perfidious Prelates of the Church, not from Men of factious and antimonarchical Principles in relation to the State; but venerable Names, Ornaments to the Ages they lived in, and such as will be remembred with Honour in succeeding ones: But I am superseded in producing, and your Lordships Trouble saved in hearing more particular Quotations to this purpose, by what is yielded by a Reverend Divine of great Parts and Learning, far enough from the Suspicion of being prejudic'd against the Rights of Princes, or partial to those of the People; I mean the Reverend Dean of *Carlisle*, who in a *Latin* Discourse preach'd and printed in this Town upon the *Duty of Submission*, stating some Cases of extreme Necessity, and putting the Question, *Whether it may not be lawful for the People in such Cases to resist?* answers, *Viri boni & graves, &c.* 'That good and judicious Men, that have taken great and useful Pains in defending the Rights of Princes, and representing popular Licence, have contended that it is lawful.' He adds indeed, 'Whether they have done right or wrong, let others judge;' and does not give his own Opinion. But since he has granted, that such Men as he has described, Men of Probity and Judgment, zealous Assertors of the Rights of Princes, and Repressors of popular Licence, have contended that in Cases of extreme Necessity it is lawful for the People to defend themselves; I may comfort myself, if I err in my Opinion, that I err in good Company. But I humbly conceive I do not err, and that,

3. For this plain Reason, That if it be utterly unlawful to resist in any case whatsoever, even that of a total Subversion of the Constitution and Laws; then there is no Distinction of Governments, of absolute, I mean, and limited: or if there be a Distinction, it is a nominal one, without any real Difference. For what Difference is there between a Prince's governing arbitra-

rily without Law, and governing arbitrarily against Law? betwixt having no Laws at all, and having precarious Laws that depend intirely on the Will of the Prince, whether he will observe one of them, or subvert them all; and if he does, the People cannot help themselves?

But, my Lords, I hope and believe that there is a real Distinction of Governments, and that the Subjects of all Governments are not in the same wretched Condition that those of *France* and *Turkey* are in. I hope we have not boasted falsely or vainly of our own Form of Government, that we are bless'd with a Constitution more happy than any other Nation in the World enjoys, that allows and secures as great, and (I had almost said) God-like Powers and Prerogatives to the Crown, as any wise and good Prince can desire; a Power of doing every thing that is good, and nothing that is ill; and at the same time secures most valuable Rights and Privileges to the People.

What wise or good Prince would not rather chuse to reign over free Subjects, than tyrannize over Slaves? To receive a willing cheerful Obedience, proceeding from the Principles of Gratitude, Love and Interest, as well as of Duty, rather than a forced one, owing meerly to a Principle of Fear, the Principle from whence the *Indians* worship the evil Spirits?

My Lords, such a Frame of Government your Lordships have receiv'd from your Ancestors; and I hope and trust, that in grateful Respect to their Memory, and in tender regard to your Posterity, (I say nothing of ourselves, my Lords; for as for us who have the Happiness to live under the Government of the best of Princes that ever Heaven bless'd a Nation with; for us, I say, were our Government as arbitrary as any in the *East*, yet I should think our Rights, Liberties and Properties, and whatever is most dear and valuable to us, as safe if they depended entirely upon Her Majesty's gracious Will, as they are now they are secured to us by our Laws, or stronger Fences, if they could be made) but I speak in regard to those that are to come after us: and I do hope and trust, that as your Lordships have receiv'd such an inestimable Treasure from your Predecessors, you will transmit it inviolable to your Posterity.

My Lords, I fear I tire you, but I must beg your Patience a little longer, while I express my Surprise and Wonder that the Doctrine of *Passive Obedience* and *Non-Resistance*, in the unlimited Extent in which some explain it, is so diligently inculcated, and so zealously press'd at this Time.

Passive Obedience, I own, when truly stated, is a truly Christian Duty; a perpetual Duty as to the Obligation, but occasional as to the Practice of it. Now Preachers do not usually, neglecting the pressing of other Duties of more constant Practice, lay out their Time and Labour in filling both Pages of their Discourses with earnest Assertions and violent Exhortations to the Practice of an occasional Duty, unless they have some near Prospect of an Occasion for the Exercise of it. And yet, my Lords, has this one Duty been of late, more frequently and earnestly asserted and urged both from Pulpit and Press, than all the other Duties of Christianity: And what Occasion for this does any one pretend to have in view?

Can there be a Wretch so abandon'd, so lost to all Sense of Gratitude and every thing that is good, as to be capable of admitting a Thought, that

that our gracious Queen has done, is doing, or intending to do any thing, that may give her Subjects occasion for the Practice of this Duty: Has she not, ever since her happy Accession to the Throne, postponed, sacrificed her own Repose and Ease to the Quiet and Happiness of her Subjects? Has she not clearly shown that she has nothing so much at heart, as the Good and Prosperity of her People, the true Interest and Honour of her Kingdom, which she has carried higher than any of her Royal Predecessors ever did before her? Has she not approv'd herself a true Parent of her Political Children, by exercising as prudent a Care of, and expressing on all Occasions as tender an Indulgence to them, as any natural Parents ever did towards theirs?

If then there be no Occasion from the Conduct of our Prince, is there any Reason from the Behaviour of her People that may justify this extraordinary and otherwise unseasonable Zeal for this Doctrine? Do they (excepting such as the Zealots for this Doctrine have excited to disturb her peaceful Reign at home, by rebellious and dangerous Tumults and Insurrections) shew any Uneasiness under her Majesty's Government, or Inclination to throw it off? Do they not bless their glorious Queen and God for her? Do they not on all Occasions express their grateful Sense of the many inestimable Blessings they enjoy thro' her Administration? Do they not constantly offer up their devout Prayers to God for her long Life and happy Reign? Do they not willingly pay their Taxes for the Support of her Government, cheerfully expend their Treasure and Blood too in Defence of it?

What then can be said for such a Conduct, which can have no other natural Tendency than to create unreasonable Jealousies of her People in the Head of our Queen, and groundless Fears of their Queen in the Hearts of her People? Jealousies in the Queen, that her Subjects are inclinable to rebel against her, when the Clergy think it necessary thus to press these Restraints upon them; and Fears in the People when their Pastors are so industriously preparing them for Sufferings.

My Lords, I would not be thought to charge upon all that hold and assert this Doctrine, the Consequences which I may with too much Reason charge upon some of them; I mean such as do not allow Her Majesty's Title to the Crown, but refuse to take the Oaths to Her, or join in Prayer for Her, and have upon that account form'd one of the most unaccountable Schisms that ever was made in the Church. Some of these have engaged zealously in asserting this Doctrine; and one of them in a Paper written in Vindication of it, has not been afraid to insinuate a Parallel between the Case of *Her Majesty and the Pretender*, and that of *Atbaliah and Joash*.

Horrid Suggestion, that would make one tremble! What do these Men mean? Any Service to Her Majesty? No: The Consequences as to them are plain. If to resist upon any Occasion whatever be unlawful, be Rebellion, damnable Rebellion; then the Revolution was Rebellion, and all that were concern'd in it are involv'd in that Guilt; then we have continued in a Rebellion ever since; then if we wou'd avoid Damnation, we must repent of that Sin: but there is no true Repentance without Restitution, and if there must be Restitution, they will tell you what that is.

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I would charitably hope, that the unfortunate Person now in Judgment before your Lordships, did not intend to carry Matters so far: But I must say, his Doctrine as he has stated and managed it, under his Head of *Falſe Brotherhood* with relation to the State, does give too great a Handle for those that have such Views, to improve what he has said to their Purposes.

The Counsel for him, have labour'd to defend him against the Charge in this Article, by producing a great many Quotations out of the *Homilies, Statutes, and Writings* of Divines dead and living, wherein this Doctrine has been laid down generally. They all allow'd that Cases of extreme Necessity were always excepted out of this general Doctrine; and that tho' the Exception was not express'd, yet it was always imply'd; and they allow'd farther, that the Case of the Revolution was a Case of such Necessity: But how did they apply this to the Case of their Client? Thus: They said, that those Divines whom they had quoted, were never found fault with for asserting the Doctrine in general Terms, not expressing but tacitly implying the Exception: Then they ask'd, Why should the Doctor be charged for asserting the Doctrine in general Terms, as others had done, not expressing the Exception which they had not express'd? Why should not he be intitled to the favourable Construction of tacitly implying the Exception of Cases of Necessity, such a Necessity as they allow'd justify'd the Revolution?

Indeed I should readily have admitted the Plea, if the Doctor had done no more than barely assert the Doctrine in general Terms, and his only Fault had been that he had not express'd the Exception which he tacitly imply'd: But has he done no more than this? Has he not mention'd the Case of the Revolution, with no other view, as I can see, than to expose it; not as an Exception out of his general Position, but an Objection against it? Our Adversaries, says he, that is, those that oppose his general Doctrine, think they have us sure, *i. e.* effectually confute that Doctrine, by objecting the Revolution. This Objection must suppose that there was Resistance at the Revolution; for to say that the general Doctrine, That it is not lawful in any Case to resist, is not true, because the Revolution was lawful, in which there was no Resistance, would be a wonderful Objection indeed: I say, Resistance must be suppos'd in the Objection, to make Sense of it. How then does he solve this Objection? Does he say the general Doctrine always implies an Exception of Cases of Necessity? That the Revolution was a Case of such Necessity, and therefore that Necessity justify'd the Resistance at the Revolution; No, but by advancing a strange Position (which he proves by as strange a Medium) *viz. That there was no Resistance at the Revolution*: plainly implying, that if there was Resistance at the Revolution, which every body knows there was, the Revolution stands condemn'd by his general Doctrine. So that I cannot see that his learned Counsel, who wanted neither Abilities nor Inclinations to serve him, have at all defended him against the Charge in this Article. But this they have effectually done, they have given up his general Doctrine, if it admits of no Exceptions; and thereby clear'd the Revolution and the necessary Means whereby it was brought about, from those black and odious Colours which he endeavour'd to cast upon them.

After all, I can truly appeal to my own Heart, and a greater than it, the Searcher of it, that I am not any ways prejudiced against the Person of the unhappy Prisoner, but rather in favour of him, as I am of all Men in his suffering Circumstances, by a natural Tenderneſs (it may be a Weakneſs, but ſuch a one as I cannot help) which never ſuffers me, however oblig'd in Juſtice to it, to do a hard thing to any one—however deſerving it, without doing at the ſame time a hard thing to myſelf: And if your Lordſhips ſhould be of Opinion in the Concluſion of this Trial, That the Commons have made good their Charge againſt him, I am ſure I could come into as eaſy a Sentence upon him as may be conſiſtent with the Honour and Juſtice of your Proceedings, and with that which I take to be the chief End in all Punishments, not ſo much the hurting the Offender, as the preventing the like Offences, and hindring others from committing them for the future.

But ſtill, my Lords, there is ſurely a Tenderneſs and Compaſſion due to our Queen, our Country, and our Poſterity; all which, I humbly apprehend, are highly concern'd in the Iſſue of this Affair.

If Clergymen may with Impunity publickly in

their Sermons arraign and condemn the Revolution; beſides the Reflections they caſt upon all the worthy Patriots that were concern'd in that great Work, the Commonalty, Gentry, and Nobility, Lords upon every Bench in this Houſe; beſides this, it muſt ſhake, it muſt ſap the very Foundation of our preſent Eſtabliſhment, as it ſtands upon the Foot of the Revolution, and utterly deſtroy our future Hopes in the Proteſtant Succeſſion, which is founded upon that bottom only.

My Lords, I muſt humbly aſk Pardon for having treſpaſs'd ſo long upon your Patience, and will conclude with this one Word, That in my Opinion, *theſe Praeſcriptions of Clergy-men* (to uſe the Expreſſion of a great and eminent Prelate) *in State-Matters, are of that dangerous Tendency and Conſequence, that if there be not ſome effectual Stop put to theſe Praeſcriptions, theſe Praeſcriptions will, in time, put an effectual End to our Conſtitution.*

The Commons had therefore Reaſon to bring this Matter in Judgment before your Lordſhips, and I think they have fully made good their Charge in the firſt Article of their Impeachment againſt Dr. Sacheverell.

*The Biſhop of Lincoln's * Speech to the Houſe of Lords, March the 17th, at the opening of the ſecond Article of the Impeachment againſt Dr. Sacheverell.*

MY LORDS,

IT was the Miſfortune of ſome of our Bench, that in the Proſecution of the foregoing Article of this Impeachment, a Noble Lord, who ſpoke very early to that Point, was pleaſed not only to anticipate our Judgment in that Particular; but to do it with this pretty hard Reflection, That in giving it, as he ſuppos'd we would, we ſhould vote contrary to our own Doctrine. It is not improbable but that, in the Courſe of the preſent Debate, another Arrow may be drawn out of the ſame † Quiver to ſhoot at us; and we may be told, that in defending of the || Toleration granted by Law to the Diſſenters, we ſhew ourſelves to be Apoſtates from our own Order. But from both theſe Imputations I am perſuaded both our Writings, and our Actions, will ſecure us in the Judgment of all indifferent Perſons.

The Subſtance of this Second Article of the Impeachment, which your Lordſhips are now about to enter upon, is this: *'That Dr. Sacheverell in his Sermon doth ſuggeſt and maintain, that the Toleration granted by Law is unreaſonable, and the Allowance of it unwarrantable. That he is a False Brother with relation to God, Religion, or the Church, who defends Toleration, and Liberty of Conſcience. That Queen Elizabeth was deluded by Archbiſhop Grindal to the Toleration of the Genevian Diſcipline: And that it is the Duty of ſuperior Paſtors to thunder out their Eccleſiaſtical Anathemas againſt Perſons entitled to the Benefit of the Toleration; and insolently dares, or deſies, any Power on Earth to reverse ſuch Sentences.'* This, my Lords, is the Sum of this part of the Commons Charge againſt Dr. Sacheverell, and I think the Managers have fully made it out; not

by bare Intendments, by unneceſſary Implications, and forced Conſtructions; not by piecing together broken Sentences, and conjoining of diſtant, and independent Paſſages (as he has unjuſtly complain'd;) but by the plain Words, and neceſſary Meaning, of a very great part of his Diſcourſe.

But before I trouble your Lordſhips with the Proof of this, give me leave, upon this Occaſion (tho' it be no part of the Impeachment laid againſt the Preacher) to obſerve to your Lordſhips what a ſtrange Account he has thought fit to publiſh of that other popular Engine, which, he ſays, has been made uſe of ‡ to pull down the Church, and which he calls by the Name of Comprehension.

The Perſon who firſt concerted this ſuppoſed Deſign againſt our Church, was the late moſt Reverend Dr. *Sancroft*, then Archbiſhop of *Canterbury*. The Time was towards the End of that unhappy Reign, of which ſo much was ſaid upon the Occaſion of the foregoing Article. Then, when we were in the height of our Labours, defending the Church of *England* againſt the Aſſaults of Popery, and thought of nothing elſe; that wiſe Prelate foreſeeing ſome ſuch Revolution as ſoon after was happily brought about, began to conſider how utterly unprepared they had been at the Reſtoration of King *Charles II.* to ſettle many things to the Advantage of the Church; and what a happy Opportunity had been loſt for want of ſuch a previous Care, as he was therefore deſirous ſhould now be taken, for the better and more perfect Eſtabliſhment of it. It was viſible to all the Nation, that the more moderate Diſſenters were generally ſo well ſatisfied with that

* Dr. William Wake.

† See Dr. Sacheverell's Answer to the 1st Article of Impeachment. His Speech, Vol. P. 23.

|| Dr. Sacheverell's Sermon at St. Paul's, Pag. 8. ‡ Sermon, pag. 16, 17.

that Stand which our Divines had made against Popery, and the many unanswerable Treatises they had publish'd in Confutation of it, as to express an unusual Readiness to come in to us. And it was therefore thought worth the while, when they were deliberating about those other Matters, to consider at the same time what might be done to gain them, without doing any Prejudice to ourselves.

The Scheme was laid out, and the several Parts of it were committed, not only with the Approbation but by the Direction of that Great Prelate, to such of our Divines as were thought the most proper to be intrusted with it. His Grace took one Part to Himself: Another was committed to the then Pious and Reverend * Dean, afterwards a Bishop, of our Church. The reviewing of the daily Service of our Liturgy, and the Communion-Book, was referr'd to a select Number of excellent Persons, † two of which are at this time upon our Bench; and I am sure will bear Witness to the Truth of my Relation. The Design was, in short, this: To improve, and, if possible, to enforce our Discipline; to review, and enlarge our Liturgy; by correcting of some things, by adding of others; and if it should be thought advisable by Authority, when this Matter should come to be legally consider'd, first in Convocation, then in Parliament, by leaving some few Ceremonies, confess'd to be indifferent in their Natures, as indifferent in their Usage, so as not to be necessarily observ'd by those who made a Scruple of them; till they should be able to overcome either their Weaknesses or Prejudices, and be willing to comply with them.

How far this good Design was not only known to, but approved of by, the other Fathers of our Church, that famous Petition, for which Seven of them were sent to the Tower, and which contributed so much to our Deliverance, may suffice to shew. The *'Willingness there declared of coming to such a Temper as should be thought fit with the Dissenters, when that Matter should be consider'd, and settled, in Parliament and Convocation;'* manifestly referr'd to what was then known to several, if not all of the Subscribers, to have been at that very time under Deliberation. And that nothing more was intended than I have before said, is as evident from what was publicly declared in a Treatise purposely written to recommend the Design, when it was brought before the two Houses of Parliament, in the beginning of the late Reign; and Licensed by the Authority of a Noble Peer, now present, who was at that time Secretary of State: In the very Beginning of which there is this remarkable Passage, which I shall beg leave to read to your Lordships: || *'No Alteration, that I know of, is intended, but in things declared to be alterable by the Church itself. And if Things alterable be altered upon the Grounds of Prudence and Charity; and Things defective be supplied; and Things abused be restored to their proper Use; and Things of a more than ordinary Composition, revised and improved; whilst the Doctrine, Government, and Worship of the Church remain intire, in all the substantial parts of them; we have all reason to believe that this will be so far from injuring the Church, that, on the contrary, it shall receive a very great Benefit by it.'*

And now, my Lords, let any impartial Person consider, what was there in such a Design that could be justly esteem'd prejudicial to the Constitution of our Church? Wherein would our Canons have suffer'd, if those already made, had been more strongly enforced; and some new ones had been added, for the Reformation of Manners; for the better punishing of notorious Offenders; and to render our publick Discipline more strict, and severe? This we have been wishing for, ever since the Reformation. What harm would it have done our Church had it now been effected? Or how would our excellent Liturgy have been the worse, if a few more doubtful Expressions had been changed for plainer and clearer; and a Passage or two, which however capable of a just Defence, yet in many Cases seem harsh to some even of our own Communion, had either been wholly left at liberty, in such Cases, to be omitted altogether; or been so qualified as to remove all Exception against them in any Case. If such Collects, as are not yet adapted to the Festivals, or Gospels, to which they belong, had been made more full, and apposite to both; if some of the occasional Offices had been enlarged, and new ones added: If, for Example, there had been a greater variety of Prayers, Psalms, and Lessons appointed by Authority, instead of the Compositions of private Persons, now necessarily to be used, for the Visitation of the Sick; and new Forms composed for the Use of Prisoners for Debt or Crimes: For the greater Solemnity of receiving Profelytes into our Church; of reconciling Penitents to it; and of casting notorious Offenders out of it: These were some of the main things that were then design'd. As for any favour to the Dissenters, none, that I know of, was intended, but what should have been entirely consistent with our own Constitution: And I hope it will not be thought any Crime for the Bishops, and Clergy of our Church, to be willing to enlarge its Communion, by any Methods which may be likely to gain others, and yet not injure our own Establishment.

But to satisfy your Lordships that nothing could have been designed to the Detriment of the Church; be pleas'd farther to consider, how what was thus at first projected in private, by select Persons, and in a difficult Time, when no Countenance was to be expected from Authority to any such purpose, was afterwards, if ever, to have been brought to Maturity. And this being a matter of publick Notice, the relation of it will admit of no Exception.

No sooner were their late Majesties, of glorious Memory, seated in their Thrones, but this Design was openly espoused by them. A Commission was issued out, under the Great Seal of England, to a large number of Bishops and other eminent Divines, to meet together, and to consider of these Matters. What they did, having not had the Honour to be one of them, I shall not presume to say. This we know, that whatever they did, it was to have been carried on from them to the two Convocations of Canterbury and York: And after it should have pass'd their Approbations, it was finally to have been laid before the

* Dr. Patrick, Bishop of Ely. † The Archbishop of York and Bishop of Ely. || A Letter to a Member of Parliament in favour of the Bill for uniting Protestants: Licensed by the Command of the Earl of Shrewsbury, April 1. 1689. Ja. Vernon. Pag. 2.

the two Houses of Parliament, and so to have gone on to the Royal Assent. This, my Lords, was the Course thro' which all that was designed, or should have been done in this matter, must have pass'd: and I am persuaded nothing very injurious to our Church's Welfare, will ever be able to pass thro' all these.

Having thus given your Lordships a true account of that Design which Dr. Sacheverell mentions under the Name of Comprehension, I doubt not but that your Lordships will now be amazed to hear, what a false and scandalous Report he has made of it. In the 16th Page of his Sermon, he thus speaks of it: '*The worst Adversaries of our Church, says he, were to be let into her Bowels under the Holy Umbrage of Sons; who neither believed her Faith; own'd her Mission; submitted to her Discipline; or complied with her Liturgy. For the admitting of this Trojan Horse, big with Arms and Ruin into our Holy City, the straight Gate was to be laid quite open; her Walls and Enclosures to be pull'd down; and a High-road made in upon her Communion. Her Articles to be taught the Confusion of all Senses, Nations, and Languages.*'

This, my Lords, is a very strange Representation of so good a Design, as that I before recounted to your Lordships. Yet this Representation did this bold Man, as confidently, as falsely, make of it in the House of God, and publish to the View of the whole Nation. For thus he goes on: '*This pious Design of making our House of Prayer a Den of Thieves, of reforming our Church into a Chaos, is well known to have been attempted several times in this Kingdom, and lately within our Memory; when all Things seem'd to favour it, but that good Providence which so happily interposed against the Ruin of our Church, and blasted the long-projected Scheme of these Ecclesiastical Achitophels.*' To say nothing more of the Design itself, of which I have given an Account before; pray, my Lords, who were the Achitophels that projected it, and must have concurr'd to the Execution of it? I have already named the first, and chiefest of them, the late Archbishop Sancroft. The next who openly approved of it, were the Commissioners who met upon it in the Jerusalem-Chamber: A Set of Men, than which this Church was never, at any one time, bless'd with either wiser or better since it was a Church: Who it was that* presided in the Convocation of this Province, to which this Project was next to be referr'd; and who, had it gone on, must have had a chief Hand in the Management of it, I need not say. Every one who knows any thing at all of his Character, (and I am sure your Lordships are none of you Strangers to it) knows him to be too good a Friend to the Establishment of our Church, to have been capable of being engaged in such a villainous Design, as Dr. Sacheverell pretends, for the Subversion of it. Or had he been otherwise, yet still the major Part of that venerable Body must have been as great Achitophels as himself, or no Harm could have been done by him. Pardon me, my Lords, if the Course of my Argument obliges me to rise yet one Degree higher, and to say, that the like Majority of your Lordships, and of the House of Commons, together with his late Majesty, must all have come into the Plot against the Church; or all the Skill and Malice of the in-

ferior Achitophels, would have signified nothing. And what Censure that Man deserves, who has the Confidence to insinuate to the World, that the Bishops, the other Clergy, the Convocations, the Parliament, nay, and the late King himself, our glorious Deliverer; or at least the greater part of all these, were engaged in a Project '*so monstrous, so romantic, and absurd, (for here I am content to use his own Expressions) that it is hard to say whether it had more of Villany, or Folly, in it;*' I shall submit it to your Lordships to consider. All I design in taking notice of this part of his Sermon, is only to clear the Memory of many excellent Persons who are dead; and to vindicate the Reputation of some still living, and in the highest Stations of the Church, from that Load of Infamy which this rash Man has with so much Virulence of Speech cast upon them: And to let your Lordships see that nothing was intended in all that Affair but what was both Honourable to those who engaged in it, and I am persuaded would have been for the Interest and Peace of our Church and State, had it been accomplish'd.

I come now to that which is the proper Subject of the present Debate; namely to offer such Passages to your Lordships, as I humbly conceive do plainly and fully make out the Second Article of the Commons Impeachment against the Preacher; and prove him to have spoken with more Freedom than he ought, not only of the Dissenters themselves, but of the Toleration, (or as he had rather we should call it) the Indulgence granted by Law to them.

And here, as I remember, it was not deny'd either by his Counsel or himself, but that he had spoken, and spoken with Warmth too, against Toleration. The only Question is, What the Toleration is against which he spake? Whether it was that which has been granted by Law to the Dissenters? Or whether it was only against a general Toleration of Atheists, Deists, Socinians, Men of no Principles, perhaps of no Religion? Or at most against such of the Dissenters as abused the Indulgence granted them by Law; and made use of it to Purposes not at all warranted by it? The former of these the Commons charge upon him: The latter he pretends; the better to clear himself of their Charge.

To determine this Point, I must in the first place beg leave to observe, that among the several sorts of false Brethren, enumerated by the Preacher with relation to God, Religion, or the Church; the second kind is of those, who give up any Point of the Church's Discipline and Worship, Page 8. To this he adds, that those are false Brethren who defend Toleration, and Liberty of Conscience. And that we may the better know what Toleration and Liberty of Conscience he means, he specifies the very Persons to whom he refers, and of whom he speaks; the Dissenters: '*If, says he, to comply with the Dissenters both in publick and private Affairs, as Persons of tender Conscience and Piety, to promote their Interests in Elections, to sneak to them for Places and Preferment, to defend Toleration and Liberty of Conscience, and under the pretence of Moderation, excuse their Separation, are the Criteria of a true Church-Man; God deliver us all from such false Brethren.*' The Toleration therefore, and Liberty of Conscience, against which

he

* The Lord Bishop of London.

he speaks, must necessarily be that of the Dissenters; those who separate from our Church: He names no others; but carries the same Persons thro' his whole Sentence, both before and after those Expressions. Either therefore it is no Reflection upon the Act of Indulgence to say that all those who defend the Toleration of the Dissenters, and are for allowing Liberty of Conscience to them, are false Brethren with relation to God, Religion or the Church, *Page 6, 7,* and such against whom we ought to pray to God to deliver us all, *Page 8:* Or if this cannot with any Reason be either said, or supposed, then it must remain that Dr. Sacheverell has here said what the Commons charge him withal; and that in express Terms, *viz.* That he is a false Brother who defends the Toleration, not of Deists, Socinians, and I know not what Monsters of Irreligion, but of the Dissenters: Those same Dissenters who by the Act of Indulgence have a right to that Liberty of Conscience of which this Gentleman speaks so very hardly; and prays God to defend us from all such false Brethren as shall presume to excuse it.

But not to insist upon a single Passage which may be supposed to have dropt unwarily from him: In the Second Part of his Sermon, he proceeds to shew the great Perils and Mischiefs of those false Brethren, against whom he was before speaking, both to the Church and State, *Page 15.* And that these again are the same Persons who have a Right to the legal Indulgence, is so very clear, that I do not see how it is possible for any one to make the least doubt of it. *Page 18.* He describes them as Occasional Conformists to the Church. *Page 19.* As those who had the old Leaven of their Forefathers still working in them: And, in the next Sentence, he expressly talks of the religious Liberty which our gracious Sovereign has indulged them. This in the very same Sentence he calls their Toleration; (for the Doctor himself is not tied up to any Niceties of Expression; he may call it so, tho' others may not:) These are the Persons, and the only Persons, of whom he speaks in all that part of his Discourse; let us see what he says of the Indulgence granted by Law to them.

And first, he tells us, *Page 18.* 'That it cannot be deny'd, but that tho' they do submit to the Government, their Obedience is forced, and constrained; and so treacherous and uncertain, as never to be trusted. That they are as much Occasional Loyalists to the State, as they are Occasional Conformists to the Church; and will betray either whenever it is in their Power, and they think it for their Advantage. That nothing but a sottish Infatuation can so far blind our Eyes and our Judgments, as to make us believe that the same Causes should not produce the same Effects; that the same Latitudinarian and Republican Notions should not bring forth the same rebellious and pernicious Consequences. That we shall be convinced to our Sorrow, if we don't apprehend that the old Leaven of their Forefathers is still working in the present Generation; and that this traditional Poison still remains in this Brood of Vipers to sting us to death. That they have advanced themselves from the religious Liberty which our gracious Sovereign has indulged them, to claim a Civil Right; and to juggle the Church out of her Establishment, by boisting their Toleration into its Place. That to convince

'us what alone will satisfy them, they insolently demand the Repeal of the Corporation and Test Acts, which under her Majesty, is the only Security the Church has to depend upon: And which (if we may believe him) they have so far eluded by their abominable Hypocrisy, as to have undermin'd her Foundations, and endanger the Government, by filling it with its professed Enemies.' His Meaning is plainly this; that the Dissenters, whom we are so foolish as to indulge, are a parcel of false and treacherous Persons; Enemies both to our Church and State; and such as, if not timely suppress'd, will convince us to our Sorrow of the Weakness and Folly of taking such Vipers into our Bosom, as watch only for a fair opportunity to sting us to death.

But what then must we do to secure ourselves against these dangerous Enemies? Why first, the Doctor assures us, that they are never to be gain'd by any Favour that can be shew'd to them. 'That he must be very weak, or something worse, that thinks, or pretends, that the Dissenters (for of these he still speaks) are to be won over by any other Grants and Indulgences than giving up our whole Constitution.' This shews the Folly of trying the soft way of Indulgence with them: And therefore he concludes, That 'He who recedes the least Tittle from it (our Constitution) to satisfy, or ingratiate with these clamorous, insatiable, Church-devouring Malignants, knows not what Spirit they are of; or he ought to shew who is the true Member of our Church.'

This I think comes fully up to what is objected against him; namely, that Dr. Sacheverell does in his Sermon suggest and maintain, that the Toleration granted by Law is unreasonable, and the allowance of it unwarrantable: For so it needs must be, if the Dissenters be such Men as he tells us they are; and will be satisfy'd with nothing less, than he assures us they will. And yet what next follows, is, if possible, still more express to the same purpose. It is objected against him, by the Commons, that he had affirm'd in his Sermons, That 'Queen Elizabeth was deluded by Archbishop Grindal, (whom he scurrilously calls a false Son of the Church, and a perfidious Prelate) to the Toleration of the Genevian Discipline.' The Fact is not denied, but the Expressions are excus'd; and the Truth of the Allegation is endeavour'd to be made out by Historical Memoirs: And it is hoped that your Lordships will not account it a High Crime and Misdemeanor, to have spoken too hardly of a Prelate who has been so many Years in his Grave.

I am, my Lords, very far from thinking, that the Commons ever intended to charge Dr. Sacheverell as guilty of High Crimes and Misdemeanors, for speaking scandalously of that good Archbishop. Their Concern was not for his Person, what Respect soever they may have had (as all true Friends of the Reformation must needs have a very great one) for his Memory. But the Truth of the matter is this: The Preacher complains, *Page 19* of his Sermon, that Queen Elizabeth was deluded by Archbishop Grindal, to the Toleration of the Genevian Discipline. He adds, 'That the Archbishop was a perfidious Prelate, for deluding her to tolerate that Discipline. That she found it such a headstrong and encroaching Monster, that in eight Years she saw it would endanger the Monarchy

*' Monarchy as well as the Hierarchy: And like a Queen of true Resolution, and pious Zeal for both, she pronounced that such were the restless Spirits of that factious People, * that no Quiet was to be expected from them, till they were Utterly Suppress'd. That this therefore, like a prudent Princess, she did by wholesome Severities; and the Effect was, that by this means the Crown for many Years sat easy and flourishing on her Head: But that her Successor, King James, did not follow her wise Politicks.' And the Result was as deplorable on his side, as it had been glorious on hers: For by this means, His Son fell a Martyr to their Fury; his unhappy Offspring suffer'd such disastrous Calamities, as made the Royal Family one continued Sacrifice to their Malice.' And all this for want of those wholesome Severities which the wise Queen his Predecessor had used utterly to suppress that factious People.*

This, my Lords, is the Doctor's Narrative, and I have given it you in his own Words. The Application is plain and home. The Dissenters are now again tolerated, as they were heretofore under Queen Elizabeth. There is a perfidious Prelate (perhaps in his Opinion a great many) who, like Archbishop Grindal, help to delude another Queen, into the Toleration of them. These *Eight Years* past (for the very number of Years is remarkable) her Majesty has borne the restless Spirits of this factious People; and had no Quiet for them. It is now high time for her to alter her Measures, as Queen Elizabeth wisely did. It is the only way to make the Crown sit easy and flourishing upon her Head. And if this be not plainly to speak out what he would have done with the Act of Indulgence, I must despair of ever being able to know any Man's Meaning by his Expressions. Such Examples are not only the most likely to enforce, but the most proper and lively Methods to convey a Man's Sense, even to the dullest Capacity; and make him clearly perceive if not what he ought, yet I am sure what the Preacher would have him to do.

The Truth is, so plain was his Meaning, that he himself began to fear that he had gone a little too far in what he had said of this Matter. And, for that reason, he added that one poor Sentence which immediately follows, and of which he has made such good use since: *' That he would not be misunderstood as if he intended to cast the least invidious Reflection upon that Indulgence the Government had condescended to give them, (the Dissenters:)'* But what then did he intend by all this bitter Invektive against them; and that very instructive Piece of History with which he concluded it? He has told us, *' that the Dissenters are false Brethren; destructive both of our Civil and Ecclesiastical Rights: That they are Occasional Loyalists to the State, as well as Occasional Conformists to the Church; and will betray both whenever they have it in their Power, and it shall be their Interest to do it: That it must be a sottish Infatuation to believe that the same Latitudinarian and Republican Notions, should not bring forth the same rebellious and pernicious Consequences: That we shall be convinc'd to our Sorrow, if we do not apprehend that the Old Leaven of their Forefathers, is still working in the present Generation: That they have already made dangerous Encroachments upon the Government, and published treasonable Reflections upon her*

Majesty: That they have advanced their Indulgence into a Civil Right, and justified the Church out of her Establishment, by hoisting their Toleration into its Place: That they have by their abominable Hypocrisy undermined the Foundation of the Church, and endangered the Government, by filling it with its professed Enemies: That they are clamorous, insatiable, Church-devouring Malignants; whom no other Grants or Indulgences can win over, but the giving up our whole Constitution: That ever since their first unhappy Plantation in this Kingdom, they have improved, and rose upon their Demands in the Permission of the Government: That Queen Elizabeth, who tolerated them for eight Years together, was forced at last to suppress them by wholesome Severities: That this made her Crown sit easy and flourishing on her Head; whereas King James the first, by not pursuing the like Methods, ruined the whole Royal Family: That nothing better could be expected from such Miscreants, begot in Rebellion, born in Sedition, and nursed up in Faction.' All this Dr. Sacheverell has said in these very plain, and emphatical Words. If he did not intend by all this to shew the Necessity of suppressing these factious People, these Vipers, who are just ready to sting us all to death, I would be glad to know what it was that he did intend by it? Could he say all this, and with such a singular Strain of impetuous Eloquence, and yet, *' not intend to cast so much as the least invidious Reflection upon that Indulgence which the Government has thought fit to give them?'* I must freely own, my Lords, I could never have imagined this: Nay, I must be excused if I add, That notwithstanding this poor Evasion, I cannot yet believe it. But the Act of Indulgence stood in his way: That Act the Queen had declared her Resolution to maintain: Your Lordships and the Commons had often shewn your Steadiness to the same effect. Even those who press'd so violently against occasional Communion, yet thought it necessary to say, in the very Preamble of that Bill, that the Act of Indulgence ought inviolably to be observed: And therefore Dr. Sacheverell thought it needful to add somewhat that he knew would not take off any thing from the Force of his Invektive, yet might serve to excuse the Severity of it, and be made use of to the purpose it now is, if he should chance to be call'd to account for it. This, my Lords, I conceive to be the true Meaning of that one single Passage, so utterly repugnant to all the rest of his Discourse; nor can I put any other Interpretation upon it. For had I the same Opinion of these Men, their Principles, and their Designs, that Dr. Sacheverell has, I should be so far from thinking them fit to be indulged, that I should account it my Duty, and the Duty of every true Friend to our Church and Government, to take the same Methods of wholesome Severities with them that Queen Elizabeth did: And I hope, by God's Grace, that should I be question'd for it, I should not dissemble my Opinion; but should have the Courage honestly to own it, whatever I might chance to suffer for it.

I have, my Lords, insisted the longer upon this Part of the Doctor's Sermon, because I would not willingly fall under the Censure of picking out disjointed Sentences, and putting them together from distant Places, that so I might the better draw

draw a Sense out of them, contrary to his Meaning. I shall trouble your Lordships but with one part more of it, to the same Effect, *Page 24, 25.* where he comes to consider, *What should be the Result of his long Discourse?* I shall read it to your Lordships in his own Words, *Page 25.* 'Let us therefore, says he, as we are unhappy Sharers of St. Paul's Misfortune, to have our Church in Perils amongst false Brethren, follow his Example and Conduct in a parallel Case. He tells us in his Epistle to the Galatians, c. 2. That he was obstructed, and pester'd in preaching the Gospel, by False Brethren unawares brought in, who came privily to spy out his Liberty which he had in Christ Jesus, that they might bring him into Bondage. To whom he gave place by Subjection, no not for an Hour, that the Truth of the Gospel might continue with the Church. Doubtless this brave and bold Resolution did the Apostle take by the peculiar Command and Inspiration of the Holy Ghost: And yet if our Dissenters had lived in those times, they would have branded him as an intemperate, hot, furious Zealot, that wanted to be sweetned by the gentle Spirit of Charity and Moderation forsooth.'

Here we have again the Persons of whom the Preacher speaks: They are our Dissenters, not the Deists, Atheists, Socinians, Hypocrites, of our times. And accordingly what follows, plainly refers to them: For thus he goes on, 'Schism and Faction are things of impudent and incroaching Natures; take Permissions for Power; and advance a Toleration (for so the Doctor is still at liberty to call what we must style Indulgence) immediately into an Establishment.' Your Lordships will please to observe, by the way, that this was the very thing he had before said of these same Persons, *Page 19.* and thereby plainly shews, that he speaks in both places of those Dissenters who have a Right to the Toleration or Indulgence, granted by Law to Protestant Dissenters. Let us now hear what he would have done with them. Why he would have them 'treated like growing Mischiefs, or infectious Plagues; kept at a distance, lest the deadly Contagion spread.' And the Method he proposes in order thereunto, is this, 'Let us therefore, says he, have no Fellowship with these Works of Darknes; but rather reprove them.' These Works, Schism and Faction; for of these, and these only, he here speaks. This is the People's Part, and the inferior Pastors: 'As for the superior Pastors, let them do their Duty, in thundring out their Ecclesiastical Anathemas against them.' Against whom, my Lords? what Works of Darknes? Still the same he before mentioned: Our Dissenters, those are the Persons: Their Schism and Faction; those are the Works of Darknes to which he refers. 'And let any Power on Earth dare reverse a Sentence ratify'd in Heaven.'

This, my Lords, was the last part of the Commons Impeachment upon this second Article: And 'tis so plainly expressed by the Preacher in this Passage, that I confess it amazes me to consider with what Positiveness he has thought fit to deny that any such thing was meant by him. The Persons whom the superior Pastors are summoned to anathematize, are the same with those, whom the other Pastors and People are to have no Fellowship withal, but to reprove. These, by the ne-

cessary Connection of his Discourse, are our Dissenters; whose Works of Darknes, he states to be Schism and Faction: Those Dissenters to whom the Government hath granted a Toleration; as himself, in the same Passage, takes notice. Which being so; I shall leave the Doctor to deny and protest, as he pleases; but when all is done, his own Words will rise up against him, and appear to every impartial Person so plain, and positive, as to put it beyond the Power of any artificial Interpretation to perplex the Meaning of them.

And this lets us into the true Application of those Passages of Scripture, with which he concludes his whole Discourse. In which, having shewn the Danger of our Church from these false Brethren, and exhorted his Auditor to a steady Courage and Resolution in the Defence of it; he thus at once both inforces his Doctrine, and abuses his Adversaries. That tho' the Church (for to that he applies, what * Zechariah spake of the false Prophets that seduced the People) lies bleeding of the Wounds she has received in the House of her Friends: A Passage first thrown at my † self, for defending the Prince's Authority, when some of these very Men engaged as vehemently on the side of Liberty, against the Rights of the Crown, as they now pretend to stand up vigorously for it: † Tho' the Ways of Zion may mourn for a Time (so the Doctor glosses upon the Text) and her Gates be desolate; her Priests sigh, and she in bitterness, because (it is the Preacher's Reason, the Text has no such Word) her Adversaries are chief; he means in the Administration under her Majesty; and her Enemies at present prosper; (so he again improves the Text; in hopes, I suppose, that it will not be long before he shall have preach'd them out of their Places:) ** Tho' among all her Lovers she has few (the Prophet complained that Jerusalem had none) to comfort her; and many (Jeremiah said all) have dealt treacherously with her, and are become her Enemies; (he refers to those of whom he had before spoken, *Page 22.*) †† Tho' there are few to guide her among all the Sons which she hath brought forth; neither are there many to take her by the Hand of all the Sons that she hath brought up; (Isaiah in both places, says none:) Tho' her Enemies cry, Down with her, down with her, even to the Ground: That is, in other Words, tho' (the Preacher, and a few of his Friends, excepted) both the Fathers and Pastors of the Church; and the Men who are at present in Power, and Authority, in the State, are become false Brethren, and run in with those Enemies of the Church, our Dissenters, against it; 'Yet there is a God that can, and will raise her up, if we forsake her not.'

It were an easy matter to make many proper Remarks upon these Passages of Scripture, thus applied, or rather abused, by the Preacher: But that would be besides my present Business; and will fall in more properly under the last Article of this Impeachment. It is enough that I have, I hope, fully shewn your Lordships how Dr. Sacheverell has treated, if not the Indulgence itself, yet I am sure, those who are entitled to the Benefit of it: And who, if they shall have the Misfortune, by this kind of Preaching, to be once generally thought such wicked, false, and dangerous Enemies to our Church and State as

* Zech. xiii. 6.

** Lament. i. 2.

† See Dr. Atterbury's Rights of an English Convocation; Title-Page.

†† Isaiah li. 18.

† Lament. i. 4, 5.

they are here represented, I cannot think that their Indulgence will hold long. If they have Numbers to secure them, it is well for them: But otherwise I am sure as the Case is here stated, it must be our Wisdom, as well as Duty, to suppress them.

How criminal such an Invektive as this will be accounted in the Eye of the Law, I dare not presume to suggest: Much less shall I pretend to intimate what Censure it may deserve. Some-

what I think should be done to put a Stop to such Preaching, as if not timely corrected may kindle such Heats and Animositities among us, as may truly endanger both our Church and State. As for the Preacher himself, I am very willing to come into any Measures of Favour to him, that are consistent with your Lordships Honour and Justice, and will answer the Ends of the Impeachment that has been brought before us against him.

*The Bishop of Norwich's * Speech in the House of Lords, at the opening of the Second Article of Impeachment against Dr. Sacheverell.*

My LORDS,

I Am very sensible under what Disadvantage in the Opinion of many, a Bishop must speak against a Clergyman that stands accused of Crimes committed by him in the seeming Execution of his Office; especially after having been so publicly required to be an Advocate as well as a Judge. And I am the more sensible of this Prejudice lying against me, for having been so lately called into that Order, and for being so unworthy of it.

But I think myself obliged notwithstanding, under all these Disadvantages, to deliver not only my Judgment, but also the Reasons that determine me to it: Which I shall do as I plainly as I can; with that Deference to your Lordships, which I am sure it must upon all Occasions particularly become me to pay; and at the same time with that Freedom which I think the Importance of this Cause does at this time require.

Dr. Sacheverell stands impeached by the Commons of Great Britain, of High Crimes and Misdemeanors expressed in the several Articles of the Charge exhibited against him: And your Lordships have heard what they have said in support of that Charge, as well as what has been offer'd in the Doctor's Defence.

Your Lordships have also debated among yourselves the Merits of the Cause as to the first of these Articles; and have come to a Resolution, that the Commons have made good that part of their Charge: In which Resolution as I did heartily concur, so I was ready to have humbly represented to your Lordships my Reasons for so doing, had there been either room or occasion for it.

Your Lordships are now upon the *Second Article*; wherein the Doctor is charged for *suggesting and maintaining, that the Toleration granted by Law is unreasonable, and the Allowance of it unwarrantable*; with other Particulars that have immediate relation to this general Charge, and which are indeed for many Proofs of it.

In this view therefore, my Lords, I beg leave to consider them: And the *First* of these Instances in support of this Charge, is, that he asserts, that *He is a false Brother with relation to God, Religion, or the Church, who defends Toleration and Liberty of Conscience*; and this, my Lords, the Doctor does assert in so many Words. It is one of the many Marks he gives whereby we may discern who is a false Brother in those respects; not a small part of one general Mark, as was alledged very inconclusively, I think, in his Defence. For if it was to be granted, (tho' it cannot be fairly pre-

tended) that the Doctor makes the defending of Toleration and Liberty of Conscience, one Branch only of the Character of a false Brother; I do not see how it could make even a part of that Character, if there was no false Brotherhood in it. And I shall not trouble myself or your Lordships with going about to settle the degrees of false Brotherhood that are in this part of the Character, because I think every degree of it is unreasonable and not to be warranted.

And therefore the Doctor cannot make it so much as a part of the Character of a false Brother to defend Toleration and Liberty of Conscience, as it is confess'd that he does, but he must at the same time *suggest and maintain that the Toleration is unreasonable, and the Allowance of it unwarrantable*. For it can never be any degree of false Brotherhood, to defend what is reasonable and warrantable: Nor would even the Doctor, as inconsistent a Man as several of the Noble Lords that have spoken for him represent him to be, ever have made it one; if he had not himself condemned that which he blames others for defending.

The *Second Instance* alledged is, that *he calls Archbishop Grindal a false Son of the Church, and a perfidious Prelate, for deluding Queen Elizabeth into the Toleration of the Genevian Discipline*. I shall not, my Lords, go about to add any thing to the full and just Vindication you have heard of that excellent Prelate. But can any of your Lordships believe, that a Presbyter of the Church of England, professing more than ordinary Zeal for Episcopacy and the Constitution of this Church, should bestow such Language on one who was the first Bishop and the Ornament of it so long; only for disposing that glorious Queen to a mild Treatment of the Puritans of that Time, which is the utmost that is pretended to be laid to his Charge, if he had thought Toleration a reasonable thing, or what was fit to be established by Law?

This, my Lords, I confess can never enter into my Thoughts, as ready as I am to enlarge them for the admitting of any favourable Construction that will not shut out common Sense.

The *Third Instance* is *his making it the Duty of the Superior Pastors to thunder out their Ecclesiastical Anathemas against Persons entitled to the Benefits of the Toleration*. And to shew that he has done this, I need only refer your Lordships to that part of his Sermon where the Superior Pastors are call'd upon to do so; (*viz.*) the Fourth and last General Head, where he draws the Consequence of all that

that he had spoken before, in the following Words: 'Now what should be the Result of this long Discourse, but that if we bear any true Concern for the Interest, Honour, and Safety of our Church and Government, we ought stedfastly to adhere to those Fundamental Principles, upon which both are founded, and upon which their Security under God alone depends; and consequently that it highly behoves us, cautiously to watch against, to mark, and avoid all those that thus treacherously desert them. And indeed it would be both for our Advantage, as well as their Credit, if such Men would throw off the Mask, entirely quit our Church of which they are no True Members, and not fraudulently eat her Bread, and lay wait for her Ruin, purloin her Revenues, and ungratefully lift up their Heels against her. For then we should be one Fold under one Shepherd; all those invidious Distinctions, that now distract and confound us, lost; and we should be terrible like an Army of Banners to our Enemies; who could never break in upon such an uniform and well-compacted Body. This indeed would be a True Peace, and Solid Union, when we should all with one Mind and one Mouth glorify God, and not with a confused diversity of contradictory Opinions, and inconsistent Jargon of Worship, which the God of Peace, Purity and Order, cannot but abhor. As it is a Maxim in Politicks, that all Governments are best supported by the same Methods and Councils upon which they are founded; so it will appear undeniably true in its Application to our Constitution, which can be maintain'd by no other Principles, but those on which it is built, and like their Basis, the Gospel, if there's any Violation, or Breach made in any Branch of it, it shakes and endangers the whole Frame and Body. These things, however little they may be represented by our Adversaries, will be found of the most considerable Consequence. Let us therefore, as we are unhappy Sharers of St. Paul's Misfortune, to have our Church in Perils among false Brethren, follow his Example and Conduct in a parallel Case. He tells us in his Epistle to the Galatians, c. 2. That he was obstructed and pester'd in his preaching the Gospel, by false Brethren unawares brought in, who came privily to spy out his Liberty, which he had in Christ Jesus, that they might bring him into Bondage: To whom he gave place by Subjection, no not for an Hour, that the Truth of the Gospel might continue with the Church. Doubtless this brave and bold Resolution did the Apostle take by the peculiar Command and Inspiration of the Holy Ghost; and yet if our Dissenters had lived in those Times, they would have branded him, as an intemperate, hot, furious Zealot, that wanted to be sweeten'd by the gentle Spirit of Charity and Moderation forsooth. Schism and Faction are things of impudent and incroaching Natures, they thrive upon Concessions, take Permission for Power, and advance a Toleration immediately into an Establishment. And are therefore to be treated like growing Mischiefs, or infectious Plagues, kept at a distance, lest their deadly Contagion spreads. Let us therefore have no Fellowship with those Works of Darkness, but rather reprove them. Let our superior Pastors do their Duty in thundering out their Ecclesiastical Anathema's, and let any Power

on Earth dare reverse a Sentence ratify'd in Heaven.'

Can any thing, my Lords, be plainer than that the Dissenters, and they only, are here spoken of? And what does the Doctor say in his own Defence, to avoid it? His Words in his printed Speech are these:

'Schismaticks, my Lords, are not the only Persons against whom Ecclesiastical Censures may be denounced: The Works of Darkness which I referred to as fit to be reprov'd, in that part of my Sermon where I speak of these Censures, are of the same kind with those mentioned by the Apostle, whose Words I produced. All lewd and immoral Practices, &c.'

It is very true, my Lords, Schismaticks are not the only Persons against whom Ecclesiastical Censures may be denounced, but I must still say they are the only Persons referred to, in the Paragraph I have read to your Lordships; and therefore I own I am a good deal concern'd, to find the Doctor making so vain, so unsincere a Defence. For it is not Works of Darkness in general he is cautioning against, but expressly, by a Word of his own inserting, not the Apostle's, those Works of Darkness mentioned immediately before; Schism and Faction, which with him go always together.

These are the Sins against which he calls upon his superior Pastors to thunder out their Ecclesiastical Anathema's; nor can the Charge be avoided by that Distinction which was offer'd in his behalf, between a Censure purely Spiritual, and an Ecclesiastical Censure. For admitting there is ground for that Distinction in a Scholastical Consideration of the general Question of Christian Censures; yet there is no room to make use of it in this Case, because he calls expressly for Ecclesiastical Anathema's, which can be apply'd to none but such as are part of the Order and Discipline of this Church.

And it is certain, my Lords, that these Censures cannot, since the Act of Toleration, be inflicted upon Dissenters, how much soever their Schism remains; because it is expressly provided by Act of Parliament, (an Act, my Lords, of the whole Christian Society, to which the Superior Pastors were personally concurring) that they shall not be treated as Schismaticks in the way of those Ecclesiastical Censures, to which their Separation would otherwise have certainly subjected them.

And tho' I cannot undertake upon Memory to be very particular, yet I dare venture to say, there have antiently been Relaxations of the Discipline of the Church, even when the Crime was thought to deserve the Continuance of it, for Publick Expedience, and better preserving the Peace of the Christian World: And that in such Cases any Presbyter or Bishop would himself have been censured, if he had not acquiesced in such Relaxations.

My Lords, a Presbyter of the Church of England, is the more obliged to acquiesce in all such Relaxations amongst us as are legally made, because he has solemnly promised at his Ordination, that he will give his Faithful Diligence always so to minister the Doctrine, and Sacraments, and the Discipline of Christ, as the Lord hath commanded, and as this Church and Realm hath received the same.

I have already observed to your Lordships, how the Discipline of the Church stands at present as to the Point in question. And as the Relaxation of it in that particular, was agreeable to that Temper which the Bishops who petitioned King James, gave the

* Vide Serm. p. 22. l. 4.

the Dissenters ground to expect; so I am verily persuaded, that the Church is so far from having been hurt by this Indulgence, that it has received Advantage as well as Credit, from that Moderation which gave way to it. I could give several Instances of this within my own Observation, while I was Arch-Deacon, under a Reverend Prelate that sits now before me, and since I have had the Honour to be on this Bench: In which compass of Time several Men of Sobriety and Learning, bred up to be Ministers amongst the Dissenters, have left the Separation, and upon due Trial have been admitted to Orders in our Church; in which they have officiated with entire Conformity to our Rules, and to the Honour of our holy Religion.

These Instances have been so frequent and remarkable, since the Dissenters have been exempted from the Penalties of certain Laws, above what had been observed before; that I think it very ill becomes any Clergyman to preach against that Exemption, as the Doctor (notwithstanding his Reserve for Consciences truly scrupulous) has done; and to call upon his Superiors to act in Contradiction to it. He should have forbore doing this, at least out of regard to her Majesty, who had been graciously pleased to declare from the Throne, that she would preserve the Toleration inviolable: A Resolution I shall ever think it my Duty, upon all proper Occasions, to express my Approbation of, as just and wise and charitable, and every way agreeable to the Spirit and Genius of the Christian Religion.

I shall not, my Lords, enter into the Enquiry of what Sentences are ratified in Heaven: But as one may venture to say, that all that have been pronounced on Earth, are not ratified there; so, by all I have seen of the Doctor's Spirit in these Matters, I have great reason to fear, that if the Power of the Keys was in his Hands, it would often be very sadly abused.

However he has so good an Opinion of his own Spirit, as to put his Superiors in mind of another Part of their Duty, immediately after that I have mentioned; and that is, to promote Men of Probity, Conscience and Courage; without which, he thinks, they cannot be fit Members of the Church Militant: in which I can as little agree with him as in the former Demand. For if I may judge of the Probity, Conscience, and Courage he thinks of deserving, by what appears in his Sermon, compar'd with his Speech to your Lordships, I cannot think them Qualifications for a Minister of the Church of Christ in any respect; and I hope I shall be so

happy as to find all the Reverend Prelates, with whom I have the Honour to sit, agreeing with me in this.

But tho' I hope such a Conduct will never recommend any Person to Favour, yet I do not desire that even that which I heartily blame should be punished so much as I think it deserves. And tho' he, who pleads so warmly for wholesome Severities toward those who differ from him, has the least Title to your Lordships Compassion; yet I hope he will find it, as far as the just Concern you have for the Publick Tranquillity will allow you to shew it.

This I say from that which, I bless God, is the natural Temper of my Mind, and not from the Care that has been taken by some to intimidate, as far as they could, those who were to have the Cognizance of the Doctor's Cause, and were not thought to be favourable to it.

I shall not take upon me to charge the Doctor or any of his particular Friends with this Practice, as great a Temptation as one is under to do so from several Circumstances. And it is not the least, that occurs in his Prayers, which he has publish'd upon this Occasion, to represent not so much to God as to the World, that he is under Persecution, when he is prosecuted for offending against the Law, by those, who in common Justice ought to be thought the fairest Accusers; and before your Lordships, who are justly acknowledged to be the most impartial Judges.

However I will never believe, till I cannot avoid it, that any Members of the Church of *England* who have acknowledged the Government, much less any Clergyman who has so often profess'd his Obedience to it in Church and State, should have been any way accessary to those Threatnings that have been given out, particularly against such Bishops as should happen to condemn the Doctor's Proceedings.

As far, my Lords, as I have seen of this Cause, I am likely to be one of those Bishops; and tho' I do not pretend to any great share of Courage, I am very free to declare to your Lordships, that I am in no Comparison so apprehensive of what may befall myself for condemning this Person, as I am of what will probably befall the Publick, if your Lordships should not condemn him.

But that is in your Lordships Judgment, to which I humbly submit it: And only beg Pardon for having detain'd your Lordships so long in giving my Reasons why I think the Commons have made good this Second Part of their Charge.

The End of the Fifth Volume.

4/20/29 2018

